

SECTION 504

OF THE REHABILITATION ACT OF 1973

PUBLIC LAW 93-112

Acknowledgements:

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<p style="text-align: center;">SECTION 504 OF THE REHABILITATION ACT OF 1973, PUBLIC LAW 93-112 GENERAL INFORMATION</p>
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Section 504 is the section of the Rehabilitation Act of 1973, Public Law 93-112, which applies to persons with disabilities. It is a civil rights act which prohibits organizations that receive federal funds from discriminating against otherwise qualified individuals solely on the basis of a handicap. Section 504 is enforced by the Office for Civil Rights (OCR). Its regulations are in 34 Code of Federal Regulations 104. The statute provides:

No otherwise qualified individual with handicaps in the United States shall, solely by reason of her or his handicap, 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.

An antidiscrimination statute, the Act specifies that school districts must operate academic and extracurricular programs in a manner which affords disabled students equal opportunity to participate. It is not a funded mandate, but OCR can remove or withhold federal funds from a district for noncompliance.

It is the intent of Public Schools to identify and provide a free, appropriate public education to all students who are handicapped under Section 504 of the Rehabilitation Act of 1973. It is also our intent to provide reasonable adaptations and interventions whenever necessary in order to help students succeed in the general education program.

504 Eligibility:

For students, eligibility under 504 means a student of school age who has a physical or mental impairment which substantially limits one or more major life activities such as caring for one's self, performing a manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Schools generally need to concern themselves with the major life activity of learning. Eligible students may include those with learning disorders, communicable diseases, temporary handicapping conditions, ADD/ADHD, chronic illness, or physical handicaps.

The other two criteria as follows **do not apply to public education (as per OCR Senior Staff memorandum 19 IDELR 894):**

1) has a record of such an impairment

" . . . has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities". (34 CFR 104.3 {j,2,iii}) and

2) is regarded as having such impairment

"... (A) 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; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph {j,2,i} of this section, but is treated by a recipient as having such an impairment." (34 CFR 104.3 {j,2,iv})

504 and Special Education:

Section 504 is **not** an aspect of "special education". Rather, it is a responsibility of the comprehensive general public education system. Thus, the building administrator and the superintendent of schools are responsible for its implementation within districts. As a general rule, special educators lead the district efforts in the identification process, while general educators lead the development and implementation of the 504 plan. It is a collaborative effort.

All students who are enrolled in special education are automatically covered by 504 regulations. Normally, a 504 plan is not necessary for special education students, as the Individual Education Plan (IEP) provides a higher level of service than a 504 plan. In regard to the possibility of special education placement for a 504 student, it must be kept in mind that Section 504, along with the Individuals with Disabilities Act (IDEA), and the Americans with Disabilities Act (ADA) were enacted by Congress to end the practice of automatically segregating persons with disabilities on the basis of their labels. A Joint Policy Memorandum, issued by the Assistant Secretaries for the Office of Special Education and Rehabilitative Services; the Office for Civil Rights; and Office of Elementary and Secondary Education, states that the proper placement of a 504 student is in the regular classroom, with a regular educator who has been trained in making necessary adaptations. The child's education must be provided in the regular education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 104.34)

504 and ADD/ADHD

Section 504 can provide an ideal mechanism for addressing ADD/ADHD through reasonable adaptations and interventions in the regular classroom. If a student who is diagnosed as having ADD/ADHD does not meet legal criteria for special education placement, the district must evaluate the child to determine whether he or she is handicapped as defined by Section 504. Evaluation may include consideration of information from outside resource(s). If the school accepts the outside agency determination of ADD/ADHD, it is still the school personnel's responsibility to determine whether or not the handicap "substantially limits a major life activity." Please note that ADD/ADHD alone is not sufficient for 504 eligibility. The ADD/ADHD must also substantially limit a major life activity (usually learning.)

504 and Student Discipline

The 504 student is subject to normal discipline procedures, unless otherwise noted on the 504 plan. The 504 student may be suspended just as any other student. The district must afford 504 students due process in expulsion cases, by reviewing the 504 plan before a referral for expulsion is made. The review will address whether the misbehavior was a direct manifestation of the handicap, and whether the student was appropriately placed at the time of misconduct. Bad conduct, per se, without another handicapping condition, does not make a student eligible for a 504 plan.]

The 504 Plan:

Once eligibility is determined, "reasonable accommodations" must be provided, as agreed to by the team, or it may be agreed and documented that no accommodations are necessary at that time. The 504 plan is an individualized determination of the child's educational needs, including related aids and services, which are based upon information drawn from a variety of sources. This determination is made by a group of persons knowledgeable about the student. The team should review the nature of the handicap, how it affects the student's education, whether specialized interventions or services are needed, and, if so what those services should be. All information must be considered and documented. The parent must be an integral part of the 504 planning process.

REFERRAL PROCEDURES

1. A student may be referred by anyone.
2. The referral is made to the 504 coordinator.
3. The 504 team is assembled. The team will include persons knowledgeable about the student and the student's school history and individual needs, the meaning of the evaluation data, and the placement options. Parents are also a part of the team.
4. The team will review the student's existing records and make a decision as to whether an evaluation under the 504 procedure is appropriate. If a request for evaluation is denied, the 504 team will inform the parents of those decisions and the basis for the decision in writing and will provide a copy of parent procedural safeguards.

REVIEW OF RECORDS

1. The 504 team will evaluate the nature of the student's suspected handicap and the impact of that possible handicap upon the student's education. This will include a review of the student's cumulative file, and all pertinent records.
2. Each evaluation is individualized in terms of the possible disability as well as the composition of the evaluation team. The team will be composed of persons knowledgeable about the child, about the meaning of the evaluation data, and about the educational options (34 CFR eligibility and service options (34CFR104.35)). The evaluation must be sufficient to accurately and completely assess possible eligibility and service options, but evaluations more limited or different in nature that a full special education evaluation could consist of the school nurse meeting with the parent, reviewing the student's current medical records, and obtaining current information from school staff.
3. A final decision regarding eligibility will be made by the 504 team, which will consider whether or not the handicapping condition substantially limits a major life activity, such as learning.
4. The results of the evaluation will be documented.

<p style="text-align: center;">INFORMATION REGARDING SECTION 504 OF THE REHABILITATION ACT OF 1973</p>

Section 504 is an Act which prohibits discrimination against persons with a handicap in any program receiving federal financial assistance. The Act defines a person with a handicap as anyone who:

1. Has mental or physical impairment which substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working);
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

In order to fulfill its obligation under Section 504, the Escalon Unified School District recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a handicap will knowingly be permitted in any of the programs and practices in the school system.

The school district has specific responsibilities under the Act, which include the responsibility to identify, evaluate, and if the child is determined to be eligible under Section 504, to afford access to appropriate educational services.

If the parent or guardian disagrees with the determination made by the professional staff of the school district, he/she has the right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specified rights related to educational records.

This Act gives the parent or guardian the right to: 1) Inspect and review his/her child's educational records; 2) make copies of these records; 3) receive a list of all individuals having access to those records; 4) ask for an explanation of any item in the records; 5) ask for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the child's rights; and 6) a hearing on the issue if the school refuses to make the amendment.

If there are questions, please feel free to contact the principal of your child's school.

Notice to Parent

RIGHTS AFFORDED BY SECTION 504 OF THE REHABILITATION ACT OF 1973

The following is a description of the rights granted by federal law to students with handicaps. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. have your child take part in, and receive benefits from, public education programs without discrimination because of his/her handicapping conditions
2. have the school district advise you of your rights under federal law
3. receive notice with respect to identification, evaluation, or placement of your child
4. have your child receive a free appropriate public education
5. have your child receive services and be educated in facilities which are comparable to those provided to non-handicapped students
6. have evaluation, educational, and placement decisions made based on a variety of information sources, and by persons who know the student and who are knowledgeable about the evaluation data and placement options
7. have transportation provided to and from an alternative placement setting (if the setting is a program not operated by the district) at no greater cost to you than would be incurred if the student were placed in a program operated by the district
8. have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district
9. examine all relevant records relating to decisions regarding your child's identification, evaluation, and placement
10. request to have an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program, or placement. (You and your child may take part in the hearing and be represented by the counsel. Hearing request must be made to our local district superintendent)
11. file a local grievance

If there are questions, please feel free to contact the principal of your child's school.

Parent/Guardian Right of Appeal

(34 C.F.R. Section 104.36.)

The parent or guardian has the right to appeal the final determination of the 504 Team regarding evaluation, eligibility, or services of the procedure for Section 504. The appeal process is an impartial hearing (Section 504 Due Process Hearing) and the parent or guardian may request a hearing as described below. However, the parent or guardian also may, as an option, first attempt to resolve any disagreement with the team decision through the principal of the school, the administrator assigned by the district to Section 504 issues.

The parent or guardian may then appeal the decision within ten days to the school board.

The request for appeal must be in writing and must include the factual basis for the appeal.

An appeal or request for a Section 504 Due Process Hearing is to be filed in the Office of Associate Superintendent of Educational Services and will identify the district decision with which the parent disagrees.

A. Within twenty (20) calendar days of receipt of a written appeal/request for hearing, the Superintendent will select an impartial Section 504 Hearing Officer in each case for which a hearing as been requested.

B. Within forty-five (45) calendar days of the selection of the 504 Hearing Officer, the hearing on the appeal shall be conducted and a written decision mailed to all parties.

C. Any Section 504 Hearing Officers selected by the district must satisfy the following requirements:

(1) Be qualified to review district decisions relating to Section 504 of the Rehabilitation Act.

(2) Be impartial, i.e., not employed by or under contract with the district in any capacity other than that of a hearing officer in the last three years, or by any cooperative program in which the district participates, e.g., the SELPA of which the district is a member, or by any other agency or organization that is directly involved in the diagnosis, education or care of the student, and additionally shall not be a person who has a personal involvement that would affect his or her objectivity in this case.

D. Any party to the hearing shall be afforded the following rights:

(1) The right to be accompanied and advised by counsel and/or by individuals with special knowledge or training relating to the problems of students who are qualified disabled individuals within the meaning of Section 504.

(2) The right to present evidence, through documents and/or testimony.

(3) The right to question and cross-examine witnesses.

(4) The right to written findings of fact, conclusions of law and decisions prepared by the Section 504 Hearing Officer.

E. In instances where a State fair hearing already has been held under the IDEA concerning issues relevant to the Section 504 proceeding, the Section 504 Hearing Officer shall, at the request of either party, accept into the record as evidence, copies of the transcript of testimony and documents submitted in the State Fair Hearing. The Hearing Officer shall then provide opportunity for the submission of additional evidence by the parties that is relevant to a determination of the issues under Section 504. The Section 504 Hearing Officer's jurisdiction shall be limited to Section 504 issues and shall not extend to a determination of eligibility for special education or special education assessment or placement under the IDEA.

F. The Section 504 Hearing Officer shall render a decision de nova pursuant to the legal standards set forth in 34 C.F.R. Part 104 and court decisions interpreting those provisions.

G. Either party may seek review of the decision of the Section 504 Hearing Officer. The parties shall abide by the decision of the Section 504 Hearing Officer unless the decision is stayed, modified or overturned by a court of competent jurisdiction.

The Superintendent will notify the parent/guardian of the date, time, and place of the hearing. The 504 Team representative, parent/guardian, and parent/guardian representative or counsel, if any, will be invited to participate in this hearing. Within forty-five (45) calendar days of the selection of the 504 Hearing Officer, the hearing on the appeal shall be conducted and a written decision mailed to all parties.

The Hearing Officer shall control the conduct of the hearing and reach a determination whether to uphold the decision of the 504 Team. The parties shall abide by the decision of the Hearing Officer unless and until such decision is overturned or modified by a court of competent jurisdiction.