

**Descriptor Term:**

SPECIAL INSTRUCTIONAL PROGRAMS AND  
ACCOMMODATIONS

**Descriptor:** Issued:  
IHB Draft  
4/30/2010

**Rescinds:** Issued:  
IHB 06/26/2007

It is the policy of the Tupelo Public School District to comply with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against individuals students with a on the basis of disability in any program or activity receiving federal financial assistance. No discrimination against any student with a disability will knowingly be permitted in any of the programs and activities of the District. It is the intent of the District to provide a free appropriate public education to qualified students with disabilities. The District shall comply with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process.

~~Whenever there is a determination that a child or student is not eligible for special education under the Individuals with Disabilities Act and other applicable statutes, the Section 504/ADA coordinator shall be informed, and the coordinator shall determine whether a Section 504 Team shall be convened.~~

The Board authorizes the superintendent to promulgate administrative procedures to ensure the District's compliance with Section 504. ~~as it applies to students with disabilities.~~

**ADMINISTRATIVE PROCEDURE**

**1. Definitions**

1.1 "Parent" shall include the student's natural mother and/or father, or any person who has legal guardianship of the student.

1.2 "504 team" shall mean the group of people assembled to determine eligibility and recommend accommodations for a disabled student. The 504 team shall be comprised of people who are knowledgeable about the student's educational needs. The 504 team should be a multi-disciplinary team including, where possible, the student's teacher, principal or designee, individuals with special knowledge, experience or training, and/or someone qualified to interpret test scores.

~~To ensure the District's compliance with Section 504 as it applies to students with disabilities, the following procedures have been adopted:~~

**2. Identification and Eligibility**

2.1 ~~If a student claims that he/she had been subjected to discrimination on the basis of his/her disability, in violation of Section 504 of the Rehabilitation Act of 1973, or If the District has reason to believe that a student has a disability requiring special instruction or related services and the student is ineligible for services under IDEIA, a~~ 504 team shall be convened.

2.2 If a parent thinks that his/her child has a disability requiring accommodations, he/she shall request that a 504 team be convened.

2.3 The 504 team meeting shall be convened within ten (10) fifteen (15) calendar days after the District receives a written statement describing the specific discriminatory

conduct or the date when the District becomes aware of the potential need for a 504 Plan. student's disability requiring special instruction or related services.

2.4 The 504 team shall review and consider all pertinent information related to the suspected disability. The student's parent shall be allowed to provide information to the 504 team for consideration. Information such as grades, classroom documentation, comprehensive assessment data and other relevant information should be examined.

2.5 The 504 team described above shall determine: (a) whether the student is disabled under Section 504, and (b) whether that student, because of the disability, requires special instruction or related services. If the student meets both criteria, the 504 team must shall determine what accommodations are required to allow the student an equal opportunity to participate in school and school-related activities.

2.6 The District shall undertake to identify and locate every qualified handicapped person residing in the District who is not receiving a public education and take appropriate steps to notify handicapped persons and their parents of the District's duty under 504.

2.7 The District shall provide a written statement of the eligibility determination and inform the parent of the right to ask for an impartial hearing to review the matter, if the parent disagrees with the District's conclusion and recommendations.

### 3. Due Process

3.1 A parent may request a hearing (a) on the determination of the 504 team or (b) if the parent feels that the student has been discriminated against because of his disability.

3.2 A parent's request for a hearing shall be made in writing to the superintendent within five (5) calendar days after the receipt of the District's 504 team's conclusion and recommendations regarding accommodations. The request shall give specific reasons describing the discriminatory actions by the District and why the reasons the parent believes the District's decision and/or accommodations are not appropriate. The hearing request shall include a list of accommodations that the parent believes are appropriate, along with copies of any documents upon which the parent relies for support.

3.3 The parent (or guardian) of a child with possible disability shall be allowed, upon written request, to have an opportunity to examine the relevant records held by the District upon which the determinations set forth above are made.

3.4 An impartial hearing shall be held within thirty (30) calendar days of receipt of the written request. The District shall retain obtain as a hearing officer an individual who is not an employee of the District and who is knowledgeable of Section 504.

3.5 The parent and student may take part in the hearing and may have an attorney accompany, advise and represent them, at their own expense. Counsel may also represent the District.

3.6 The parent and student may be accompanied by individuals with special knowledge, experience or training with respect to disabilities, children, education, therapy or accommodations, who may make brief presentations within the discretion and rules set forth by the hearing officer.

3.7 The parent and student may present evidence and witnesses and may cross-examine any other witnesses who testify.

3.8 The hearing officer shall conduct the hearing so as to give the parent an opportunity to present evidence supporting the claim that the 504 team's conclusion is erroneous, or that the child has been subjected to discriminatory treatment in violation of

Section 504. The District shall be given the opportunity to present evidence supporting its position with respect to the student. The District will make an **audio or audio/visual** tape recording or written record of the hearing, and a copy will be provided to the parent.

3.9 The ~~impartial~~ hearing will be conducted in an informal manner with the hearing officer directing the meeting and presentation of evidence, according to reasonable rules. Rules of evidence shall not apply, but no decision shall be made solely on hearsay evidence.

3.10 The hearing officer shall make a decision within ~~ten (10)~~ **fifteen (15)** calendar days after the conclusion of the hearing. The decision shall be given in writing to the District's 504 coordinator and the parent. The decision made by the hearing officer shall be final and shall be confined to those matters involving the identification, evaluation or educational placement of the student under Section 504.

#### **4. Appeal**

4.1 Any party aggrieved by the hearing officer's decision may file a civil action in a court of appropriate jurisdiction.

~~The District shall publish its policy of discrimination against persons with disabilities this policy and shall inform parents of their rights under Section 504, including the right to examine records relevant to their child, the right to an impartial hearing with representation by counsel and the district's review procedure. These procedural safeguards should be provided to parents any time the district takes action with regard to the identification, evaluation or educational placement of a student with a disability.~~

~~The following statement and designation should be included in both student and staff handbooks:~~

~~**The Tupelo Public School District does not discriminate on the basis of sex, race, religion, age, handicap, national origin or veteran status. The Tupelo Public School District's Title IX Coordinator and the Section 504 Coordinator can be reached at the following:-**~~

#### **5. 504 Coordinator**

**5.1 The District Section 504 Coordinator is:**

~~\_\_\_\_\_ Title IX  
Coordinator \_\_\_\_\_~~

~~\_\_\_\_\_ Mr. Jim Turner~~

~~\_\_\_\_\_ Tupelo Public Schools~~

~~\_\_\_\_\_ P. O. Box 557~~

~~\_\_\_\_\_ Tupelo, MS 38802~~

~~\_\_\_\_\_ (662) 841-8856~~

**504 Coordinator**

**Mrs. Diana Ezell Assistant  
Superintendent  
**School Psychologist****

**Tupelo Public Schools**

**P. O. Box 557**

**Tupelo, MS 38802**

**(662) 841-8850**

#### **EXHIBITS**

**IHB 1.0510 Notice of Rights for Disabled Students and Their Parents Under §504**

**IHB 2.0510**

#### **REFERENCES**

Section 504 of the Rehabilitation Act of 1973

**FORMS**

Section 504 Eligibility Determination Form IHB 1.0510 (Do we have one? I have a sample, if needed.)

IHB 1.0510

**NOTICE OF RIGHTS**

**FOR DISABLED STUDENTS AND THEIR PARENTS**

**UNDER §504 OF THE REHABILITATION ACT OF 1973**

The purpose of this Notice is to inform parents and students of their rights under §504. Section 504 is a civil rights law that prohibits discrimination because of disability.

In accordance with Section 504 of the Rehabilitation Act of 1973, the Tupelo Public School District provides you, as the parent or guardian of a student or eligible student, with the following procedural rights for your child.

1. You have a right to receive a copy of this notice when the District identifies, evaluates, refuses to evaluate, makes a new educational placement, denies a new educational placement or makes any significant change in the placement of your child because of your child's disability or suspected disability.
2. You have the right to an evaluation of your child if the District has reason to believe that your child has a mental or physical impairment that substantially limits learning or some other major life activity. You have the right to this evaluation before any plan for accommodation and before any subsequent significant change in the education placement of your child. An example of a significant change in educational placement is a referral for expulsion.
3. Your child has the right to a free appropriate public education. You are responsible for the same costs as the parents of children who are not disabled.
4. To the maximum extent appropriate, your child has the right to be educated with children who are not disabled.
5. You have the right to an opportunity to examine all relevant records the school maintains about your child.
6. You have the right to an impartial due process hearing if you wish to contest any action of the District with regard to your child's identification, evaluation, or placement under §504. You have the right to participate personally at the hearing, and to be represented by an attorney, if you wish to hire one.

7. If you wish to contest an action taken by the §504 **Committee** by means of an impartial due process hearing, you must submit a Notice of Appeal or a Request for Hearing to the District's §504 Coordinator at the address below:

Diana Ezell  
Tupelo Public Schools  
P O Box 557  
Tupelo, MS 38802

A date will be set for the hearing and an impartial hearing officer will be appointed. You will then be notified in writing of the hearing date, time and place.

8. If you disagree with the decision of the hearing officer, you have a right to seek a review of that decision by filing a complaint with federal district court.
9. With respect to other issues surrounding your child's education that do not specifically involve identification, evaluation, or placement, you have a right to present a grievance or complaint to the District's §504 Coordinator (identified in paragraph 7). The § 504 Coordinator will provide you with a copy of the District's grievance procedure.
10. You also have a right to file a complaint with the Office for Civil Rights (OCR) of the United States Department Education. The address of the OCR Regional Office that covers this state is the following:

**Office for Civil Rights  
U.S. Department of Education  
1999 Bryan Street, Suite 1620  
Dallas, Texas 75201-6810**

**Telephone: 214-661-9600  
FAX: 214-661-9587; TDD: 877-521-2172**

## Section 504 Guidance

1. Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance.
2. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.
3. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

### **12. What is a physical or mental impairment that substantially limits a major life activity?**

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as 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; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Mitigating measures, including assistive devices, auxiliary aids, accommodations, medical therapies and supplies (other than eyeglasses and contact lenses) have no bearing in determining whether a disability qualifies under the law.

1. What is an impairment?

“An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” For example, a student with Crohn’s Disease who may have periodic flare-ups that require hospitalization must be evaluated based on how the disease affects him during those flare-ups, not when the disease is inactive.

2. What if the disability or condition is controlled or mitigated, e.g. by medication, cochlear implants, hearing aids, etc.

3. What are mitigating measures?

Mitigating measures include but are not limited to: medication; medical supplies, equipment, or appliances; low-vision devices (excluding eyeglasses and contact lenses); prosthetics; hearing aids, cochlear implants, etc.; mobility di

**15. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?**

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

**16. Are current illegal users of drugs excluded from protection under Section 504?**

Generally, yes.

**Are current users of alcohol excluded from protection under Section 504?**

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities

**18. What is an appropriate evaluation under Section 504?**

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

**19. How much is enough information to document that a student has a disability?**

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

**20. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?**

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

An impairment in and of itself is not a disability.



**24. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?**

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions

**25. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?**

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity,

**27. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?**

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

or only results in some minor limitation in that regard.

**29. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?**

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

**30. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?**

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-

evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

**31. What is reasonable justification for referring a student for evaluation for services under Section 504?**

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

**33. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?**

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

**38. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?**

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student.

**41. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?**

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

**44. What procedural safeguards are required under Section 504?**

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

**45. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?**

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.