



# **Section 504:**

**Rehabilitation Act of 1973 and Americans with Disabilities  
Amendments Act of 2008**

## **Operational Guidelines**

**2021-2022**

**LAMAR CONSOLIDATED INDEPENDENT SCHOOL DISTRICT**  
**ADMINISTRATIVE PROCEDURES FOR DISABLED STUDENTS**  
**UNDER SECTION 504, REHABILITATION ACT OF 1973**

**Purpose of Section 504**

The purpose of the Act and these procedures is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to nondisabled students.

**Purpose of the ADA and ADAAA**

The purpose of the ADA and ADAAA is to eliminate discrimination against individuals with disabilities of all ages in private industries, public entities, public accommodations, telecommunications, and private nonsectarian schools. The ADAAA broadened eligibility for Americans with disabilities under ADA and Section 504.

**Eligibility**

Any child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, and may be based upon academic or nonacademic issues.

Since the enactment of the ADAAA in 2008, eligibility must be considered without consideration of the ameliorating effects of mitigating measures (except for ordinary eyeglasses and contact lenses). Thus a student may be *substantially limited* even though he is doing fairly well with the assistance of aids, services, medication and/or learned behaviors that compensate for the disability. See **Mitigating Measures** below.

These provisions will also provide protection for individuals with impairments that are episodic or in remission if the disability would substantially limit a major life activity when active. Thus, schools may need to identify as *disabled* those students with seizure disorders or asthma, even though there has been no recent activity.

A substantial limitation on one or more major life activities must be determined by the 504 committee on an individual basis. The 504 committee must make the comparison of limitation relative to peers of the same age or grade level in the general population, and consider eligibility without the ameliorating effects of mitigating measures.

The ADAAA lowered the standard by stating an impairment need not prevent or severely restrict a major life activity to be considered substantially limiting.

**Definition of Impairment**

Any physiologic disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, and genitourinary, hemic and lymphatic, skin and endocrine, and respiratory\*.

Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, or a specific learning disorder\*.

\* These lists are not intended to be all-inclusive.

### **Definition of “Major Life Activities”**

Includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Additional functions now include major bodily functions (such as the immune system, normal cell growth, etc.) as well as sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

### **Age**

Eligible school-aged students who have not graduated are covered.

### **Dual Eligibility**

Many disabled students will be eligible for educational services under both Section 504 and Individuals with Disabilities Education Act (IDEA). The procedures set out herein are applicable only to Section 504. Parents and/or students seeking services under the IDEA are referred to the District's Special Education Department.

### **Program Availability**

Lamar Consolidated ISD will provide to each Section 504 eligible student, as determined by the District, a free, appropriate, public education regardless of the nature or severity of the disability.

### **Section 504 Coordinator**

Lamar Consolidated ISD has designated the 504/Dyslexia Facilitator as the District Section 504 Contact for students. She may be contacted at 3801 Ave. N Rosenberg TX 77471, (832) 223-0485. Each campus will select a Campus 504 Coordinator(s), who will perform all the duties of the Section 504 Coordinator on that campus.

## **Child Find**

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

## **Referral**

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

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

## **Consent for Evaluation.**

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

## **Evaluation**

When the consent is received from the parent, the Coordinator should:

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

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

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

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

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

d. Schedule a §504 Evaluation by the Committee.

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

At the §504 Evaluation, the Committee should:

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

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

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

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

At the conclusion of the Evaluation/Placement meeting, the Coordinator provides notice to the parent (Notice of

Section 504 Evaluation Results form) of the 504 Committee's findings, and copies of the completed Evaluation form, the Services Plan (if eligible), and the Refusal of Consent Form (if appropriate).

### **Records**

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

### **Free Appropriate Public Education (FAPE)**

No eligible Student may be excluded by the District from receiving a public elementary or secondary education. When considering the educational placement for eligible students, the Committee will ensure that the services provided are:

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

### **Parental Rights to Refuse Consent & Revoke Consent for Section 504 Services**

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

### **Least Restrictive Environment (LRE)**

The Committee shall create a placement for the eligible Student that

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

### **NonAcademic Services & Extracurricular Activities**

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

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

### **Counseling**

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

### **Physical education and athletics**

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

### **Accommodations to Extracurricular Athletics**

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

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

### **Implementation of the Section 504 Services Plan**

The District or Campus §504 Coordinator should ensure that the Student's Services Plan is delivered to each teacher, administrator, and any other employee or third-party contractor with responsibility to implement the plan. Monitoring of Services Plan implementation should be accomplished through parent

input, the teacher appraisal process, review of teacher documentation, walkthroughs, and informal checks of the student's academic, emotional, behavioral, and social progress by the Coordinator and appropriate administrators.

### **Periodic Three-Year Re-Evaluation**

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

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

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

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

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

**Section 504 eligible students with 504 Plans and additional concerns.** For certain Section 504-eligible students with 504 Plans, no snapshot is necessary, and the student will receive an annual review that year if any of the following factors apply as determined by the Section 504 Committee: the student has a complex or intricate Section 504 Plan; the student has life-



threatening impairments or impairments that, if improperly addressed, could result in serious bodily injury; or the student is moving to a new campus the following year (for example, the student is moving from the elementary to the middle school). The Committee's determination will be recorded on the Section 504 Services Plan.

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

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

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

### **Discipline**

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

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

Removals for less than ten days can be effected without §504 Committee approval, subject to the “pattern of exclusion” rule. A series of short removals (including teacher removals under §37.002 of the Texas Education Code) over the course of the school year that exceeds ten total days may constitute a pattern of exclusion that triggers applicable procedural safeguards (a manifestation determination evaluation and a right to due process) and requires the school to provide the Parent with another copy of the Notice of Rights (Form 6). The Committee will meet to conduct an evaluation prior to the tenth cumulative day of removals during a school year (and prior to each subsequent short term removal thereafter), to determine: (1) was the conduct in question caused by, or directly and substantially related to the Student’s disabilities? and (2) was the conduct in question the direct result of the school’s failure to implement the Student’s 504 plan? Prior to the evaluation, the Coordinator shall give the Parents notice of the time and place of the evaluation meeting, inviting the Parent to attend if that is the district’s policy. Written notice, while not required, is preferred, and can be accomplished utilizing the Notice of Section 504 Meeting form. If at the evaluation meeting a link is determined, the disciplinary removal cannot occur.

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

#### **Interaction with Special Education**

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

#### **Interaction with Texas Dyslexia Law**

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

#### **Interaction with regular education Early Intervention efforts**

In an effort to meet the needs of struggling students as early as possible, and to reduce the misidentification of students in both Section 504 and special education, the District uses an early intervention process, referred to as \_\_\_\_\_. This simple, campusbased

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

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

### **Mitigating Measures and Development of Section 504 Plans**

Pursuant to the ADA, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as— medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Section 504 Services plans, however, shall not be developed unless needed, at the time, in order for the student to have his needs met as adequately as those of nondisabled students. Should need develop, the Section 504 Committee shall develop an appropriate Services Plan. Further, students with physical or mental impairments whose needs are addressed through early intervention, RtI, or health plans will not be excluded from consideration for possible Section 504 referral, even when current interventions, services or health plans successfully address their impairment-related needs.

### **Procedural Protections**

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

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

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

### **Local Grievance Policy**

In school districts where the governing board has adopted policies specifically addressing grievances with respect to discrimination and harassment on the basis of disability (such as TASB Policy FFH (Local) and FNG (Local) in Texas), the following provisions with respect to grievances would not apply, and the board's adopted policy will be followed. In the absence of a specific grievance policy adopted by the board, the following policy and procedures will govern grievances with respect to disability discrimination and harassment in violation of §504:

This grievance policy and procedure serves to provide a mechanism for students, parents/guardians, and/or employees to raise complaints alleging violations of the District's obligation to not discriminate on the basis of disability in any of its programs or activities under Section 504 of the Rehabilitation and Vocational Act of 1973 (29 U.S.C. §794a) and its implementing regulations at 34 C.F.R. Part 104.

Grievances must be submitted to the District Section 504 Coordinator within 180 calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action or omission in violation of §504. Lateness in filing a grievance under this Procedure shall result in a dismissal of the grievance as untimely.

A grievance must be in writing, containing the name and address of the person filing it, as well as the name of the student and campus of enrollment, if any. The grievance process documentation shall ensure the confidentiality of the student and/or parent/guardian filing the grievance pursuant to the requirements of the Family Educational Rights and Privacy Act (FERPA, at 20 U.S.C. §1232g) and its regulations. The grievance must contain a brief and plain statement of the action or omission alleged to be discriminatory, facts underlying the claim, and the remedy or relief sought. The Grievant may attach relevant documents for consideration and shall have the opportunity to submit documentary evidence no later than 20 school business days after the date of the filing of the grievance. Lateness in submitting documents may result in the documents not being considered as part of the grievance.

The Section 504 Coordinator (or her/his campus designee) must notify the Grievant in writing of the receipt of the grievance, the steps of the grievance process (i.e., receipt of grievance, investigation, consideration of documentary evidence, and decision), and the timeline for submitting written evidence for consideration. The Section 504 Coordinator (or her/his campus designee) shall conduct an investigation of the factual bases for the grievance. This investigation

may be informal, but it must be thorough, considering relevant information and also affording the campus staff an opportunity to submit written information relevant to the grievance no later than 20 school business days after the date of the filing of the grievance. The Section 504 Coordinator (or her/his campus designee) may seek out relevant information for consideration beyond that provided by the Grievant and campus staff. The Section 504 Coordinator (or her/his campus designee) will maintain all records relating to each grievance. The Section 504 Coordinator may attempt to mediate a resolution of the grievance claims, if feasible, although a grievant shall not be required to participate in any mediation or informal resolution of the grievance claims.

The Section 504 Coordinator will consider all information deemed relevant, the applicable legal requirements, application of the legal requirements to the facts, and issue a brief written decision on the grievance claims no later than 30 school business days after the date of its filing. A copy of the decision shall be provided to the Grievant within three school business days of its completion. Such decision may be appealed to the Superintendent or their designee by the filing of a written appeal, which must be submitted to the Superintendent's office within 5 school business days after the date of the grievance decision. Missing of the appeal timeline under this Procedure shall result in dismissal of the appeal as untimely. The Grievant shall have access to other remedial options, as well, as indicated below.

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

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

#### **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.

#### **Duty to Not Discriminate**

The District shall ensure that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any District program or activity. These protections apply regardless of whether the eligible Student currently receives a Section 504 Services Plan.

#### **Retaliation prohibited**

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

#### **Disability-based harassment**

The District will promptly investigate all claims of disability-based harassment

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

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

### **Timelines**

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

### **Notice of Parent Rights Under Section 504**

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

### **Temporary Impairments**

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

### **Transfer of Rights to the Adult Student**

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

### **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.

### **Section 504 and Pre-Kindergarten Programs & Activities**

A student’s Section 504 right to nondiscrimination protection and to services prior to kindergarten largely depends on what educational opportunities the school makes available to nondisabled peers of the same age. For example, when the only pre-k programs in a district exist for students who are special education-eligible, there are no district programs and activities for nondisabled pre-k students. Consequently, Section 504 would provide equal opportunity for the student with a disability (who does not qualify under IDEA) to participate and benefit in those nonexistent programs and activities.

When the school provides pre-kindergarten programs to nondisabled students, some Section 504 rules will apply. “Section 104.38 of the Department’s Section 504 regulations specify that recipients of Federal financial assistance from the Department that provide preschool education may not on the basis of disability exclude qualified persons with disabilities, and must take into account the needs of these persons in determining the aid, benefits, or services to be provided. 34 CFR §104.38....” *OSERS Dear Colleague Letter*, January 9, 2017, Fn. 4. The Section 504 regulations contain a less-than-FAPE standard for pre-kindergarten students. 34 C.F.R. § 104.38 provides: “Preschool and adult education. A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.”

In making the required determinations, no specific process is outlined by OCR or the regulations. *See, for example, Kanawha County (WV) Schools*, 17 IDELR 186 (OCR 1990)(“The Section 504 regulation at 34 C.F.R. Section 104.38 provides that for a preschool program, a recipient shall take into account the needs of the handicapped person in determining his/her aid, benefits or services under the program. The regulation neither specifies that preschool programs should follow any formal procedures nor identifies any standards which must be met.”). Looking to the ADA, OCR has directed “The Title II regulations, at 28 C.F.R. § 35.130(b)(7), require a school district to make reasonable modifications to policies, practices, or procedures that are necessary to avoid disability discrimination, unless it can demonstrate that such modifications would fundamentally alter the nature of the service, program, or activity. Under 28 C.F.R. § 35.130(b)(8), a school district may not apply eligibility criteria that screen or tend to screen out a disabled child or children from fully and equally enjoying any service, program, or activity, unless it can show that the criteria are necessary to provide the offered service, program or activity.”

For nondiscrimination rules to apply, the student must be (1) “disabled” (i.e., have physical or mental impairment that substantially limits one or more major life activities), and (2) be “otherwise qualified.” “Otherwise qualified” refers to the eligibility criteria applied to all students who desire to participate in the program or activity. For example, any student’s participation in the program or activity may require the completion of a timely application and/or the payment of a fee. Should space be limited in the program or activity, a first-come first-served rule could apply to limit enrollment to the first applicants to fill the program. As explained above, however, the program or activity eligibility criteria must not be discriminatory on the basis of disability. Should parents request accommodation that is needed due to disability with respect to the enrollment process or criteria, the request will be addressed by the district

Section 504 Coordinator or designee. Generally, however, criteria such as completion of applications or first-come first-served policies would not be considered to be discriminatory on the basis of disability and would thus not require accommodation. Section 504 students applying to voluntary pre-K must also meet the regular admission criteria normally applied to all students, unless such criteria would be discriminatory.

Once enrolled in the pre-k program or activity, the school will utilize the following interactive process to determine whether and which reasonable accommodation might be needed. The student's pre-kindergarten teacher, the parents, and other staff as determined by the school, will discuss the student's impairment, including consideration of available medical data, the Section 504 eligibility standard, and, if eligible, the student's disability-related needs and the impact of those needs on participation in the program or activity. Reasonable accommodations will be offered to ensure students with disability are not excluded and will be documented in writing. The school, however, is not required to fundamentally alter the pre-kindergarten program to comply with Section 504 or the ADA."

#### **Texas Annual Notice to Students with Learning Difficulties**

Pursuant to the requirements of Texas Education Code §26.0081(d), Texas schools will provide Form 21 annually to parents of students with learning difficulties eligible under Section 504. The notice can be provided during a Section 504 meeting. This form is only calculated to provide the required notice to Section 504 students.



## Section 504 Due Process Hearing Procedures

### Right to Due Process

In the event a parent or guardian [hereinafter “parent”] wishes to contest an action or omission on the part of the District with regard to the identification, evaluation, or placement of a disabled child under §504 of the Rehabilitation Act of 1973 [“§504”], the parent has a right to an impartial hearing before an impartial hearing officer. Omissions on the part of the District with regard to a disabled child might include, for example, the District's failure to identify a child eligible for services under §504. Thus, a child's identification as eligible for services under §504 is not an absolute prerequisite to the right to due process. The parent must exercise the right to an impartial hearing by providing the written request for hearing (described below) within the state-law timeline for a special education due process hearing under the IDEA. In Texas, the application of this rule means that requests for a Section 504 due process hearing must be made in writing within one year of the District's action or omission.

### Parent Participation & Representation

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

### Initiation of Due Process Procedures

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

### Appointment of a Hearing Officer

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

relate to the identification, evaluation, or placement of a disabled child under §504. If a parent disputes the impartiality of the appointed Hearing Officer, he or she may raise such issue in a review of the Hearing Officer's opinion by a court of competent jurisdiction (*See "Review Procedure" below*), or in a complaint to the appropriate Office for Civil Rights regional office (*See "Complaints to the Office for Civil Rights (OCR)" below*).

### **Scheduling of Hearing**

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

### **Pre-Hearing Conference**

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

### **Dismissals**

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

### **Continuances**

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

### **Conduct of Hearing**

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

### **Recording**

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

### **Witnesses**

Witnesses will present their information in narrative form, without the traditional question and answer

format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the Hearing Officer, at his or her discretion, ask a witness a certain question.

### **Format for Presentations**

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

### **Submission of Documentary Exhibits**

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

### **Written Closing, Arguments or Briefs**

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

### **Closing of Hearing**

At the conclusion of all presentations, the Hearing Officer will close the hearing and set a date for the issuance of the written decision. The Hearing Officer may make an oral ruling at the conclusion of the hearing or take the case under advisement but must in all cases issue a written opinion addressing and ruling on all issues raised by the Petitioner and indicating what corrective action, if any, the District must take. Formal findings of fact and conclusions of law, however, are not required. Any issue or claim raised by the parent that is left unaddressed by the Hearing Officer in his or her decision will be deemed to have been denied to the parent. The decision must be issued to both parties within fifteen (15) days after the hearing.

### **Decision Timeline**

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

### **Remedies and Relief**

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

**Review Procedure**

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

**Access to Courts**

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

**Complaints to the Office for Civil Rights (OCR)**

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