

# CESD Section 504 Compliance System

## Forms and Procedures

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**\*\*\*An important note about the ADA Amendments Act of 2008 (ADAAA).** In January of 2009, the provisions of the ADAAA went into effect. This legislation significantly changed Section 504 eligibility. To date, the U.S. Department of Education (ED) has not issued guidance, although the Office for Civil Rights (OCR) has updated a Q&A document to address, in a preliminary way, these changes. This document, *Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*, a revised March 27, 2009 FAQ from OCR-Chicago, is available on the OCR website at <http://www.ed.gov/about/offices/list/ocr/504faq.html>. The Revised Q&A was not intended as the final ED guidance on these issues, as noted in its opening paragraph. “OCR is currently evaluating the impact of the Amendments Act on OCR’s enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate.” Until ED issues guidance (or perhaps new regulations), any discussion of the ADAAA’s impact on the K-12 Section 504 free appropriate public education, and changes to Section 504 forms, requires speculation. **These forms reflect our best efforts to address the changes consistently with current OCR findings and historical guidance. If you choose to use these forms or make changes to your school’s §504 process based on these forms, involve your school attorney in the discussion.**

**The following materials should not be viewed as the only method of Section 504 compliance.** In response to requests from CESD members, the following materials were created in 1999. These forms are updated each year for the Fall §504 Conference. We sought to build and maintain a set of operational guidelines that implemented the §504 regulations, and a set of forms to assist the school in implementing the guidelines. By creating the guidelines and forms as a system, we sought to ensure consistency in language and action and, to the extent possible, have the forms guide §504 Committees through their tasks to ensure that proper procedures are followed. There are many ways to articulate the rules and to gather, analyze, and communicate the information necessary for §504 compliance. This system is merely one method of achieving procedural compliance.

**These documents were designed to work as a whole, and not to be used separately from each other.** If you choose to use a single document or a few forms from these materials, understand that you must review the rest of your system of compliance to ensure that it is consistent with the CESD materials you use, and to ensure that as a result of your entire program, your district is in compliance. In the CESD Compliance System, §504 compliance with a particular regulation is sometimes handled by several forms working in concert. Unless all of the forms are used, an element of compliance may not be met. For example, the referral form, the parental consent and notice form, the two input forms and the evaluation form combine to provide coverage of the compliance issues arising from §504 evaluation. Deleting any of those forms or important elements of the forms may jeopardize compliance.

**Feel free to use this system as a reference point for evaluating your district’s system.** Analyze the areas covered here to determine whether your forms and procedures adequately meet the 504 requirements. Remember that no system of compliance is effective if the individuals called upon to implement it do not understand what is expected or how the system works. Training in whatever system your district creates or

adopts is essential to ensure that teachers and others are referring potentially eligible students, evaluations and placements are properly made, and that the required accommodations are implemented.

**Your state law may require additional modifications to this system. Check with your local school attorney.** While these materials have a Texas accent, they are based on federal law. For example, you will see references to the Texas Assessment (TAKS), ARD Committees (the Texas designation for the IEP Team), as well as two forms unique to Texas. The dyslexia form for initial evaluations and re-evaluations (Form 14) addresses requirements of the Texas Dyslexia Law, and Form 15 addresses Texas' General Education Homebound rules.

**These forms are updated at least one time each year.** The forms evolve in response to questions, concerns, and comments from educators using the forms, and in response to OCR Letters of Finding, decisions from the courts, and our on-going efforts to make the forms compliant and usable. To determine whether the forms you are currently using are the most up-to-date, go to [www.504idea.org](http://www.504idea.org) and click on the Section 504 Conference page. The conference page will always list the most recent edition of the forms. Compare the "latest forms" date from the website to the date in the first line of the footer on any page of the forms you are using. Each CESD Section 504 Conference participant providing a valid email address at the conference is eligible for an electronic version of the forms during the year following the participant's attendance, together with any form update issued until the next CESD Section 504 Conference. Attendance at a CESD 504 Conference one year does not entitle the participant to forms issued at a subsequent CESD 504 Conference.

## **CESD §504 COMPLIANCE SYSTEM DOCUMENTS**

**1. Operational Guidelines:** The structural framework for the District's §504 program. This document describes how the District will operate the program and implement the §504 regulations, including when the various forms will be used, by whom, and how.

**2. Procedures for §504 Due Process Hearing:** This document lays out the procedures for responding to a request for a hearing under §504, describing the District's responsibilities, choosing a hearing officer, and the rules for operating the hearing itself.

**3. Child Find Notice:** Provided in both English and Spanish, this document provides notice of the District's §504 duties to parents of potentially eligible §504 students.

**4. §504 Referral:** This is the document which begins the process of §504 for a child. It gathers basic information on the child's academic, behavioral and social progress at school, and serves as the basis for the Coordinator's determination of whether a §504 Evaluation should be sought.

**5. Notice and Consent for Initial Evaluation under §504:** Following the receipt of the Referral and the decision that a §504 Evaluation should be pursued, this form is sent home to the parents to gain consent for initial evaluation. Included with it is a copy of Form 6, the Notice of Parent Rights.

**6. Notice of Parent Rights under §504:** A short document (provided to the parent in English or Spanish) to inform parents of their rights under §504. This document is provided to the parent after referral, regardless of whether the decision is made to evaluate under §504.

**7. Teacher Input for §504 Evaluation:** A document designed to seek information from a student's teacher or teachers about classroom performance and behavior.

**8. Parent Input for §504 Evaluation:** A document designed to seek information from the parent about the child's functioning and activities at home. It also provides the parents an opportunity to be involved in the process.

**9. Notice of §504 Meeting:** Sent to the parent prior to each §504 meeting, describing what will occur and giving the time, and place of the meeting. Note that this form does not assume that parents are members of the §504 Committee. If that is the case in your district, modify the form accordingly.

**10. §504 Initial Evaluation and Periodic Re-Evaluation:** This form is used by the §504 Committee to determine initial eligibility in Section 504, and to fulfill the regulatory requirement for periodic Re-Evaluation (at least every three years). The form prompts the Committee to ask the right questions and to review the required data and includes the Notice of §504 Evaluation Results. This notice is sent to the parents following evaluations to indicate what occurred. This notice of results form is designed to be used following any type of §504 Evaluation (initial, re-evaluation, etc.). Note that other documents are often required to be attached to this notice for delivery to the parents.

**11. §504 Student Services Plan:** Should the §504 Committee determine that the student is eligible and in need of a Plan, it uses this form to create a placement. The completed plan is delivered to the parent and school personnel and third-party contractors who have the duty to implement the plan. A behavior management form is part of the Plan form and is completed if necessary.

**12. §504 Annual Review:** This form is designed to be used when a full evaluation is not required, but minor changes to the Services Plan, or no changes, are needed. The form can also be used for annual review of students who are technically eligible but have not needed a plan in the past. The form screens for situations where a full re-evaluation, using Form 10, is required.

**13. §504 Evaluation and Manifestation Determination:** When disciplinary removals trigger the need for evaluation, this document walks the Committee through the required questions. This form also now includes a Notice of Evaluation to inform the parents of the results of the manifestation determination.

**14. Texas Dyslexia & Section 504 Initial Evaluation & Periodic Re-Evaluation:** When the §504 Committee is performing an evaluation that includes possible eligibility under the Texas Dyslexia law, this form should be used. This form guides the committee in meeting both the requirements of the Section 504 evaluation and the additional evaluation requirements established by Texas state law and the Revised Procedures Concerning Dyslexia (i.e., the Blue Book).

**15. General Education Homebound.** This form is designed to assist Texas §504 Committees in determining whether homebound services are available under regular education for §504-eligible students, and what types of services are appropriate. It should be used in conjunction with the §504 Evaluation form (Form 10).

## **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 District's overall early intervention process, understand how to initiate a §504 Referral and know how to identify students who should be referred.

**2. Referral.** 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 no §504 Evaluation is required, the Coordinator shall forward the Parent Rights form (Form 6) to the parents, with a note 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 to the parent Notice of Parent Rights under §504 [hereinafter, "Parent Rights"], together with a Notice and Consent for Initial Evaluation under §504 Form [hereinafter, "Notice and Consent"], and a Parent Input for Section 504 Evaluation Form [hereinafter, "Parent Input"]. If no parental consent is received for §504 Evaluation, the Coordinator should remind the parent every semester (or at other intervals as determined by the District) of the District's continued desire to conduct an Evaluation under §504.

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

a. Gather evaluation data and coordinate/direct the completion of the various Input Documents. The evaluation data consists of information from a variety of sources, including efforts and results of early intervention activities, aptitude and achievement testing, teacher recommendations, student's historical and current physical and mental condition (including data on conditions in remission and episodic conditions), social or cultural background, adaptive behavior, and mitigating measures; the Teacher Input form to be completed by one or more teachers, and the Parent Input form with information about the student's activities/behaviors at home, and any other data the parent would like the Committee. 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 15 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.
- d. Complete the Section 504 Evaluation form. If the student is determined to be eligible [hereinafter, “eligible student”], the Committee moves on to the Section 504 Student Services Plan [hereinafter, “Services Plan”] form to develop accommodations. If no eligibility is found, the parents are so informed in writing.

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 and the Services Plan (if eligible).

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

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

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

clothes, etc.). When the District has made available a FAPE as required by §504, and the eligible student or his or her parents or guardians choose to place the student in a private school, the District is not required to pay for the eligible student's education in the private school.

**7. 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 Committee will presume that 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.

**8. 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.

**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.

**9. Implementation of the Section 504 Services Plan.** The Coordinator (or designee) should ensure that the student's Services Plan is delivered to each teacher, campus administration, and any other employee or third-party contractor who has responsibility to implement the plan. Monitoring of Services Plan implementation should be accomplished through the PDAS (or other teacher appraisal process), through walkthroughs, and informal checks of the student's academic, behavioral and social progress by the Coordinator and other appropriate personnel.

**10. 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. Form 10 should be used for this purpose. Re-evaluation should also occur prior to any significant change of placement and whenever necessary to ensure the continued provision of FAPE. It is also the District's practice to conduct annual reviews when no periodic re-evaluation is required. Form 12 is appropriate where a full re-evaluation is not necessary. 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.

**11. 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, which includes manifestation determination. 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 found, 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 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). The Committee will meet to conduct an evaluation prior to the tenth cumulative day of removals during a school year, 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.

**12. Interaction with Special Education.** Each student referred and evaluated for special education who does not qualify and each student dismissed from special education shall be evaluated for possible Section 504 eligibility 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 determine on a case-by-case basis, whether the student should be referred to Section 504 for evaluation, and provide Notice of Section 504 Rights should the student not be referred. 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.

**13. Interaction with Texas Dyslexia Law.** In accordance with State Board of Education Rule and the Revised Procedures Concerning Dyslexia (Blue 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 14. The provision of dyslexia instructional services 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. Should a student already be special education eligible, a dyslexia evaluation for that student must occur under the direction of the student's ARD Committee.

**14. 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 response to intervention. This simple, campus-based process is designed to assist students struggling for any number of reasons (family issues, lack of motivation, poverty, etc) and in any number of ways (academically, socially, behaviorally) by providing, appropriate to the student's needs, differentiated instruction, as well as additional regular education intervention programs, services and opportunities that may vary from campus to campus. Data from these efforts is shared with the parent, and will become part of any Section 504 or special education evaluation. These efforts are available to all students, including students with disabilities. Should regular education, together with these early intervention efforts be insufficient to meet the needs of the struggling student, or there are grounds to suspect that the student has a physical or mental impairment, the District should consider seeking parental consent for an evaluation under Section 504 or special education, as appropriate to the student.

**15. 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 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.

**16. Procedural Protections.** 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 appeal to state or federal court. Any person may also file a grievance through the District's local grievance process. Information on the grievance process can be obtained from the District's §504 Coordinator. These protections apply regardless of whether the eligible student currently receives a Section 504 Services Plan.

**17. 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.

**18. 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.

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

**20. Disability-based harassment.** The District will promptly investigate all claims of disability-based harassment and take reasonable action to stop future recurrence. Where evidence of disability-based harassment is found pursuant to an investigation, and the District believes that the harassment 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.



## **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.

**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.

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**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 Time line.** 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.** If not satisfied by the decision of the Hearing Officer, a parent may seek review of the hearing decision in a court of competent jurisdiction, generally the closest federal district court.

**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 time lines 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.