

Morgan Hill Unified School District



504 Procedural Guide

The Governing Board of the Morgan Hill Unified School District is committed to equal opportunity for all individuals in education. Morgan Hill Unified School District programs and activities do not discriminate on the basis of gender, gender identity, age, sex, race, color, religion, ancestry, national origin, ethnic group identification, marital or parental status, physical or mental disability, sexual orientation or the perception of one or more of such characteristics. The Board shall promote programs, which ensure that discriminatory practices are eliminated in all district activities

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1. Policy Statement –

The Board of Education of the Morgan Hill Unified School District has a policy to provide a free appropriate public education (FAPE) to each qualified disabled student within its jurisdiction, regardless of the nature or severity of the disability. Consequently, it is the intent of the district to ensure that students who are disabled within the definition of Section 504 are identified, evaluated and provided with free appropriate public educational services. The due process rights of disabled students and their parents under Section 504 will be enforced.

This following is a guide that provides information for the implementation of the procedural provisions for services to students identified under §504.

2. Legal Overview of 504

Federal law requires that any school district receiving federal monies must develop and implement policies and procedures concerning Section 504 of the Rehabilitation Act of 1973. Section 504 was enacted in 1973 and implemented in 1977. Components of this Act prohibit discrimination against disabled persons by school districts receiving federal financial assistance. This includes all programs and activities of the school district receiving federal funds, regardless of whether the specific program or activity involved is a direct recipient of federal funds. Compliance with Section 504 requirements is conducted by the Office for Civil Rights (OCR).

Each district's obligation under Section 504 is to ensure, as a result of civil rights legislation, that any student with a mental or physical impairment that substantially limits a major life activity will be assured a free appropriate public education. Districts may not discriminate against a student with a disability and shall provide equal access to all services.

To be eligible under §504, a student must be "qualified" and "handicapped." Under 324 C.F.R. §104.3(j) (1) of the regulations, "handicapped" (a term which has been replaced with "disabled") is defined as follows:

Any person who:

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

The first prong of the definition focuses on current identified disabilities. To be protected by Section 4, 504 one must have an impairment, and the impairment must be of a certain level of severity in terms of its impact on the individual.

The second and third prongs cover persons with a history of a disability or persons who are perceived as having a disability. The second and third prongs create a very different type of §504 eligibility. While a "record of" an impairment or being "regarded as having" an impairment gives rise to anti-discrimination protection under §504, these two prongs do not trigger a school's obligation to provide a free and appropriate public education (FAPE). These two prongs are meant to reach situations where individuals either were or are "considered" to be disabled, and are currently being treated by others as if they were (OCR Senior Staff Memo, 19 IDELR 894, 1992). Consequently, the only duty as to these students is to not discriminate against them on the basis of the history or perception of impairment.

3. Section 504 Eligibility and Definitions

Students may be disabled under Section 504 even though they do not require services pursuant to the Individuals with Disabilities Education Act (IDEA). In other words, a student may have a disabling condition (as defined by §504) but not have one of the disabilities listed in the IDEA (thus not IDEA eligible) yet remain eligible for receipt of regular or special education and related services designed to meet the individual educational needs of the disabled student.

As stated previously, to be eligible under the first prong of §504, a student must have a (a) *physical or mental impairment* which (b) *substantially limits* one or more (c) *major life activities*.

a. Physical or Mental Impairment

Unlike the Individuals with Disabilities Education Act (IDEA), §504 does not list disability categories. While the "physical or mental impairment" language is designed to include virtually anything that can happen to your body or your mind, the narrowing of eligibility under §504 occurs through the substantial limitation language. That is, to be eligible, one must have:

- the required impairment and
- the impairment must be of a certain level of severity in terms of its impact on the individual.

To date, the "required impairment" remains undefined. Please note, however, if a student is found to meet the criteria for eligibility under the IDEA definitions, then subsequent procedural safeguards and services are to be provided as prescribed by that Act's regulations, not §504 regulations. Although a student may be found eligible for both IDEA and §504 services, it would be nonsensical unless there is an issue of "access" (to building facilities) that cannot be addressed through the Individualized Education Program (IEP).

Section 504 services are primarily provided through the implementation of related services and accommodations in regular education settings. If the student requires a direct service delivery model, then IDEA eligibility proceedings should be considered and, if appropriate, initiated.

b. Substantial Limitation

Substantial limitation is required; however, the §504 regulations do not contain a definition of "substantial limitation." Under the Americans with Disabilities Act (ADA) a major life activity is substantially limited when the "individual's important life activities are restricted as to the conditions, manner or duration under which they can be performed **in comparison to most people.**"

The regulations developed pursuant to the ADA provide some additional information regarding the substantial limitation issue. Under the ADA regulations adopted by the Equal Employment Opportunity Commission (EEOC), "substantially limits" means:

- a. "unable to perform a major life activity that the **average person** in the general population can perform" or
- b. "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 population can perform that same major life activity."

The regulations list the following factors for use in evaluating whether someone is substantially limited in a major life activity:

- "The nature and severity of the impairment;
- the duration or expected duration of the impairment; and the permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment."

While considering a student's eligibility under §504, and subsequent accommodations, it is appropriate to consider the necessity for a systematic and consistently implemented accommodations, over an extended period of time, in order to have the student's needs met as adequately as students without disabilities.

c. Major Life Activity

"Major life activities" are interpreted as daily, or ordinary, functions; for example, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 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." The student need not have a disability limiting the major life activity of learning to qualify. The student may not have a disability that adversely affects the ability to learn, yet may require assistance from the school system to access learning. For instance, a child may have a very severe asthma condition (affecting the major life activity of breathing) that requires regular medication and regular use of an inhaler while in school. Without regular administration of the medication and inhaler, the student cannot remain in school, thus learning is impacted. The §504 plan would formally address the use of the inhaler.

The Bottom Line

Two main questions need to be addressed when considering eligibility under §504.

- First, is there a physical or mental impairment?
- Second, does that physical or mental impairment substantially limit one or more major life activities?

Additionally, while a student may be eligible under the criteria of having a record of an impairment or be regarded as having an impairment, such eligibility is limited to the anti-discrimination provisions, not educational services. Thus, without a current impairment, there is no presumed educational need and, consequently, the student would not be eligible for educational services under §504.

4. Section 504 Accommodation Plan

The Section 504 team must consider all the data and determine whether the student has an impairment that substantially limits a major life activity related to the student's education. If so, the team must decide whether the student needs any services in order to receive a FAPE. The District must provide a FAPE to all students identified as disabled under Section 504. The regulation defines an appropriate education as the "provision of regular or special education and related aids and services" that are designed to meet the student's individual educational needs as adequately as the needs of non-disabled students are met. When a team makes decisions about what services a student needs in order to receive a FAPE, the team must follow the procedures outlined in this Guide, which have been developed to comply with Section 504. 34 CFR §104.33(b). The 504 plan is a program created and maintained pursuant to the procedural requirements of the Section 504 regulations that gives the student with a disability an equal chance to succeed in the classroom.

In the Section 504 context, placement means deciding what individually planned services, accommodations or modifications the student needs, and who will provide them. It usually does not mean placing the student outside the general education classroom. Instead, most students will receive most of their identified services in their regular classrooms. For the child with an attention deficit (AD/HD) served under §504, for example, "placement" may include such things as an assignment book, preferential seating, or reduced assignments. (See accommodation documents)

The Section 504 plan is developed by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. This collection of individuals, known as the Section 504 Team, will consist of, at a minimum:

- a site level administrator, or designee;
- a regular education teacher;
- a parent/guardian/surrogate;
- specialists (psychologist, special education teacher), as necessary;
- the student, as appropriate.

5. Section 504 Process

General Information:

The Director of Student Services is Morgan Hill Unified School District's 504 Coordinator. Each district must assign a Section 504 Coordinator whose duties will include monitoring §504 compliance, distributing necessary information, and overseeing §504 decisions. In addition, the §504 Coordinator handles parent complaints, coordinates responses to OCR investigations, and makes necessary arrangements for §504 due process hearings.

The §504 team collects the information necessary to make an educational determination that a child may have a disability that is substantially limiting a major life activity. Conclusive medical diagnoses of disabilities are not required for a school to determine §504 eligibility; however, acquiring such information is always helpful.

Typically, there is information readily available in a child's cumulative folder to aid in the determination of whether a child needs modifications, accommodations, and related services because of a disability. Possible types of information may include:

- Standardized Test scores, report cards, referral forms, disciplinary records, teacher reports and observations, prior special education assessment data, parent information, school health records, attendance records, and outside reports provided by parents, etc.

1. Avenues of Referral

1.1. Referral to the Student Study Team (SST) due to school staff concerns that a student may have a mental or physical impairment which substantially limits a major life activity. The SST will consider the need for further evaluation under Section 504 and/or refer for assessment for Special Education eligibility.

1.2. As a result of information presented at an SST meeting, the team may become concerned that the student may have a mental or physical impairment which substantially limits a major life activity. The SST will then consider the need for further evaluation under Section 504 and/or refer for assessment for Special Education eligibility.

1.3. If a request for evaluation under Section 504 is being made by the parent or an outside source, it is recommended that the principal or designee schedule a student study team meeting and obtain input from the classroom teacher, as well as the information from the outside source.

1.4. When a student is referred for a 504 evaluation, the *504 Referral Form* is completed.

2. Prior to a Section 504 Team Meeting

2.1. Prior to a meeting to determine eligibility for a student's protection under Section 504, an evaluation must be completed. The *504 Consent for Evaluation* must be signed by the student's parent.

2.2. As part of the evaluation, the school nurse, school psychologist, and/or other professionals with special expertise may need to gather additional information to assist the Section 504 team in determining eligibility and/or services/accommodations. The evaluation must address all areas of suspected disability. The evaluation must be sufficient for the 504 team to accurately describe (a) the nature and extent of the student's disabilities, (b) the student's special needs, and (c) what services the student needs in order to receive a FAPE.

2.3. The principal or designee notifies the parent of the meeting, sending home the *504 Parent Meeting Notice*.

3. Section 504 Team Meeting

3.1. The Section 504 Team members shall include, but are not limited to, the parent(s), teacher, principal or designee, nurse and/or psychologist and any other persons knowledgeable about the student, assessments and disability.

3.2. The Section 504 meeting begins with presentations of the appropriate assessment reports and the student's present levels of performance in the classroom.

3.3. If there is a need to address physical accommodations, the principal or designee should communicate with the appropriate district official in charge of facilities in order to obtain information regarding physical accommodations.

3.4. There may be occasions when the support personnel cannot be present at a Section 504 meeting. The support personnel should provide necessary information to the school site in order to aid the decision making about 504 eligibility and appropriate services/accommodations.

4. 504 Eligibility Determination and Development of 504 Plan

4.1. The *Section 504 Plan* is completed at the 504 meeting, beginning with the first page where eligibility is determined.

4.2. A child with an impairment that substantially limits a major life activity is considered disabled under Section 504. Thus the student is protected and services or accommodations may be necessary in order for the student to receive a free and appropriate public education.

4.3. In determining "substantial," consider what information is needed, such as medical records, observations of target behaviors, etc. to address the area of concern. For example, a child with asthma may only need medical records and possibly anecdotal records that describe the days the student had to sit out from PE. Another example would be an ADHD student. In this case, an observation that describes the student's on task behavior compared to others in the class may be necessary.

4.4. Using the information from the Student Study Team, Section 504 assessments, and other reports, the team will determine what services/accommodations, if any, are necessary for the student to receive FAPE. The Section 504 Team must outline in the accommodation plan the appropriate services/accommodations, who is responsible for providing each one, and who will coordinate implementation of the plan.

4.5. It is important to note that support personnel are not solely responsible for determining 504 eligibility. It is a team decision with input from all members of the team.

4.6. Appeal rights are provided in the event parents disagree with the Section 504 Team's determinations.

5. Section 504 Team Meeting Follow-Up

5.1. When the *Section 504 Plan* is completed, a copy is sent to the District's 504 Coordinator. All persons who need to have knowledge of the accommodations must receive a copy of the plan. Parents must receive a copy of the plan and procedural safeguards. The school site principal or designee is responsible for carrying out these responsibilities.

5.2. Place a copy of the report in the student's cumulative folder and/or in the school site 504 file.

6. Annual Review

6.1. Prior to the start of school each year, the school site principal or administrative designee should **establish a listing of all school site students who have been identified as disabled under Section 504 and their review dates.**

6.2. The Section 504 Team will determine, when appropriate or prior to the annual review date, if a revision to the plan is necessary by discussing the current plan with parents and staff.

6.3. If a revision is necessary, the principal or designee will follow the procedures outlined above and submit a new report.

6.4. If no revisions are necessary, the principal or designee will update the current plan to reflect the new annual date and have the parents sign Page 1 of the 504 Plan. All updated 504's must be given to the District 504 Coordinator, a copy is given to the parent, place a copy in the student's cum file and inform and provide a copy of the new 504 Plan for the student's new teachers and other appropriate school personnel. Place a copy in the school 504 file.

6. **Procedural Safeguards and Discipline**

The procedural safeguards afforded to students and parents under §504 are much less extensive than those under the Individuals with Disabilities Education Act (IDEA). In brief, each school district "shall establish and implement, with respect to actions regarding the identification, evaluation or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards."

The *Parent and Student Rights Under Section 504* must be given to parents/guardians when requesting permission to evaluate, when inviting them to the 504 meeting, and when changing the student's eligibility, placement, or provide services designed to meet the individual education needs of your child as adequately as the needs of other children are met.

The same discipline procedures used for students who qualify for services under IDEA will be used for students who are protected under Section 504.

7. Section 504 Documents – General Guidelines

All Morgan Hill Unified School District employees are required to use the proper 504 procedures and forms provided. They forms include the following:

- 504 Guidelines Quick Reference Sheet
- 504 Referral Procedures from Student Study Team (SST) Meeting
- Parent and Student Rights Under Section 504 (English/Spanish)
- 504 Referral Form
- 504 Consent Evaluation Form
- 504 School Staff Meeting Notice
- 504 Parent Notice of Meeting (English/Spanish)
- 504 Release of Information Form (English/Spanish)
- 504 Meeting Forms Pages 1 – 4 (English/Spanish)
- 504 Addendum Form (English/Spanish)