

*West Oso ISD*

*504 Hand book*



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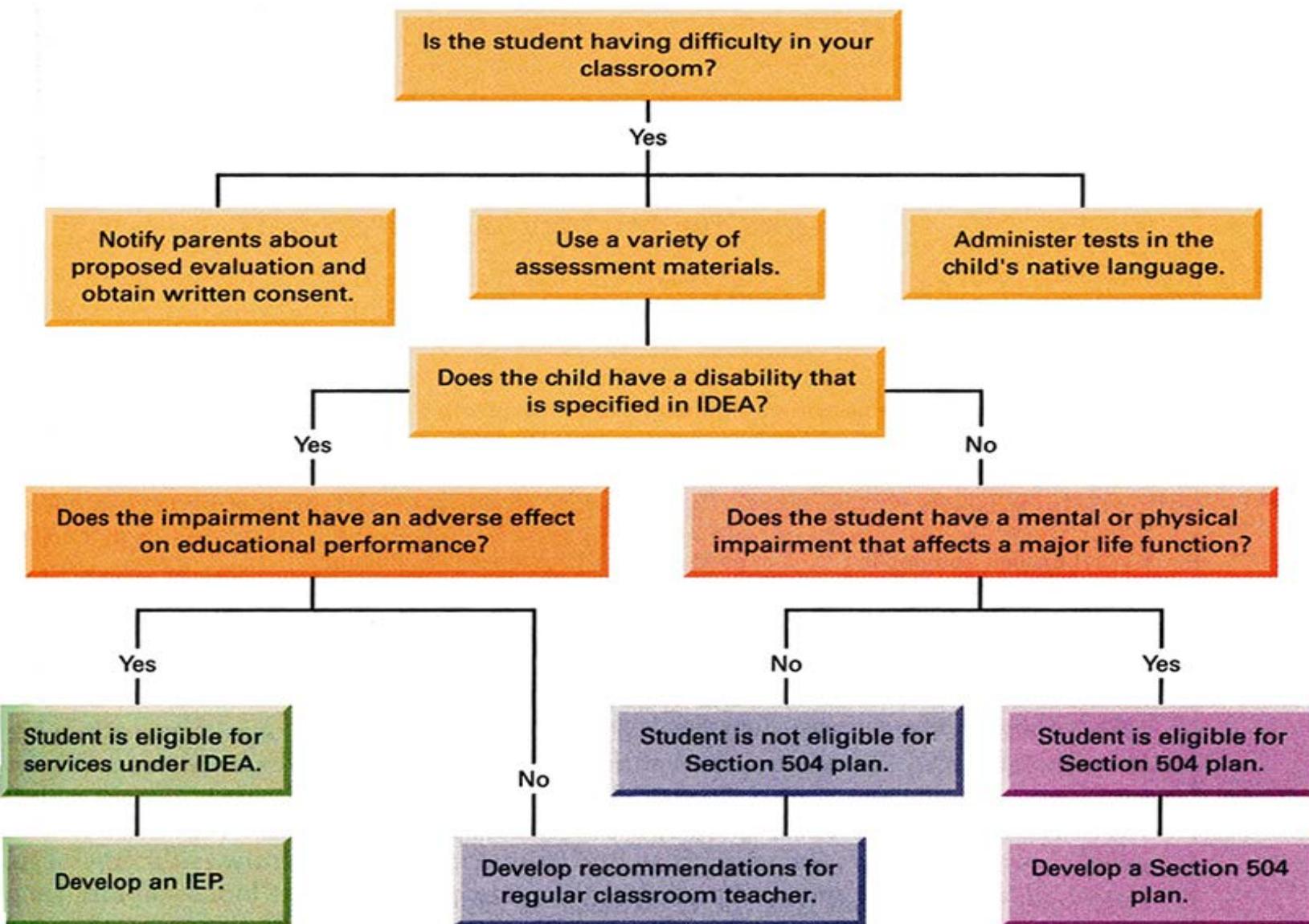


West Oso Independent School District  
Office of Student Services  
*Section 504*  
*Of the*  
*Rehabilitation Act of 1973*  
A Procedural Handbook for Educators  
Fall 2017

## **ADMINISTRATION**

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## Qualify for IDEA or Section 504



***West Oso ISD***

***Section 504 of the Rehabilitation Act of 1973***

A Procedural Handbook for Educators

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## **Section 504 of the Rehabilitation Act of 1973**

*"No otherwise qualified individual with a disability in the United States as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (29 U.S.C. Sec. 794)*

### **I. PURPOSE**

This handbook is intended to be used as a resource while working with students who have a current Section 504 plan or are being considered for eligibility under Section 504 of the Rehabilitation Act of 1973. It is recommended that this handbook be used as a guide in your work as an educator with Section 504 students and as a tool for implementing Section 504 requirements. The handbook sections are to be used interchangeably and as a desktop reference while carrying out the Section 504 plan activities. The West Oso School District is committed to providing Section 504 students with the appropriate accommodations to allow him/her the opportunity to reach his/her full potential. To this end, the goal is to provide you with a Section 504 handbook that is user friendly which will provide clear answers to questions. Additionally, you are encouraged to duplicate sections of the handbook to use as a reference and working document for practical use. Innovative and effective strategies must exist including all available resources and the engagement of students and parents/guardians in students' learning process prior to implementing Section 504 plans. It is equally important that you assess students' current educational performance when determining Section 504 eligibility.

### **II. SECTION 504 & IDEA/SPECIAL EDUCATION**

Section 504 is not part of the Individuals with Disabilities Education Act (IDEA), or special education. Section 504 is considered a responsibility of the general education program and requires participation from the general education staff and curriculum. Generally all individuals who are disabled under the IDEA are also considered to be entitled to rights and protection under Section 504. However, all individuals who have been determined to be Section 504 eligible may not be IDEA eligible.

**Free Appropriate Public Education, or FAPE,** is an educational right of children with disabilities in the United States that is guaranteed by the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA). Under Section 504, FAPE is defined as "the provision of regular or special education and related aids and services that are designed to meet individual needs of persons with disabilities as well as the needs of non-disabled persons are met and based upon adherence to procedural guidelines regarding

educational setting, evaluation and placement and procedural safeguards as outlined in the law.” Under the IDEA, FAPE is defined as an educational program that is individualized to a specific child, designed to meet that child’s unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives educational benefit. The United States Department of Education issues regulations that define and govern the provision of FAPE. Classroom teachers and other school staff are responsible for providing accommodations and/or services necessary for eligible students to participate in and benefit from public education programs and activities. Accommodations may provide support of physical, instructional, or social/emotional nature. Section 504 regulations require identification, evaluation, provision of appropriate services, and procedural safeguards. While the IDEA spells out what FAPE means for the IDEA-eligible students with well defined criteria and procedures, Section 504 does not provide similarly detailed eligibility criteria, nor does it require any particular form in which program protections must be delivered. Furthermore, while the IDEA programs receive state and federal funding, Section 504 receives no state or federal funding.

### **III. OVERVIEW OF SECTION 504 ELIGIBILITY**

Section 504 of the Rehabilitation Act of 1973 is a *federal civil rights anti-discrimination law* that applies to eligible adults and children. Section 504 applies broadly to any person who has been identified as having a physical or mental impairment which substantially limits one or more major life activities including but not limited to:

- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Performing manual tasks
- Caring for oneself
- Reading
- Thinking
- Concentrating

One who has a “record of” or is “regarded as” having such an impairment.

### **IV. DEFINITIONS**

#### ***Individual With a Disability***

A *qualified individual with a disability* under Section 504 is any person who:

1. Has a physical or mental impairment which substantially limits one or more major life activities;
2. Has a record of such impairment; or
3. Is regarded as having such an impairment. [29 U.S.C. Sec. 706(8)]

#### ***Has a Record of Such an Impairment***

Has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities. [34 Code of Federal Regulations, Part 104.3]

#### ***Is Regarded as Having an Impairment***

1. Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as West Oso School District

#### ***Qualified Disabled Individual***

A *qualified disabled* individual for public preschool, elementary, secondary, or adult education services is a disabled person who:

1. Is of an age during which nondisabled persons are provided such services;
2. Is of an age during which it is mandatory under state law to provide such services to disabled persons, or
3. To whom the state is required to provide FAPE under the IDEA. [29 U.S.C. Sec. 706(8)]

#### ***Major Life Activities***

*Major life activities* are defined as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, reading, thinking, and concentrating.” The disability need only substantially limit one major life activity in order for the student to be eligible. (34 Code of Federal Regulations, Part 104.3)

#### ***Physical or Mental Impairment***

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hermetic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (34 Code of Federal Regulations Part 104.3)

#### ***Evaluation***

Requirements for evaluation are determined by the type of disability believed to be present. The evaluation must provide relevant data needed to assess the nature and extent of the disability, the impact of the disability, and recommended services. Evaluations more limited than a comprehensive special education evaluation may be adequate in many circumstances. However, it is imperative that staff conduct a Section 504 determination regardless of the information the parents/guardians may or may not provide. Evaluation must cover area(s) of concern and be completed in a reasonable timeframe. Evaluation information from a variety of sources should be considered. Information may be available in the student’s record. While medical records can be provided by the parent/guardian, it is not mandated that the district seek a doctor’s input. It is an option of the parent/guardian to hire a physician in order to determine a medical condition. All information on medical conditions must be considered. If a parent has a diagnosis from a private medical or mental health provider, an appropriate district staff person (i.e., nurse, psychologist, etc.) should discuss the diagnosis with the parent and the provider, and conduct any supplemental

assessment deemed necessary to confirm the diagnosis including the possibility of the District conducting a medical assessment if necessary.

#### ***Section 504 Accommodations***

Adjustments made by the classroom teacher and other school staff to enable the student to benefit from his or her educational program. Accommodations may provide support of physical, instructional, or social/emotional nature. It is important that the Section 504 team determine each year what interventions and accommodations are needed by the student to insure an appropriate educational program.

#### ***Review Annually***

The student's progress must be reviewed by the appropriate school staff and parents/guardians, and modified annually or more often, if there is a change in the student's condition. The plan should be reviewed if the student is not successfully accessing the educational program. A Section 504 transitional meeting must take place between the elementary, middle, and high school staff prior to the Section 504 student entering the six and ninth grades. The transitional meeting shall be held in the Spring of each school year.

### **V. SECTION 504 PROTECTION**

Unless a student actually has a physical or mental impairment that substantially limits a major life activity, the mere fact that he/she has a "record of" or is "regarded as" an individual with a disability is insufficient, by itself, to trigger the creation of a Section 504 Plan including FAPE or accommodations. Students who have a "record of" or are regarded as "substantially impaired" are entitled to protection against discrimination but are not entitled to a Section 504 Plan.

Examples of rights, "under Section 504, the violation of the rights below may constitute an act of discrimination."

1. Right to program access with no fee charges greater than those charged regular students.
2. Right of equal access to school transportation.
3. Right to evaluation in all areas of suspected disability and an appropriate placement.
4. Right to procedural safeguards, which provide for notice to all of nondiscrimination policy, based on Section 504.
5. An opportunity for student, parent/guardian to examine relevant records.
6. Right to an impartial hearing before an impartial hearing officer if there is a dispute with the district.
7. Right to a free appropriate public education in the least restrictive environment.
8. Right to be integrated with regular students to the maximum extent appropriate.
9. Right to nondiscriminatory testing procedures.
10. Right of equal access to extracurricular activities.

### **VI. IDENTIFICATION PROCESS**

The district has a responsibility to seek, identify, and develop accommodation plans for Section 504 eligible students. Students may be self-referred or referred by a parent/guardian, teacher, or other certificated school employee. In many cases, students are first referred for review to a

school counselor who will call a 504 meeting to discuss concerns and consider accommodations or support services. The 504 team may determine whether the student should be referred for evaluation under IDEA guidelines or Section 504. In the event the student is assessed and not found to have a disability within the definition of IDEA, the assessment information may, but is not required to, be used to determine whether the student has a disability within the definition of Section 504. Not qualifying for special education should not result in automatic qualification for Section 504. Qualification for Section 504 must be based on the specific eligibility standards for Section 504. Each school must have a designated Section 504 Coordinator, someone who takes a leadership role in planning and facilitating the Section 504 Team Meetings.

***Prior to conducting a Section 504 Team Meeting, the following steps should be taken:***

1. The Section 504 Coordinator should determine the appropriate membership of the team. This may involve input from the student parent/guardian and teachers.
2. A meeting date should be determined. The meeting date should occur within 30 days of referral.
3. A written notice of the Section 504 Team Meeting should be sent to the parents/guardians.
4. The written notice should include a copy of the 504 Parent Rights and a Notice of Nondiscrimination.
5. The Section 504 Coordinator should collect relevant information prior to the team meeting. Evaluation material can include:
  - a) Formal and informal test results.
  - b) Aptitude and achievement tests.
  - c) Observations and anecdotal records.
  - d) Attendance records.
  - e) Behavior records.
  - f) Medical reports.
  - g) Grade records/progress reports.
  - h) Teacher reports/recommendations.

**The Section 504 team should then meet to review the above information and determine the student's eligibility.**

## **VII. PROCEDURAL SAFEGUARDS AND PARENT/GUARDIAN RIGHTS**

*There are several times during the planning process when parent/guardian should be provided with a written copy of their rights:*

1. When eligibility is questioned and assessment begun.
2. When eligibility is determined and an accommodation plan developed.
3. Before there is a significant change in the plan for services.

***Parent notification should include the following rights under Section 504:***

1. Right to file a grievance with the school district, state department of education or the office of civil rights over an alleged violation of Section 504 regulations.
2. Right to have an evaluation that draws on information from a variety of sources.
3. Right to be informed of proposed actions related to eligibility and plan for services.
4. Right to examine all relevant records.
5. Right to receive all information in the parent/guardian's native language and primary mode of communication.
6. Right to periodic reevaluations and an evaluation before any significant change in program.
7. Right to an impartial hearing if there is disagreement with the school district's proposed action.
8. Right to be represented by counsel in the impartial hearing process.
9. Right to appeal the impartial hearing officer's decision.
10. The parent/guardian should be provided with written notification of all actions and/or decisions made by a Section 504 Team, including those in which the parent/guardian participated. A record of documentation provided to the parent/guardian should be maintained at the school in the student's pupil records.

## **VIII. SECTION 504 TEAM MEMBERSHIP AND MEETING**

A Section 504 team meeting must have at least two persons, the Section 504 Coordinator and the student's teacher. The team must include persons who are knowledgeable about the student, who are able to interpret evaluation data, and who know placement options, the requirement to place a Section 504-eligible student in the least restrictive environment, and the requirement to provide comparably effective aids, benefits and services to Section 504-eligible students. WOISD 504 teams will be made up of the parent, school administration, teachers and medical personnel if necessary. The 504 District Coordinator may be in 504 meetings as needed. The district encourages parent/guardian participation in the team meeting. Parents/guardians participation in the team meeting is, however, optional. Steps taken by the team should include:

1. A review of data. It is imperative that the team considers all areas of need.
2. Consideration of the need for additional evaluation data.
3. Determination of eligibility if sufficient data is available.
4. If the student *is not eligible*, complete pages 1 and 2 of the **WOISD Section 504 Identification and Eligibility** forms.
1. If the student is eligible, complete pages 1 and 2 of the **WOISD Section 504 Identification and Eligibility** forms. and complete pages 1 and 2 of the "**WOISD Section 504 Student Accommodation Plan**".
2. If the student meets the Section 504 eligibility and receives accommodations, a Section 504 annual meeting must take place within one year from the initial meeting date of his/her eligibility as documented in the **WOISD Section 504 Identification and Eligibility** forms.

- a) At the Section 504 annual meeting please complete pages 1 and 2 of the ***Section 504 Student Annual Review Meeting***.
  - b) If the student's plan was revised please complete pages 1 and 2 of the ***WOISD Section 504 Student Accommodation Plan***.
  - c) Please include the ***WOISD Section 504 Identification and Eligibility*** forms that were completed at the initial Section 504 eligibility meeting in your documents.
1. The parent/guardian should be given a copy of the documentation completed in the team meeting, the WOISD Notice of Parent/Guardian and Student Rights, and the WOISD Board Policy 6164.6.
  2. If the parent/guardian disagrees with the team findings, the Section 504 Coordinator should advise the parent/guardian of their rights on page 32 and 33 and the Procedural Safeguards.
  3. Record of documentation should be maintained at the school in the student's pupil records and send copies of the ***WOISD Section 504 Identification and Eligibility*** forms, the ***WOISD Section 504 Student Accommodation Plan***, and the ***Section 504 Student Annual Review Meeting to RJ Alvarado, District 504 Coordinator***

## **IX. DEVELOPMENT OF A SECTION 504 PLAN AND ANNUAL REVIEW**

If the student is determined to be Section 504-eligible, the district must develop and implement an “*Accommodation Plan*” for the delivery of needed services. The district must provide what the student needs to access programs and services comparable to that of a non-Section 504 student. Accommodations generally involve adjustments made by classroom teachers and other school staff to enable the Section 504-eligible student to benefit from his/her educational program. Accommodations may provide support of a physical, instructional, or social/emotional nature. The decisions about Section 504 eligibility, aids and services must be documented in the student's file and reviewed annually by staff, parents/guardians and persons knowledgeable about the student.

## **X. FOLLOW UP STEPS**

Following the meeting:

1. Copies of documentation from the meeting should be placed in the student's cum folder and the school's centralized Section 504 files.
2. If the student was found eligible, a Section 504 label should be placed on the student's cum folder.
3. Information on the student's eligibility must be entered into the district's database with the date of the most recently developed Section 504 plan.
4. All staff serving the student should be notified of the student's eligibility and their roles in providing accommodations. These staff should receive a copy of the accommodation plan.
5. The plan must be reviewed on an annual basis, or more often if needed, and modified as needed.
6. Copies of the student's Section 504 Plan and all relevant documents are to be sent to RJ Alvarado, District 504 Coordinator.

## **XI. SECTION 504 DISCIPLINE SUSPENSION OF STUDENTS WITH DISABILITIES UNDER SECTION 504**

Procedures listed for general education students shall also apply to the suspension of individuals with disabilities eligible for Section 504 accommodations.

### ***Definition***

A student with previously identified disabilities eligible for Section 504 accommodations is any student with an active Section 504 accommodation plan (“AP”). Such a student is entitled to the procedural safeguards described in this section.

### ***Duration***

Students eligible for Section 504 may be suspended for up to 3 days for a single incident of misconduct. If the student is recommended for expulsion, this suspension can be extended pending the expulsion hearing. However, manifestation determination and functional behavioral assessment procedures should be followed. Student should also be provided educational services after the 10th cumulative day of suspension in the school year, unless an exception applies.

### ***Procedures Based on Cumulative Days of Suspension/Change in Placement***

No special procedures are required to suspend a student up to 10 cumulative days in a school year. Federal regulations state, however, that the cumulative days of suspension constitutes a “change in placement” requiring a Section 504 team meeting if the removal is for more than 10 consecutive days, or the student is subjected to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a school year.

### ***Manifestation Determination***

In West Oso ISD, a manifestation determination is required when a student is suspended for more than 10 cumulative days in a school year.

### ***Manifestation Determination Process***

The Section 504 team shall review all relevant information in the student’s file, including the 504 plan, any teacher observations and any relevant information provided by the parents to determine whether the misconduct is a manifestation of the student’s disability. The school psychologist may review all relevant information in the student’s file, including the 504 plan, any teacher observations, and any relevant information provided by the parents and make a recommendation regarding whether the misconduct is a manifestation of the student’s disability. A summary report of findings will be completed referencing all the sources. If the psychologist feels that additional assessments must be completed in order to complete this manifestation report, an assessment plan must be signed by the parent. If the parent refuses to consent to an assessment which school staff believes is necessary, refer the issue to the 504 District Coordinator. A Section 504 Manifestation Determination Finding Form must be completed to document the review and team’s determination. The team determines:

1. If the conduct in question was caused by, or had a direct and substantial relationship to the student’s disability, or
2. If the conduct in question was the direct result of the school’s or district’s failure to implement the 504 Plan.

If the answer to 1. or 2. is yes, then the conduct shall be determined to be a manifestation of the student's disability.

\*\*If it is determined that the misconduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as are similarly-situated students who do not have disabilities as long as he or she receives services following 10 cumulative days of suspension in the school year. The placement of services is to be determined by the Section 504 team and must allow the student appropriate access to the general curriculum.

***Determination that the behavior was a manifestation/Functional Behavioral Assessment:***

If it is determined that the misconduct was a manifestation of the student's disability, the student should be allowed to return to school and the Section 504 team shall:

1. Conduct a functional behavioral assessment and implement a Behavior Intervention Plan (BIP) or
2. If a BIP had been developed, modify it as necessary to address the behavior
3. Return the student to the placement from which the student was removed, unless the parent and school or district agree to a change in placement as part of the modification of the BIP.



## DUE PROCESS

### Case by Case Determination

School administration may consider any unique circumstances on a case by case basis when determining whether to order a change in placement for a student with a disability who violates a code of student conduct.

#### *Procedural Protections regarding a “change in placement”*

When suspensions constitute a “change in placement” the student and his or her parent or guardian are entitled to procedural protections. These protections include:

1. Appropriate notice to parents or guardian
2. An opportunity to examine the student’s records
3. An impartial hearing with the participation of parents or guardians which may include representation by counsel and a review procedure.

If a parent/guardian disagrees with the identification, evaluation or educational placement of a student with disabilities under Section 504, he/she may initiate the following procedures:

1. Within 30 days of receiving the student's accommodation plan, set forth in writing his/her disagreement and request that the school principal and school site committee review the plan in an attempt to resolve the disagreement. This review shall be held within 15 days of receiving the parent/guardian's request, and the parent/guardian shall be invited to attend the meeting at which the review is conducted. [AR 6164.6(C)]
2. If disagreement continues, request in writing that the Superintendent or designee review the plan. This review shall be held within 15 days of receiving the parent/guardian's request, and the parent/guardian shall be invited to meet with the Superintendent or designee to discuss the review.
3. If disagreement continues, request in writing a Section 504 due process hearing. Note: A parent may request a Section 504 due process hearing without following the two levels of review noted in 1 and 2. The request shall include:
  - a) The specific nature of the decision with which the parent/guardian disagrees
  - b) The specific relief the parent/guardian seeks
  - c) Any other information the parent/guardian believes pertinent

Within 20 days of receiving the parent/guardian's request, the Superintendent or designee shall select an impartial hearing officer. This 20 days may be extended for good cause or by mutual

agreement of the parties. Within 45 days of the selection of the hearing officer, the Section 504 due process hearing shall be conducted and a written decision mailed to all parties. This 45 days may be extended for good cause or by mutual agreement of the parties.

The Superintendent or designee shall represent the district at this hearing. Any party to the hearing shall be afforded the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training related to the problems of students who are qualified as an individual with disabilities under Section 504
2. Present written and oral evidence
3. Question and cross-examine witnesses
4. Receive written findings by the hearing officer
5. If desired, either party may seek a review of the hearing officer's decision by a federal court of competent jurisdiction. [AR 6164.6(d)]

#### ***Placement during appeals***

When an appeal has been filed by the district or the parents: The student will remain in the interim placement pending the decision of the hearing officer or until the expiration of the 45 day placement which may be 45 school days or the suspension period as applicable to general education students.

#### ***Unidentified Students***

A pupil not previously identified as a student with a disability under Section 504 who violates a behavior rule may claim protection as provided to individuals identified with exceptional needs **if there was knowledge that the pupil had a disability** before the behavior violation occurred.

#### ***Knowledge arises when:***

1. The parent has expressed concern orally or in writing to supervisory or administrative personnel or a teacher of the student, that they have specific concerns about a pattern of their student's behavior and/or performance or that the student is in need of Section 504 accommodations and related services.
2. The parent of the student has requested an evaluation of the student.
3. The teacher or other school personnel has expressed specific concerns about a pattern of the student's behavior and/or performance. The concern must be expressed in accordance with the district's established referral process to supervisory personnel of the school or district.

#### ***A public agency is not deemed to have knowledge when:***

1. The agency conducted a Section 504 evaluation or IDEA eligibility and determined the student was not a student with a disability under Section 504, or
2. The parent has not allowed an initial evaluation of the student or has refused initial services after an initial evaluation.

**If there was no prior knowledge,** disciplinary measures can be applied as those measures are applied to all general education pupils. If a parent/guardian indicates he/she believes his/her student should have been previously identified, contact the 504 District Coordinator, for assistance. If the parent requests an evaluation for a student who has not been assessed recently and found ineligible, the evaluation shall be conducted in an expedited manner if it is determined appropriate. If the student is found to be a student with a disability, the student will receive accommodations as determined by the Section 504 team.

***Drug Addiction***

Drug addictions may be covered by Section 504. A person who is addicted to drugs, but who is no longer engaged in using drugs, may have a disability and therefore be entitled to rights and protections under Section 504. However, a person who is currently engaging in the illegal use of drugs is not protected under Section 504. School districts may take disciplinary action against a 504-eligible student who is engaged currently in the use of illegal drugs to the same extent that it takes disciplinary action against persons not having disabilities. Furthermore, the due process procedures discussed above do not apply to disciplinary actions regarding the use or possession of drugs by students with disabilities who are currently engaged in the use of drugs.

***Suspension of Students with Disabilities Under Section 504***

Student commits offense listed in Education  
Code sections 48900, 48900.2, 48900.3, 48900.4, 48900.7, or 48915(c).

***Student is suspended.***

Student may be suspended for up to 3 consecutive school days for a single offense. The student must receive services (to enable him/her to participate in the general curriculum) after 10 cumulative days of suspension. These services may be provided in an alternative educational setting. The alternative services and setting are determined by the Section 504 Team in consultation with the 504 District Coordinator; documentation is recorded in the conference notes. The suspension can be extended pending expulsion if the student would cause a danger to persons or property or a threat of disrupting the educational process.

***When cumulative suspensions total less than 10 in a school year:***

No special procedures are required to suspend a student up to 10 cumulative days of suspension.

***When suspensions exceed 10 cumulative days in a school year  
and if there is a change in placement:***

The section 504 team must meet to complete a manifestation determination form, a behavior support plan, and revise the 504 plan if necessary. This meeting must be held within 10 school days of the decision to go beyond 10 cumulative days and make a change in placement. If it is determined that the misconduct was not a manifestation of the student's disability, the student may be excluded from school in the same manner consistent with general education students as long as he/she receives services following the 10th cumulative day of suspension.

## **XII. EXPULSION OF STUDENTS WITH DISABILITIES UNDER SECTION 504**

Students with disabilities under Section 504 are subject to expulsion for violations of E.C. 48900 and 48915. In order for a student with disabilities under Section 504 to be considered for expulsion, procedures must be followed that do not violate the procedural safeguards protecting these students.

### **Definition**

A student with a previously identified disability eligible for Section 504 accommodations is any student with an active Section 504 accommodation plan (“AP”). Such a student would be entitled to the procedural safeguards described in this section.

### **Procedural Safeguards**

When determining any course of discipline with a student with disabilities under Section 504, administrators must follow the procedural safeguards that exist in federal and state law.

Violation of these procedural safeguards constitutes a violation of the student’s civil rights and may serve as grounds for the discipline being disallowed. The following pre-expulsion procedure shall be used when a student with disabilities commits an offense for which the student is considered for expulsion.

### **Unidentified Students**

A pupil not previously identified as a student with a disability under Section 504 who violates a behavior rule may claim protection as provided to individuals identified with exceptional needs **if there was knowledge that the pupil had a disability** before the behavior violation occurred.

#### ***Knowledge arises when:***

1. The parent has expressed concern orally or in writing to supervisory or administrative personnel or a teacher of the student, that the parent has specific concerns about a pattern of their student’s behavior and/or performance or that the student is in need of Section 504 accommodations and related services.
2. The parent of the student has requested an evaluation of the student.
3. The teacher or other school personnel has expressed specific concerns about a pattern of the student’s behavior and/or performance. The concern must be expressed in accordance with the district’s established Section 504 referral process, to supervisory personnel of the school or district.

#### ***A public agency is not deemed to have knowledge when:***

1. The agency conducted a Section 504 or IDEA eligibility evaluation and determined the student was not a student with a disability under Section 504, or
2. The parent has not allowed an initial evaluation of the student or has refused initial services after an initial evaluation.

**If there was no prior knowledge,** disciplinary measures can be applied. Those measures are applied as to all general education pupils. If a parent/guardian indicates he/she believes his/her student should have been previously identified, contact the Director, Student Services for

assistance. If the parent requests an evaluation for a student who has not been assessed recently and found ineligible, the evaluation shall be conducted in an expedited manner if it is determined appropriate. If the student is found to be a student with a disability, the student will receive accommodations as determined by the Section 504 team.



### **Procedures to follow for Manifestation and Functional Behavioral Assessments and Section 504 Meeting**

#### ***1. Suspension***

Procedures listed in the Student Code of Conduct, manual apply.

#### ***2. Principal's Conference***

The principal must recommend expulsion for the pre-expulsion process described below to proceed. The expulsion hearing shall not be conducted until after completion of:

- a.) The Manifestation Determination report, and b) The Section 504 team meeting to make the manifestation determination.

#### ***3. Scheduling the Section 504 meeting***

Following the Principal's Conference recommending expulsion, a manifestation determination Section 504 team meeting shall be held no later than 10 school days from the first day of suspension or sooner. The manifestation determination Section 504 team meeting cannot be held beyond the 10 cumulative school days from the first day of the suspension. If the manifestation determination Section 504 team is held after the 10<sup>th</sup> day, the recommendation for expulsion will be nullified. A Behavior Intervention Plan (BIP) must also be completed at this time.

#### ***4. Psychologist Manifestation Determination Report***

The school psychologist may review all relevant information in the student's file, including the accommodation plan, any teacher observations, and any relevant information provided by the parents and make a recommendation regarding whether the misconduct is a manifestation of the student's disability. A summary report of findings will be completed referencing all the sources. If the psychologist determines that additional assessments must be completed in order to complete this manifestation report, an assessment plan must be signed by the parent. If the parent refuses to consent to an assessment which the school psychologist determines is necessary, refer the issue to the 504 Director.

#### ***5. Pre-expulsion Section 504 Team Meeting***

The Section 504 team shall review all relevant information in the student's file, including the Section 504 plan, any teacher observations, and any relevant information provided by the

parents, as well as the psychologist summary of findings to determine whether the misconduct is a manifestation of the student's disability. A WOISD Section 504 Manifestation Determination Finding Form must be completed to document the team's review and determination.

The team determines:

1. If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability, or
2. If the conduct in question was the direct result of the school or district's failure to implement the Section 504 plan.

If the answer to 1 or 2 is yes, then the conduct shall be determined to be a manifestation of the student's disability.

\*\* If it is determined that the misconduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as are similarly-situated students who do not have disabilities as long as he/she receives services as described above.

***1. Determination that the behavior was a manifestation:***

If it is determined that the misconduct was a manifestation of the student's disability, the student should be allowed to return to school and the Section 504 team shall:

- a) Conduct a functional behavioral assessment and implement a Behavior Intervention Plan (BIP), or
- b) Modify a previously developed BIP, as necessary, to address the specific behavior.
- c) Return the student to the placement from which the student was removed, unless the parent and school or district agree to a change in placement as part of the modification of the BIP.
- d) The WOISD Section 504 Manifestation Determination Finding form should be used to document the Section 504 team's determination with regard to these questions.

***2. Special Circumstances—Disciplinary Alternative Education Placement (DAEP)***

If school administration seeks to order a change in placement that would exceed 10 cumulative school days (i.e. place the student up for an expulsion hearing) and the behavior that gave rise to the violation is determined not to be a manifestation of the student's disability,

- a) The relevant disciplinary procedures applicable to students with disabilities may be applied in the same manner and for the same duration in which the procedures are applied to students without disabilities except that the students must continue to
- b) receive educational services to enable them to participate and progress in the general curriculum. This may be provided in an alternative educational setting.
- c) This means the student is to continue to participate in the general curriculum and receive services according to the student's Section 504 plan, behavior support plan or positive behavioral intervention plan.
- d) The alternative setting is determined by the 504 District Coordinator in consultation with the Section 504 team. If the parent disagrees with the district's determination regarding services and/or manifestation, the parent may challenge this. During the pendency of any challenge, the student remains in the alternative setting. If the Section 504 team determines the student's action is a manifestation of his disability, or after placing the student in an alternative setting for up to 90 school days for misconduct involving a weapon or drugs or serious bodily injury:
- e) The student shall continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, even if in an alternative setting.

- f) If the student does not have a Behavior Intervention Plan (BIP), the Section 504 team meeting shall conduct a functional behavioral assessment (FBA), and develop a BIP designed to address the behavior violation so that it does not reoccur.
- g) If the student has a BIP, the Section 504 team must review the plan as necessary and make changes designed to address the behavior violation so that it does not reoccur.

### ***3. Placement During the Expulsion Process***

- a) If the Section 504 team determines that the student is subject to expulsion, the 504 District Coordinator in consultation with the Section 504 team shall determine an interim placement for the student pending the expulsion hearing.
- b) If the parent disagrees with the Section 504 team determination, the parent may challenge this in an impartial hearing. During the pendency of the impartial hearing, the student remains in the alternative setting.

### ***4. Expulsion Process following Pre-expulsion Manifestation Determination meeting and/or Administrative Hearing Panel***

- a) If the recommendation for expulsion continues following the pre-expulsion manifestation determination Section 504 meeting, the Director, Student Services should be notified immediately.
- b) If the recommendation for expulsion is denied by the administrative hearing panel or WOISD Board of Education, a Section 504 team meeting must be convened as soon as possible by the home school with the interim placement program in attendance to determine the educational placement of the student. During this period, the student remains in the interim placement.
- c) If the recommendation for expulsion is approved by the administrative hearing panel, the home school must pre-schedule a Section 504 meeting to be held as soon as possible after the School Board ratifies or denies the expulsion, as stated in number 10 below.

### ***5. Placement During Period of Expulsion***

- a) If the student is expelled by the Board of Education, a Section 504 team meeting is held as soon as possible to determine and document the placement of the student during the expulsion period.
- b) This Section 504 meeting will involve representatives of the student's home school, a representative of the program providing interim services, and a representative of the proposed placement during the period of expulsion.
- c) The period of the expulsion placement must be noted in the student's Section 504 plan.
- d) The expulsion placement cannot go over 120 days without review.

## **DUE PROCESS**

### **Case by Case Determination**

School administration may consider any unique circumstances on a case by case basis when determining whether to order a change in placement for a student with a disability who violates a code of student conduct.

### ***Procedural Protections regarding a “change in placement”***

If a “change in placement” occurs as a result of the expulsion process, the student and his or her parent or guardian are entitled to procedural protections. These protections include:

1. Appropriate notice to parents or guardian
2. An opportunity to examine the student’s records
3. An impartial hearing with the participation of parents or guardians which may include representation by counsel and a review procedure. Thus, if, after a Manifestation Determination and Functional Behavioral Assessment (FBA), the parents disagree with the determination regarding the relationship of the behavior to the disability, or with the placement proposal, they may request an impartial hearing.

### ***Placement during appeals***

When an appeal has been filed by the district or the parents: The student will remain in the interim placement pending the decision of the hearing officer or until the expiration of the 30 day placement which may be 30 school days or the suspension period as applicable to general education students.

### ***Readmission Following Period of Expulsion***

1. No later than two weeks prior to the end of the expulsion period, a Readmission Hearing is scheduled to determine if the student has met the terms of his/her rehabilitation plan.
2. If the student is readmitted to the District, a Section 504 team meeting is held at the conclusion of the Readmission Hearing to determine the new placement.
3. If the student is denied readmission and the Board recommends an alternative educational program, a Section 504 meeting is held to address the new placement recommendation.
4. These Section 504 meetings will be scheduled by the student’s home school, and will involve representatives of the home school, and the program providing interim services. Representatives from the school(s) where the student may be placed should also attend.



## **90 DAY INTERIM ALTERNATIVE EDUCATION SETTING FOR WEAPON/DRUG/SERIOUS BODILY INJURY VIOLATIONS**

A student may be placed in the DAEP for 45 days for acts that are related to school activity or attendance that occur at any time, including, but not limited to, any of the following: while on school grounds; while going to or coming from school; during the lunch period whether on or off the campus; or during, or while going to or coming from a school-sponsored activity if a student with disabilities under

Section 504;

1. Carries a weapon or
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substances, or
3. Inflicts serious bodily injury upon another person.
  - a) A substantial risk of death;
  - b) Extreme physical pain;
  - c) Protracted and obvious disfigurement; or
  - d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. The 504 District Coordinator has the authority to place the student in an DAEP for up to 45 calendar days.

When such misconduct occurs, the principal should:

1. Confirm that a weapon and/or an illegal drug or controlled substance or resultant serious bodily injury was involved in the misconduct.
2. Notify the parent/guardian of the misconduct, the need to suspend the student, and the need to schedule a Section 504 meeting to complete a manifestation determination and initiate an Interim Alternative Education placement. Parents must be provided with a copy of their procedural safeguards notice with the suspension notice.
3. Contact the 504 District Coordinator to request recommendation to the DAEP.
4. Schedule the Section 504 team meeting with the parent/guardian and the administrator of the proposed Interim Alternative Education Setting. The parent/guardian should be given reasonable notice and the Section 504 team should meet before the end of the 3 day suspension and in no case later than 10 school days after the decision to make changes in
5. placement for more than 10 cumulative days in the school year.
6. Conduct the Section 504 meeting. The principal should:
  - a) Follow standard protocol for conducting a Section 504 meeting.
  - b) Confirm the nature of the student's offense with the student and parent/guardian(s).
  - c) Conduct a manifestation determination.
  - d) Determine the Discipline Alternative Education Placement.

- e) Review the student's Behavior Intervention Plan. If none exists, develop a Behavior Intervention Plan or develop an assessment plan to complete a Functional Behavior Assessment.
  - f) Include in the accommodation plan services and/or accommodations/modifications designed to prevent the misconduct from recurring.
  - g) Complete a Section 504 face sheet to document the placement and services for the 45 school day period.
  - h) Schedule a Section 504 meeting to be held before the end of the 45 school day period to determine a new placement or return the student to the previous placement.
  - i) Direct the parent/guardian to complete registration at the DAEP to enroll the student at a designated time.
1. Expulsion timelines are not changed as a result of a 45 school day placement. Refer to Expulsion section of WOISD Student Code of Conduct for applicable timelines for holding an expulsion hearing.

**Required Expulsion Documentation:**

**Completed Section 504 team meeting forms, BIP if necessary, Manifestation Determination form and psychologist's report (if applicable).**

*Student commits an offense* that subjects the student to expulsion consideration. *Student is suspended.*

Student may be suspended for up to 3 consecutive school days for a single offense.

***The Section 504 team may determine the behavior of the student was a manifestation of the student's disability:***

1. If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability, or
2. If the conduct in question was the direct result of the school or district's failure to implement the Section 504. If the Section 504 team determines that the misconduct was caused by, or had a direct and substantial relationship to the student's disability, or that the conduct in question was the direct result of the school or district's failure to implement the Section 504, the process leading to expulsion may not proceed. If it is determined that the misconduct was a manifestation of the student's disability, the Section 504 team shall conduct a FBA and implement or modify a BIP. The student should be returned to school unless under special circumstances the parent and district agree to a change in placement as part of the modification of the BIP. If it is determined that the misconduct was **not** a manifestation of the student's disability, the student shall be excluded from school in the same manner as general education students, as long as he/she receives services following the 10th cumulative day, unless an exception applies. The 504 District Coordinator in consultation with the Section 504 team determines the location of these services, and they can be provided in an alternative setting. If determined appropriate, the BSP shall be written or modified to prevent the reoccurrence of the misconduct. The student shall be subject to expulsion in accordance with procedures that apply to all students.

If recommended for expulsion, the suspension can be extended pending expulsion, if the student would cause a danger to persons or property, or disrupt the education process. In WOISD, the student must receive services after 10 cumulative days, unless an exception applies. Services may be provided in an alternative educational setting. The alternative setting is determined by

the 504 District Coordinator in consultation with the Section 504 team. A manifestation determination Section 504 team meeting shall be held within 10 school days following the decision to make a change in placement beyond 10 cumulative days in a school year or the principal's decision to recommend expulsion. The suspension may be extended pending expulsion following the principal's conference. A BIP must also be completed at this meeting.

**If the conduct involves a weapon or illegal substance, or serious bodily injury, the 504 team can make an immediate 45-school-day placement.**

A Section 504 meeting should be completed indicating that a 45-day placement is being made due to violation listed above. The Section 504 team should meet again before the 45 day are over.

**Expulsion of Students with Disabilities under Section 504**

Principal's conference must be held within 3 school days from the first day of the student's suspension.

**XIV. RESOLVING DISPUTES**

If a parent/guardian disagrees with the identification, evaluation or educational placement of a student with disabilities under Section 504, he/she may initiate the following procedures:

1. Within 30 days of receiving the student's accommodation plan, set forth in writing his/her disagreement and request that the school principal and school site committee review the plan in an attempt to resolve the disagreement. This review shall be held within 15 days of receiving the parent/guardian's request, and the parent/guardian shall be invited to attend the meeting at which the review is conducted. [AR6164.6(c)]
2. If disagreement continues, request in writing that the Superintendent or designee review the plan. This review shall be held within 15 days of
3. receiving the parent/guardian's request, and the parent/guardian shall be invited to meet with the Superintendent or designee to discuss the review.
4. If disagreement continues, request in writing a Section 504 due process hearing. Note: Parents may directly request a Section 504 due process hearing and bypass steps 1 and 2 noted above. The request shall include:
  - a) The specific nature of the decision with which the parent/guardian disagrees
  - b) The specific relief the parent/guardian seeks
  - c) Any other information the parent/guardian believes pertinent

Within 20 days of receiving the parent/guardian's request, the Superintendent or designee shall select an impartial hearing officer. This 20 days may be extended for good cause or by mutual agreement of the parties. Within 45 days of the selection of the hearing officer, the Section 504 due process hearing shall be conducted and a written decision mailed to all parties.

This 45 days may be extended for good cause or by mutual agreement of the parties. The Superintendent or designee shall represent the district at this hearing.

Any party to the hearing shall be afforded the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training related to the problems of students who are qualified as disabled under Section 504
2. Present written and oral evidence
3. Question and cross-examine witnesses
4. Receive written findings by the hearing officer

If desired, either party may seek a review of the hearing officer's decision by a federal court of competent jurisdiction. [AR6164.6(d)] All written correspondence shall be provided in English and/or translated in the primary language of the home.

West Oso Independent School District

*Section 504*

*The Rehabilitation Act of 1973*

### **Notice of Parent/Guardian and Student Rights**

The Rehabilitation Act of 1973, commonly referred to as "*Section 504*" is a nondiscrimination statute enacted by the United States Congress. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students. An eligible student under Section 504 is a student who a) has, b) has a record of having, or c) is regarded as having, a physical or mental impairment that substantially limits a major life activity such as learning, self-care, walking, seeing, hearing, speaking, breathing, working, reading, thinking, concentrating and performing manual tasks, . It is the purpose of this notice to set out the rights assured by Section 504. If parents have questions regarding parents' rights under Section 504, they should contact the Director of Student Services. The enabling regulations for Section 504 as set out in 34 CFR Part 104 provide parents and/or eligible students with the following rights:

1. You have a right to be informed by the school district of your rights under Section 504 (the purpose of this notice form is to advise you of those rights.) (34 CFR 104.32.)
2. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of non-disabled students. (34 CFR 104.33.)
3. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. (34 CFR 104.33.)
4. Your child has a right to placement in the least restrictive environment. (34 CFR 104.34.)
5. Your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. (34 CFR 104.34.)
6. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent significant change in placement. (34 CFR 104.35.)
7. Testing and other evaluation procedures must conform to the requirements of 34 CFR as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, and anecdotal reports. (34 CFR 104.35.)
8. Placement decisions must be made by a group of persons (i.e. the Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. (34 CFR 104.35.)
9. If eligible under Section 504, your child has a right to periodic reevaluations, generally every three years. (34 CFR 104.35.)

10. You have the right to a notice prior to any action by the district in regard to the identification, evaluation, or placement of your child. (34 CFR 104.36.)
11. You have the right to examine relevant records. (34 CFR 104.36.)
12. If you wish to challenge the actions of the District's Section 504 team in regard to your child's identification, evaluation, or educational placement, you may file a written Notice of Appeal with the District's Section 504 Coordinator, West Oso Independent School District 5050 Rockford Dr., Corpus Christi, TX 78416, within 30 calendar days from the time you received written notice of the Section 504 team's action(s). You have the right to an impartial hearing with respect to the district's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. (34 CFR 104.36.)
13. If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction. (34 CFR 104.36.)
14. On Section 504 matters other than your child's identification, evaluation, and placement, you have a right to file a complaint with the District's Section 504 Coordinator (or designee), who
15. will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution.



SECTION 504  
DEFINITIONS  
'STUDENT WITH A  
DISABILITY'

### West Oso ISD Policy FB (Local)

#### NONDISCRIMINATION

The District shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. *Education Code 1.002(a)*

No officer or employee of the District shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any school program because of the student's race, religion, color, sex, or national origin. *Civ. Prac. & Rem. Code 106.001*

The District may not deny services to any individual eligible to participate in its special education program, but it shall provide individuals with disabilities special educational services as authorized by law. *Education Code 1.002(b)*

#### FEDERAL FUNDING RECEIPIENTS

No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any district that receives federal financial assistance, on the basis of any of the following protected characteristics:

1. Sex.
2. Race, color, or national origin.
3. Disability, or relationship or association with an individual with a disability. [See EHB, EHBA series, and GA]

*20 U.S.C. 1681 (Title VI); 42 U.S.C. 2000d (Title IX); 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act); 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act [ADA])*

## HARRASMENT

Sexual harassment of students is discrimination on the basis of sex under Title IX. *Franklin v. Gwinnett County Schools*, 503 U.S. 60 (1992) [See also DIA and FFH]

## HUMAN RIGHTS COORDINATOR

The District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, and the ADA. The District shall notify all students and employees of the name, office address, and telephone number of the employee(s) so designated,

## GRIEVANCE PROCEDURES

The District shall adopt and publish grievance procedures for prompt and equitable resolution of student complaints alleging discrimination under these statutes. [See FNG]

*34 CFR 106.8 (Title IX); 34 CFR 104.7 (Section 504)*

## RETALIATION

The District shall not coerce, intimidate, threaten, retaliate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. *34 CFR 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX)*

## STUDENTS WITH LEARNING DIFFICULTIES

The Texas Education Agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Education Code 29.004. Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means. *Education Code 26.0081*

## SECTION 504 DEFINITIONS “STUDENT WITH A DISABILITY”

A “student with a disability” is one who has a physical or mental impairment that substantially limits one or more of the student’s major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

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, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student meets the requirement of being “regarded as” having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of 6 months or less.

## MAJOR LIFE ACTIVITIES

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activity” also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*29 U.S.C. 705; 42 U.S.C. 12102*

## FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

The District shall provide a free appropriate public education to each qualified student with a disability within the District’s jurisdiction, regardless of the nature or severity of the student’s disability.

A student with a disability is “qualified” if he or she is between the ages of three and 21, inclusive. *28 CFR 35.104(l)(2)*

An appropriate education is the provision of regular or special education and related services that are:

1. Designed to meet the student’s individual educational needs as adequately as the needs of students who do not have disabilities are met; and
2. Based on adherence to procedures that satisfy federal requirements for educational setting, evaluation and placement, and procedural safeguards, as set forth below.

*34 CFR 104.33(b)*

Implementation of an individualized education program (IEP) under IDEA is one means for providing FAPE. *34 CFR 104.33(b)(2)*

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**Note:** See EHBA series for policies regarding the provision of special education to students with disabilities under IDEA who require special education in order to benefit from a free appropriate public education.

## **EDUCATIONAL SETTING**

The District shall place a student with a disability in the regular educational environment, unless the District demonstrates that education in the regular environment with the use of supplemental aids and services cannot be achieved satisfactorily. *34 CFR 104.34(a)*

In providing or arranging for nonacademic and extracurricular services and activities, the District shall ensure that a student with a disability participates with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. *34 CFR 104.34(b), 104.37*

## **EVALUATION AND PLACEMENT**

The District shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education and related services. The District shall conduct an evaluation before the initial placement, or any significant change in placement, of the student. *34 CFR 104.35*

## **MILITARY DEPENDENTS**

In compliance with the requirements of Section 504, and with Title II of the Americans with Disabilities Act (42 U.S.C. Sections 12131–12165), the District shall make reasonable accommodations and modifications to address the needs of incoming military dependents with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the District from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, § C [See FDD]*

## **PROCEDURAL SAFEGUARDS**

The District shall establish a system of procedural safeguards with respect to the identification, evaluation, and educational placement of persons who need or are believed to need special instruction or related services.

**504 Compliance**  
West Oso ISD  
Special Education Dept.  
RJ Alvarado  
Director of Special Education and Student Services

**What is Section 504?**

- Section 504 is a part of the Rehabilitation Act of 1973 that prohibits discrimination based upon disability. Section 504 is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met. Section 504 states that: "No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." [29 U.S.C. §794(a), 34 C.F.R. §104.4(a)].
- Who is covered by Section 504?
- To be covered under Section 504, a student must be "qualified" (which roughly equates to being between 3 and 22 years of age, depending on the program as well as state and federal law, and must have a disability) [34 C.F.R. §104.3(k)(2)].
- Who is an "individual with a disability"?
- As defined by federal law:  
"An individual with a disability means any person who:
  - has a mental or physical impairment which substantially limits one or more major life activity;
  - has a record of such an impairment; or
  - is regarded as having such an impairment" [34 C.F.R. §104.3(j)(1)].

**What is an "impairment" as used under the Section 504 definition?**

- An impairment as used in Section 504 may include any disability, long-term illness, or various disorder that "substantially" reduces or lessens a student's ability to access learning in the educational setting because of a learning-, behavior-, or health-related condition. ["It should be emphasized that a physical or mental 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" (Appendix A to Part 104, #3)].

## ● **What is an "impairment" as used under the Section 504 definition?**

- Many students have conditions or disorders that are not readily apparent to others. They may include conditions such as specific learning disabilities, diabetes, epilepsy, and allergies. Hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious, but if they substantially limit that child's ability to receive an appropriate education as defined by Section 504, they may be considered to have an "impairment" under Section 504 standards. As a result, these students, regardless of their intelligence, will be unable to fully demonstrate their ability or attain educational benefits equal to that of non-disabled students.

## ● **What is an "impairment" as used under the Section 504 definition?**

- The definition does not set forth a list of specific diseases, conditions, or disorders that constitute impairments because of the difficulty of ensuring the comprehensiveness of any such list. While the definition of a disabled person also includes specific limitations on what persons are classified as disabled under the regulations, it also specifies that only physical and mental impairments are included, thus "environmental, cultural, and economic disadvantage are not in themselves covered" (Appendix A to Part 104, #3).

## ● **What are “major life activities”?**

- Major life activities include, but are not limited to: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others, and working. In September 2008, Congress expanded the list of major life activities to also include, but not limited to, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, and working. This non comprehensive list includes individuals with AD/HD, dyslexia, cancer, diabetes, severe allergies, chronic asthma, Tourette's Syndrome, digestive disorders, cardiovascular disorders, depression, conduct disorder, oppositional defiant disorder, HIV/AIDS, behavior disorders, temporary disabilities (e.g., broken writing arm, broken leg, etc.). Students who are currently using illegal drugs or alcohol are not covered or eligible under Section 504.

## ● **What does "substantially limits" mean?**

- "Substantially limits" is not defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, "this is a determination to be made by each local school district and depends on the nature and severity of the person's disabling condition."

## ● **Who can refer a child for consideration for evaluation under Section 504?**

- Anyone can refer a child for evaluation under Section 504. However, while anyone can make a referral, such as parents, teachers or a doctor, OCR stated in a staff memorandum

that "the school district must also have reason to believe that the child is in need of services under Section 504 due to a disability." (OCR Memorandum, April 29, 1993.)

## ● Who can refer a child for consideration for evaluation under Section 504?

- Therefore, a school district does not have to refer or evaluate a child under Section 504 solely upon parental demand. The key to referral is whether the school district staff **suspects** that the child is suffering from a mental or physical impairment that substantially limits a major life activity and is in need of either regular education with supplementary services or special education and related services [Letter to Mentink 19 IDELR 1127 (OCR) 1993]. If a parent requests a referral for evaluation, and the campus determines they lack evidence to support a referral for a 504 Evaluation, Pflugerville Independent School District will provide parents with notice of their procedural rights under Section 504.

## ● Who decides whether a student is qualified and eligible for services under Section 504?

- According to the federal regulations:  
"...placement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, placement options, least restrictive environment requirements, and comparable facilities" [34 C.F.R. §104.35(c)(3)].

## ● Who decides whether a student is qualified and eligible for services under Section 504?

- Unlike Special Education, the federal regulations for Section 504 do not require or even mention that parents are to be a part of the decision-making committee. The decision to include parents in the decision-making committee is a determination that is made by each school district and should be spelled out in the district's procedures for implementing Section 504. Best practices in Pflugerville Independent School District is to provide parents notice of Section 504 Meeting and invite parents to participate in the Section 504 Meeting. Parents are asked and encouraged to contribute any information that they may have (e.g., doctor's reports, outside testing reports, etc.) that would be helpful to the Section 504 committee in their determination of what the child may need. Schools are expected to make sound educational decisions as to what the child needs in order to receive an appropriate education.

## ● What information is used in a Section 504 Evaluation?

- Under Section 504, no formalized testing is required. The 504 Committee should look at grades over the past several years, teacher's reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records, and adaptive behavior information.

Schools must consider a variety of sources. A single source of information (such as a doctor's report) cannot be the only information considered.

- Can a child be placed in 504 without a parent's knowledge?
- No. Parents should always be given notice in writing before their child is evaluated and/or placed under Section 504. (34 C.F.R. §104.36). Parents must also be given a copy of their child's Section 504 accommodation plan if the committee determines that the child is eligible under Section 504.

- **What types of accommodations will my child receive if determined eligible under Section 504?**

- Each child's needs are determined individually. Determination of what is appropriate for each child is based on the nature of the disabling condition and what that child needs in order to have an equal opportunity to compete when compared to the non-disabled. There is no guarantee of A's or B's or even that the student will not fail. Students are still expected to produce. The ultimate goal of education for all students, with or without disabilities, is to give students the knowledge and compensating skills they will need to be able to function in life after graduation.

- **Will my child still be in the regular classroom or will he/she be in a "special class"?**

For the most part, a Section 504 eligible child will always be in the regular classroom unless (according to federal regulations): "... the student with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by §104.34" (34 C.F.R. §104.34, Appendix A, #24); or the student is receiving acceleration in a CORE subject area or the student is in the dyslexia program.

- Can a child be disciplined under 504?
- Yes. Children under Section 504 are still expected to follow the district's student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior if the child is going to be removed from the regular setting for longer than 10 days. This does not mean that a student with a disability cannot be sent to a discipline center or that they cannot go to in-school suspension, or be suspended from school for three days. Very strict guidelines exist for schools in discipline issues with students who have a disability under Section 504. Children having disabilities with behavioral components should have individual discipline plans as well as behavior intervention plans.

**● If a parent disagrees with the school's evaluation, will the school district pay for an outside independent evaluation?**

- Under Section 504, schools are not required to pay for an outside independent evaluation. If a parent disagrees with the school's evaluation decision, they may submit a written request to have the 504 Committee decision reviewed by the District 504 Coordinator, request a due process hearing or file a complaint with the Office for Civil Rights. (See Notice of Parent and Student Rights Under Section 504 of the Rehabilitation Act of 1973.)

**● How often will a child be re-evaluated?**

- While there are no specific time lines on this issue, students must be re-evaluated at least every three years or whenever there is going to be a "significant change in placement". In West Oso Independent School District, the student's Section 504 Committee will convene annually to determine continued eligibility and revise your child's plan to make sure that his or her accommodation plan is appropriate based on their current schedule and individual needs. The accommodation plan may be revised during the school year if needed.

**● Will a child still be able to participate in non-academic services?**

- Yes. West Oso ISD must provide equal opportunity in areas such as counseling, physical education and/or athletics, transportation, health services, recreational activities, and special interest groups or clubs. However, the "no pass, no play" standard used for students in Texas also applies to students under Section 504 (34 C.F.R. §104.37).

**● What Are the Rights of a Parent under Section 504?**

- As a parent or legal guardian, you have the right to:
- Receive notice regarding the identification, evaluation, and/or placement of your child;
- Examine relevant records pertaining to your child;
- File a complaint with your school district Section 504 Coordinator, who will investigate the allegations regarding Section 504 matters other than your child's identification, evaluation, and placement.
- Request an impartial hearing with respect to the district's actions regarding the identification, evaluation, or placement of your child, with an opportunity for the parent/guardian to participate in the hearing, to have representation by an attorney, and have a review procedure

**● SECTION 504 & IDEA/SPECIAL EDUCATION**

- Section 504 is not part of the Individuals with Disabilities Education Act (IDEA), or special education.
- Section 504 is considered a responsibility of the general education program and requires participation from the general education staff and curriculum. Generally all individuals

who are disabled under the IDEA are also considered to be entitled to rights and protection under Section 504. However, all individuals who have been determined to be Section 504 eligible may not be IDEA eligible.

## ● **OVERVIEW OF SECTION 504 ELIGIBILITY**

- Section 504 of the Rehabilitation Act of 1973 is a *federal civil rights anti-discrimination law that applies to eligible adults and children.*
- Section 504 applies broadly to any person who has been identified as having a physical or mental impairment which substantially limits one or more major life activities including but not limited to:
  - Walking
  - Seeing
  - Hearing
  - Speaking
  - Breathing
  - Learning
  - Working
  - Performing manual tasks
  - Caring for oneself
  - Reading
  - Thinking
  - Concentrating
- One who has a “record of” or is “regarded as” having such an impairment.

## ● **DEFINITIONS**

### ● **Individual With a Disability**

- *A qualified individual with a disability under Section 504 is any person who:*
- 1. Has a physical or mental impairment which substantially limits one or more major life activities;
- 2. Has a record of such impairment; or
- 3. Is regarded as having such an impairment. [29 U.S.C. Sec. 706(8)]

## ● **DEFINITIONS**

### ● **Has a Record of Such an Impairment**

- Has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.  
*[34 Code of Federal Regulations, Part 104.3]*

## ● **DEFINITIONS**

### ● **Is Regarded as Having an Impairment**

- 1. Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

- 2. Has a physical or mental impairment that does substantially limit major life activities only as a result of the attitudes of others toward such an impairment; or
- 3. Has none of the impairments defined but is treated by a recipient as having such an impairment. [34 Code of Federal Regulations, Part 104.3]

## DEFINITIONS

### Qualified Disabled Individual

- A *qualified disabled individual for public preschool, elementary, secondary, or adult education services* is a disabled person who:
  1. Is of an age during which nondisabled persons are provided such services;
  2. Is of an age during which it is mandatory under state law to provide such services to disabled persons, or
  3. To whom the state is required to provide FAPE under the IDEA.[29 U.S.C. Sec. 706(8)]

## DEFINITIONS

### Major Life Activities

- Major life activities are defined as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, reading, thinking, and concentrating.” The disability need only substantially limit one major life activity in order for the student to be eligible. (34 Code of Federal Regulations, Part 104.3)*

## DEFINITIONS

### Physical or Mental Impairment

- 1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hermetic and lymphatic; skin; and endocrine; or
- 2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.  
(34 Code of Federal Regulations Part 104.3)

## DEFINITIONS

### Evaluation

- Requirements for evaluation are determined by the type of disability believed to be present. The evaluation must provide relevant data needed to assess the nature and extent

of the disability, the impact of the disability, and recommended services. Evaluations more limited than a comprehensive special education evaluation may be adequate in many circumstances. However, it is imperative that staff conduct a Section 504 determination regardless of the information the parents/guardians may or may not provide.

- Evaluation must cover area(s) of concern and be completed in a reasonable timeframe.
- Evaluation information from a variety of sources should be considered. Information may be available in the student's record. While medical records can be provided by the parent/guardian, it is not mandated that the district seek a doctor's input. It is an option of the parent/guardian to hire a physician in order to determine a medical condition. All information on medical conditions must be considered. If a parent has a diagnosis from a private medical or mental health provider, an appropriate district staff person (i.e., nurse, psychologist, etc.) should discuss the diagnosis with the parent and the provider, and conduct any supplemental assessment deemed necessary to confirm the diagnosis, including the possibility of the District conducting a medical assessment if necessary.

## ● **DEFINITIONS**

### ● **Section 504 Accommodations**

- Adjustments made by the classroom teacher and other school staff to enable the student to benefit from his or her educational program. Accommodations may provide support of physical, instructional, or social/emotional nature. It is important that the Section 504 team determine each year what interventions and accommodations are needed by the student to insure an appropriate educational program.

## ● **DEFINITIONS**

### ● **Review Annually**

- The student's progress must be reviewed by the appropriate school staff and parents/guardians, and modified annually or more often, if there is a change in the student's condition. The plan should be reviewed if the student is not successfully accessing the educational program. A Section 504 transitional meeting must take place between the elementary, middle, and high school staff prior to the Section 504 student entering the six and ninth grades. The transitional meeting shall be held in the Spring of each school year.

## ● **Identification Process**

- The district has a responsibility to seek, identify, and develop accommodation plans for Section 504 eligible students. Students may be self-referred or referred by a parent/guardian, teacher, or other certificated school employee.
- In many cases, students are first referred for review by a Student Study Team (SST) and the Coordinated Care Team (CCT) to discuss concerns and consider accommodations or support services. The SST/CCT may determine whether the student should be referred for evaluation under IDEA guidelines or Section 504. In the event the student is assessed and not found to have a disability within the definition of IDEA, the assessment information

may, but is not required to, be used to determine whether the student has a disability within the definition of Section 504. Not qualifying for special education should not result in automatic qualification for Section 504. Qualification for Section 504 must be based on the specific eligibility standards for Section 504. Each school must have a designated Section 504 Coordinator, someone who takes a leadership role in planning and facilitating the Section 504 Team Meetings.

- **Prior to conducting a Section 504 Team Meeting, the following steps should be taken:**
  - 1. The Section 504 Coordinator should determine the appropriate membership of the team. This may involve input from the student parent/guardian and teachers.
  - 2. A meeting date should be determined. The meeting date should occur within 45 days of referral.
  - 3. A written notice of the Section 504 Team Meeting should be sent to the parents/guardians.
  - 4. The written notice should include a copy of the 504 Parent Rights and a Notice of Nondiscrimination.
  - 5. The Section 504 Coordinator should collect relevant information prior to the team meeting. Evaluation material can include:
    - a) Formal and informal test results.
    - b) Aptitude and achievement tests.
    - c) Observations and anecdotal records.
    - d) Attendance records.
    - e) Behavior records.
    - f) Medical reports.
    - g) Grade records/progress reports.
    - h) Teacher reports/recommendations.
- **The Section 504 team should then meet to review the above information and determine the student's eligibility.**

## ● **Procedural Safeguards**

- *There are several times during the planning process when parent/guardian should be provided with a written copy of their rights:*
  - 1. When eligibility is questioned and assessment begun.
  - 2. When eligibility is determined and an accommodation plan developed.
  - 3. Before there is a significant change in the plan for services.

## ● **SECTION 504 TEAM MEMBERSHIP AND MEETING**

- A Section 504 team meeting must have at least two persons, the Section 504 Coordinator and the student's teacher. The team must include persons who are knowledgeable about the student, who are able to interpret evaluation data, and who know placement options, the requirement to place a Section 504-eligible student in the least restrictive environment, and the requirement to provide comparably effective aids, benefits and services to Section 504-eligible students.

## ● **SECTION 504 TEAM MEMBERSHIP AND MEETING**

- The district encourages parent/guardian participation in the team meeting. Parents/guardians participation in the team meeting is, however, optional.
- Steps taken by the team should include:
  - 1. A review of data. It is imperative that the team considers all areas of need.
  - 2. Consideration of the need for additional evaluation data.
  - 3. Determination of eligibility if sufficient data is available.
  - 4. If the student *is not eligible*, *forms must be completed*
  - 5. If the student *is eligible*, *forms must be completed*

## ● **SECTION 504 TEAM MEMBERSHIP AND MEETING**

- 6. If the student meets the Section 504 eligibility and receives accommodations, a Section 504 annual meeting must take place within one year from the initial meeting date of his/her eligibility and be documented.
- 7. The parent/guardian should be given a copy of the documentation completed in the team meeting,
- 8. If the parent/guardian disagrees with the team findings, the Section 504 Coordinator should advise the parent/guardian of their rights
- 9. Record of documentation should be maintained at the school in the student's pupil records and send copies of all forms to the District 504 Coordinator

## ● **DEVELOPMENT OF A SECTION 504 PLAN AND ANNUAL REVIEW**

- If the student is determined to be Section 504-eligible, the district must develop and implement an "*Accommodation Plan*" for the delivery of needed services. The district must provide what the student needs to access programs and services comparable to that of a non-Section 504 student. Accommodations generally involve adjustments made by classroom teachers and other school staff to enable the Section 504-eligible student to benefit from his/her educational program. Accommodations may provide support of a physical, instructional, or social/emotional nature.

- The decisions about Section 504 eligibility, aids and services must be documented in the student's file and reviewed annually by staff, parents/guardians and persons knowledgeable about the student.

## ● **FOLLOW UP STEPS**

- Following the meeting:
  1. Copies of documentation from the meeting should be placed in the student's cum folder and the school's centralized Section 504 files.
  2. If the student was found eligible, a Section 504 label should be placed on the student's folder.
  3. Information on the student's eligibility must be entered into the district's database with the date of the most recently developed Section 504 plan.
  4. All staff serving the student should be notified of the student's eligibility and their roles in providing accommodations. These staff should receive a copy of the accommodation plan.
  5. The plan must be reviewed on an annual basis, or more often if needed, and modified as needed.
  6. Copies of the student's Section 504 Plan and all relevant documents are to be sent to RJ Alvarado
- 7. Handbook
  - A 504 Handbook will be available in September to all campuses.
- For any questions or concerns call RJ Alvarado at (361) 806-5911.