

Lindale ISD

# **SECTION 504**

DETERMINATION OF ELIGIBILITY

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## **Determination of Eligibility**

### **What is Required**

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

A student may be eligible under Section 504 even if the student does not require services and supports. Thus, a student may be technically eligible under Section 504 but not require a Section 504 plan. For example, a student who has a record of impairment is protected by Section 504 but does not require services and supports 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 is suspected of having a disability that substantially limits a major life activity, the District must, with signed parent consent, 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 may have a disability that substantially limits a major life activity 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 should 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.

### **Evidence of Implementation**

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

## **Resources**

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

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

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

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

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

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

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

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

## **CITATIONS**

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