

## **EUSTACE INDEPENDENT SCHOOL DISTRICT SECTION 504 HANDBOOK**

Eustace ISD is committed to meeting the educational needs of our students. The district believes that all children can learn and should have equal access to every opportunity for academic, physical, and social growth. One of the many ways that Eustace ISD serves the needs of students is adherence to Section 504 of the Rehabilitation Act of 1973. This handbook outlines the procedures governing the Eustace ISD 504 program. The Rehabilitation Act of 1973, Section 504 provides 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 handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service ...” – 29 U.S.C. §794(a)(1973).

### **504 ELIGIBILITY**

Like other students, those students with a 504 eligible disability are entitled to a free appropriate public education. An appropriate education for a Section 504 disabled student may require the provision of specific accommodations and related services in order to meet the needs of the student. Section 504 focuses on assuring access to educational services and the learning process that is equal to that given students who do not have disabilities.

For a student to qualify for Section 504 protection the student must meet three criteria. The three criteria are (1) a mental or physical impairment (or has a record of an impairment or is regarded as having an impairment), (2) which substantially limits, (3) one or more major life activities. It is important to understand that **all three criteria must apply** to a student before that student is eligible for Section 504 protection. In addition, this disability must be why the student cannot equally access or receive benefit from the school’s programs and services.

**1) Mental or physical impairment (a) has a record of such an impairment or (b) is regarded as having an impairment:**

This may include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. Additionally, this can include any mental or psychological disorder. This criterion does not limit eligibility to specific diseases or categories of medical conditions.

- (a) “Has a record of such an impairment” means that a person has a history of, or has been misclassified (by a recipient of federal funding) as having a mental or physical impairment that substantially limits one or more major life activities.

- (b) “Is regarded as having an impairment” means that an individual has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient (of federal funds) as constituting such a limitation; or has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment.

**2) Substantially limits:**

Section 504 does not specifically define the term “substantially limits”. The basis for evaluating this criterion is on the impact a disability has on one or more of a student’s major life activities. School personnel, after reviewing relevant student information, must use their collective professional judgment in determining if an impairment (or disability) *substantially limits* one or more of a student’s major life activities.

A student may be considered *substantially limited* by an impairment if the student is:

- Unable to perform a major life activity that the average person in the general school population can perform; or
- The student is significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general school population can perform that same major life activity.

The following three factors and related questions should be used by staff when determining if the *substantially limits* requirement is met.

**Nature and severity of the impairment**

- Is the impairment mild or severe?
- Does the impairment result in the student not achieving near expected levels?
- Does the impairment impact on a major life activity? If so, how?

**Duration or expected duration of the impairment**

- Will the impairment be of such short duration as to not cause significant problems?
- Will the impairment cease impacting on the child without any intervention?

**Permanent or long term impact resulting from the impairment**

- Will the impairment be short or long in duration?

- If the impairment is of short duration, will it have a significant impact without intervention?
- If the impact will be long term, will the impact negatively affect the child's status, academically, socially, emotionally, or behaviorally?

### 3) **Major Life Activities**

“ ‘Major life activities’ means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, *learning*, and working.” §104.3(j)(2)(ii) This list is not exhaustive. The phrase “major life activities” is calculated to include “those basic activities that the average person in the general population can perform with little or no difficulty.” ADA, 29 C.F.R. §1630.2(i). **The student need not have a disability limiting the major life activity of learning to qualify.** “Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind from the district to access learning.

## **THE 504 PROCESS**

### **Child Find**

The district will conduct a “child find” at least annually. The district makes efforts to notify disabled students and their parents of the district’s obligations to provide a free appropriate public education to all disabled students between the ages of 3 and 22 who reside in the district, including those currently attending private or home school.

### **Referral**

Prior to referral and evaluation, the district can use screening committees, academic teams, student assistance teams or intervention teams to address the child’s needs. To refer for evaluation, the district must have reason to believe that the student is having academic, social, or behavioral problems that **substantially** affect the student’s overall performance at school. The district has the option of attempting to address these types of problems through documented school-based intervention and/or modifications, prior to conducting an evaluation. Furthermore, if such interventions and/or modifications are successful, the district is not obligated to evaluate a student for special education or related services.

A student may be referred to §504 when the district believes that the student may be eligible, i.e., when the district believes that the student has a physical or mental impairment that substantially limits one or more major life activities, AND that the student is in need of either regular education with supplementary services or special education and related services. A parent, guardian, teacher, counselor, related service provider, other school staff and administrator can request a Section 504 referral. However, a school does not have to refer a child to §504 simply because a parent requests a referral. The Department of Education has made clear that a child must be referred only if the *school* believes the child might be in need of §504 services because of a disability that substantially limits a major life activity. Requests for referral should be made to the campus principal. Within 30 days from initial request, a 504 committee will meet to determine student eligibility.

### **504 Committee**

The section 504 committee is responsible for 504 evaluation and placement. The 504 committee is a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options §104.35(c)(3). Parents are encouraged to participate in the process but are not required to be members of the committee. There is no maximum number of members of the committee.

### **Evaluation**

Parental consent is required prior to initial evaluation. The district will draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior. Other sources of evaluation data for §504 eligibility may also include the student's grades, disciplinary referrals, health information, language survey, and parent information. Formal testing is not required to determine eligibility.

Once the information has been gathered, the §504 committee will make an evaluation as to the student's eligibility based on the criteria previously addressed. If the student is found to be eligible, the committee will create an accommodation plan for the child which describes the child's services.

An annual review of the student's progress will be held to determine if changes are necessary due to differences in the student's schedule in the coming year or changes in the student's abilities and disabilities. A comprehensive reevaluation will be conducted at least every three years.

### **Placement**

A student that qualifies under §504 will be educated with nondisabled students to the maximum extent appropriate and in the least restrictive environment. The least restrictive environment is the setting that allows the disabled student the maximum exposure to nondisabled peers while still allowing the student to receive an appropriate education. Implementation of most Section 504 student accommodations occurs within the regular classroom. A placement other than the regular classroom is only appropriate if the disabled child cannot be educated satisfactorily in the regular classroom with supplementary aids and services such as a behavior management plan, classroom modifications, assistive devices, counseling, etc. §104.34(a).

### **504 Accommodations and Related Services**

If the 504 committee determines that a student has a Section 504 disability, the committee's second responsibility is to identify student needs and the services and/or accommodations the student will receive. The plan provides a summary of accommodations that a student needs in order to have equal access to the learning process, or to other programs, activities, and services. The original document is kept in the student's cumulative file. Each teacher of the student will receive a copy of the accommodations/modifications to be carried out and is

responsible for implementation. The eligibility team should review active Section 504 accommodation plans yearly with more frequent reviews occurring when needed.

### **Procedural Safeguards & Discipline**

The district has a system of procedural safeguards that includes (1) **notice** (which includes child find, notice of parent rights, prior notice of evaluations and meetings, and notice of the results/actions taken at 504 committee meetings); (2) an opportunity for the parents or guardian of the person to **examine relevant records**; (3) an **impartial hearing** with an opportunity for participation by the person's parents or guardian and representation by counsel; and (4) a **review procedure**. §104.36.

Students who are identified as 504 handicapped are subject to the school's code of conduct. All students and parents should receive a copy of the school's code of conduct and acknowledge those responsibilities. A child's 504 plan may include a behavior management plan which outlines disciplinary options to be used. If a student misbehaves he may be removed from classes for a few days or sent to an alternative educational setting. A student may be expelled or placed in AEP if they commit a serious offense as listed in the school code of conduct.

Students who qualify under §504 may not be subjected to a disciplinary change in placement for more than ten days unless the appropriate §504 committee first determines that the **behavior giving rise to the discipline was not linked** to the student's handicapping condition or to an inappropriate placement. Removals for less than ten days can be effected without §504 committee approval.

“For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against *any handicapped student* who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 C.F.R. 104.36, Procedural Safeguard, shall not apply to such disciplinary action.” 29 U.S.C. §706 (8)(c)(iv).

### **Parent's Rights in Placement**

Eustace ISD has established a system that provides parents and guardians with rights and privileges concerning evaluation or placement of their child. This system allows for parents and guardians to be notified prior to an evaluation or placement action, access to the child's records, and provisions for an impartial hearing concerning evaluation and placement procedures and decisions. Parents may participate in the discussions during the hearing. In addition, the parent has the freedom to appoint an attorney to assist them when challenging a Section 504 decision.

### **Section 504 Complaints**

The best solutions to parent and student concerns occur at the school level. Therefore, the first step in resolving a complaint involves the parent or guardian contacting the building

principal and discussing the issue with the principal and other appropriate building staff. Should the issue not be resolved through these discussions, the parent or guardian can file a *Section 504 Complaint Form* with the school principal. The form is available at your local school. If the issue remains, the parent or guardian can continue the complaint process by contacting the district 504 coordinator to review and respond to the parent concern. If the concern is still not resolved, the superintendent or designee will review the decision to determine if all district and 504 policies have been followed.

The Office of Civil Rights (OCR) is the federal agency responsible for enforcing Section 504 compliance. While the best resolutions occur at the school level, parents and guardians always have the right to initiate a complaint with OCR or to involve OCR at any time during the complaint process.

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U.S. Department of Education  
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Denver, Colorado 80204-3582  
(303) 844-5695

### **The Hearing Process and Mediation**

Section 504 also provides that parents have input into the procedures involved in a hearing. These include: the filing of a request for a hearing with the school district, parental participation and, if desired, by legal counsel for the parents. Eustace ISD will appoint an impartial hearing officer who is not connected in any way to the district. If either party is not satisfied with the results of the hearing, they may appeal the decision to a court. Mediation is also provided when parents may not agree with the educational program developed by Eustace ISD. Disagreements may be resolved through an impartial third party or mediator. During this process, parents or guardians meet with someone from the school and the mediator to review the child's plan. From that meeting, solutions are worked out that are satisfactory to both the parents and the district.

### **Exit from 504**

At the student's annual review or three-year evaluation, the committee has the option to exit a student from the 504 program if services are deemed no longer necessary.

## **504 ANTI-DISCRIMINATION PROTECTION**

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973, the Eustace Independent School District does not discriminate on the basis of disabilities in any programs and services. Qualified students with disabilities are entitled to be provided with regular or special education and related aids and services that are designed to meet individual educational needs as adequately as the needs of those who are not disabled.

Qualified students are afforded equal opportunity to participate in extracurricular activities, meals, recess, and other nonacademic services. These services include:

- counseling
- physical education
- health services
- recreation
- athletics
- transportation
- special interest groups or school-sponsored clubs
- referrals to agencies that provide assistance to handicapped persons
- employment of students, where applicable.