



Santa Monica
Malibu Schools

Santa Monica-Malibu Unified School District
1651 Sixteenth Street • Santa Monica, California 90404 • 310.450.8338

SECTION 504 SERVICE PLAN HANDBOOK

December 2009

**Santa Monica-Malibu Unified School District
SECTION 504 SERVICE PLAN HANDBOOK**

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Santa Monica-Malibu Unified School District An Overview of Section 504

Section 504 of the Rehabilitation Act of 1973 ("Section 504") is Congress' directive to schools receiving any federal funding to eliminate discrimination based on disability from all aspects of school operation. It states, "*No otherwise qualified individual with a disability ..., 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....*" Because the Santa Monica-Malibu Unified School District is a recipient of federal funding, it is required to provide eligible disabled students with equal access (both physical and academic) to services, programs, and activities offered by its schools.

Section 504 is a civil rights statute and not a special education statute. At each school, the responsibility for ensuring Section 504 compliance rests with the District, the school's Section 504 Site Chairperson and the principal or assistant principal.

There are two main purposes to Section 504. The first purpose of Section 504 is to protect students from discrimination under federal law. Section 504 assures access to educational services and the learning process that is equal to that given to students who do not have disabilities. All students who have a physical or mental impairment which substantially limits one or more major life activities, have a record of such an impairment, or are regarded as having such an impairment, are protected from discrimination under Section 504.

The second purpose of Section 504 is to provide a free appropriate public education ("FAPE") to those students who (1) actually have a physical or mental impairment, (2) that substantially limits, (3) one or more major life activities. The provision of FAPE is accomplished through the creation and implementation of Section 504 Service Plan. Only those students who satisfy **all three** of these criteria are eligible for, and are provided, regular or special education and related aids and services under Section 504 (in the form of a Section 504 Service Plan).

The purpose of this Section 504 Service Plan Handbook is to provide guidance for students who may be, or are, eligible for FAPE in the form of a Section 504 Service Plan. For information regarding a student's right to be protected from discrimination, including grievance procedures, please see District Board Policy 1312.3 (link available from www.smmusd.org)

Frequently Asked Questions about Section 504 Service Plans

What criteria are used to determine whether a student is eligible for a Section 504 Service Plan?

A student shall be eligible for a Section 504 Service Plan if they satisfy all of the following criteria:

(1) Physical or Mental Impairment

A student must actually have a mental or physical impairment. A physical or mental impairment means: 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, and specific learning disabilities. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The law does not limit eligibility to specific diseases or categories of medical conditions.

(2) Substantially Limits

The student's physical or mental impairment must substantially limit one or more major life activities. Section 504 does not specifically define the term "substantially limits." It is subject to interpretation on a case-by-case basis. Nevertheless, 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.

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, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. Thus, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(3) Major Life Activities

Major life activities include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Learning, reading, concentration, thinking, and communication

are typically, but not always, the major life activities utilized to determine Section 504 eligibility in the schools.

How is a Section 504 Service Plan referral made?

When a student is exhibiting academic, attendance, social and/or behavioral problems the student's school will convene a Student Success Team (SST) meeting. The purpose of the SST is to **investigate the needs** of the student. This preliminary investigation should result in a disposition including one of three things: regular education interventions (such as Response to Instruction and Intervention), a referral to review Section 504 Service Plan eligibility, and/or a referral for a special education evaluation pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA). If it is determined that the student should go through Section 504 Service Plan Eligibility Review, then a **Section 504 Service Plan Referral Form** should be submitted to the school's Section 504 Site Chairperson.

A parent, guardian, teacher, counselor, related service provider, other school staff, and/or community agency may also directly initiate a Section 504 Service Plan referral without going through the SST process. The individual making the referral should complete the Section 504 Service Plan Student Referral Form and forward it to the Section 504 Site Chairperson.

What is the Section 504 Service Plan evaluation process?

The District shall evaluate a student who, because of a disability, needs, or is believed to need, special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement.

When selecting tests and other evaluation materials, the District will ensure that they are: validated for the specific purpose for which they are used; administered by trained personnel in conformance with the instructions provided by their producer; tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

The District may administer and use **formal and informal measures** as deemed necessary. If the team is going to conduct formal assessment and/or observations in order to determine eligibility, then the team must obtain informed and written consent from the parent/guardian before the student is evaluated.

Once the evaluations are completed, the District will schedule a Section 504 Service Plan meeting to review the evaluations and the student's Section 504 Service Plan team will determine whether the student is eligible for a Service Plan under Section 504.

What is the process for reviewing Section 504 Service Plan eligibility?

At the Section 504 Service Plan initial team meeting, the team will decide whether the student is eligible for a FAPE under Section 504 by **deciding whether the student has a physical or mental impairment that substantially limits one or more major life activities**. If the team determines that the student is eligible to receive a FAPE under Section 504, the team will develop a Section 504 Service Plan.

The Section 504 Service Plan team is made up of a group of individuals, including persons knowledgeable about the student, the meaning of the evaluation data being reviewed, and placement options. The Section 504 Service Plan team will generally include the parent/guardian and at least one of the student's general education teachers; and, may include: other teachers, individuals who can interpret the instructional implications of the assessment results, SST members, counselors, related service providers, the student, other school staff and administrators, and individuals who have knowledge or special expertise regarding the student.

The Section 504 Service Plan team, in deciding whether a student is eligible for a Section 504 Service Plan, will collect and carefully interpret evaluation data and in a making placement decision, the team will draw upon information from a variety of sources, including, but not limited to, observations, testing, reports, District evaluations, medical records, letters from doctors, health care plans, school records, school administration, school counselors, teachers and paraprofessionals that work with the student, the parent, and when appropriate, the student.

How often should a Section 504 Service Plan be reviewed?

The Section 504 Service Plan should be reviewed on **an annual basis**, at which time the parent/guardian should receive a copy of the District's notice of parent/guardian rights and procedural safeguards. Further, a re-evaluation of the student should occur at least every three years, or before any significant change in placement, including exiting the student from a Section 504 Service Plan.

Are there situations when it is inappropriate to offer a Section 504 Service Plan?

Eligibility for a Section 504 Service Plan is decided by evaluating the student and determining if the student has **a physical or mental impairment that substantially limits one or more major life activities**. If any of the three criteria is not met, then a Section 504 Service Plan will not be developed for the student. Keep in mind that while a Section 504 Service Plan might not be appropriate, **other kinds of accommodation plans may be appropriate**. Some common misuses of a Section 504 Service Plan are outlined below:

- A parent/guardian and/or doctor presents the school with a disability diagnosis and a Section 504 Service Plan is written without first determining if the disability causes substantial limitation of a major life activity.

- A student is placed on a Section 504 Service Plan solely because the parent/guardian wants the student to have additional time on college qualifying examinations (e.g., ACT, SAT).
- A student is placed on a Section 504 Service Plan because the student has a record of impairment or is regarded as being impaired, but the student does not actually have a disability that substantially limits a major life activity.
- A student fails to qualify for special education and related services under the IDEA, but is automatically provided with a Section 504 Service Plan.
- A student is automatically placed on a Section 504 Service Plan when the student no longer qualifies for special education services under the IDEA without first qualifying based on Section 504 criteria.
- A student is placed on a Section 504 Service Plan as an alternative way to receive special education and related services because the parent/guardian refuses to “label” his/her child by including him/her in a special education program; this may also apply in cases where parent/guardian has revoked consent to special education.

Are there any special rules regarding discipline and students with Section 504 Service Plans?

In disciplinary situations, students who have a Section 504 Service Plan may be suspended or placed in an alternative interim setting to the **same extent** these options would be used for children without disabilities. School personnel may also consider any **unique circumstances** on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days. Additionally, removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct may be made.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal, child is entitled to a manifestation determination meeting within ten (10) school days of the District’s decision to change the student’s placement. The child’s parent/guardian must be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine (based upon a review of all relevant information in the student’s cumulative and Section 504 Service Plan files, the Student’s Section 504 Service Plan, any teacher observations, and any relevant information provided by the parent/guardian) whether the student’s alleged behavior was a manifestation of his/her disability by answering the inquiry required by the IDEA. As of the 2008-2009 school year, the questions are::

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student’s disability; or,

- Whether the conduct in question was the direct result of District's failure to implement the student's current Section 504 Service Plan.

If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of the student's disability. However, if the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of the student's disability and the District may take disciplinary action against the student, such as expulsion, in the same manner as it would with a child without disabilities. If the student's behavior is determined to be a manifestation of his or her disability, the District must conduct a functional behavior assessment, and implement a behavioral support plan for the student. In this situation, if a behavioral support plan has already been developed, the District will review the plan and modify it as necessary to address the behavior in question. However, regardless of whether a student's behavior was a manifestation of the student's disability, the District may determine, following assessment, that a change of placement is appropriate for the student. The District may proceed with this change of placement following notice to the parents; consent is not required for a change of placement pursuant to Section 504.

Santa Monica-Malibu Unified School District Administrative Regulation

Instruction

AR 6164.6

IDENTIFICATION AND EDUCATION UNDER SECTION 504

Definitions

Free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 means the provision of either regular or special education and related aids and services, designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. (34 CFR 104.33)

Eligibility to receive FAPE under Section 504 means a student has a physical or mental impairment which substantially limits one or more major life activities. (34 CFR 104.33)

Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (34 CFR 104.3)

Physical or mental impairment means any of the following: (34 CFR 104.3)

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; hemic and lymphatic; skin; and endocrine
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

Referral, Identification, and Evaluation

1. Any student may be referred by a parent/guardian, teacher, other school employee, student success team, or community agency for consideration of eligibility as a disabled student under Section 504. This referral may be made to the principal or 504 Coordinator.
2. Upon receipt of a referral for eligibility, the principal or 504 Coordinator shall consider the referral and determine whether an evaluation is appropriate. This determination shall be based on a review of the student's school records, including academic and nonacademic areas of the school program; consultation with the student's teacher(s), other professionals, and the parent/guardian, as appropriate; and analysis of the student's needs.

If it is determined that an evaluation is unnecessary, the principal or 504 Coordinator shall inform the parents/guardians in writing of this decision and of the procedural safeguards, as described in the "Procedural Safeguards" section

below.

3. If it is determined that a student needs or is believed to need special education or related services under Section 504, the district shall conduct an evaluation of the student prior to initial placement and before any significant change in placement. (34 CFR 104.35)

Prior to conducting an initial evaluation of a student for eligibility under Section 504, the district shall obtain written parent/guardian consent.

The district's evaluation procedures shall ensure that tests and other evaluation materials: (34 CFR 104.35)

- a. Have been validated and are administered by trained personnel in conformance with the instruction provided by the test publishers
- b. Are tailored to assess specific areas of educational need and are not based solely on a single IQ score
- c. Reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills unless the test is designed to measure these particular deficits

Section 504 Services Plan and Placement

1. A multi-disciplinary 504 team shall be convened to review the evaluation data in order to make placement decisions.

The 504 team shall consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. (34 CFR 104.35)

In interpreting evaluation data and making placement decisions, the team shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The team shall also ensure that information obtained from all such sources is documented and carefully considered and that the placement decision is made in conformity with 34 CFR 104.34. (34 CFR 104.35)

2. If, upon evaluation, a student is determined to be eligible for services under Section 504, the team shall meet to develop a written 504 services plan which shall specify the types of regular or special education services, accommodations, and supplementary aids and services necessary to ensure that the student receives FAPE.

The parents/guardians shall be invited to participate in the meeting and shall be given an opportunity to examine all relevant records.

3. If the 504 team determines that no services are necessary for the student, the record of the team's meeting shall reflect whether or not the student has been identified as a disabled person under Section 504 and shall state the basis for the decision that no special services are presently needed. The student's parent/guardian shall be informed in writing of his/her rights and procedural safeguards, as described in the "Procedural Safeguards" section below.
4. The student shall be placed in the regular educational environment, unless the district can demonstrate that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. The student shall be educated with those who are not disabled to the maximum extent appropriate to his/her individual needs. (34 CFR 104.34)
5. The district shall complete the identification, evaluation, and placement process within a reasonable time frame.
6. A copy of the student's Section 504 services plan shall be kept in his/her student record. The student's teacher(s) and any other staff who provide services to the student shall be informed of the plan's requirements.

If a student transfers to another school within the district, the principal or designee at the school from which the student is transferring shall ensure that the principal or designee at the new school receives a copy of the plan prior to the student's enrollment in the new school.

Review and Reevaluation

1. The 504 team shall monitor the progress of the student and the effectiveness of the student's Section 504 services plan to determine whether the services are appropriate and necessary and whether the student's needs are being met as adequately as the needs of nondisabled students. The team shall review the student's plan annually. In addition, the student's eligibility under Section 504 shall be reevaluated at least once every three years.
2. A reevaluation of the student's needs shall be conducted before any subsequent significant change in placement. (34 CFR 104.35)

Procedural Safeguards

Parents/guardians shall be notified in writing of all district decisions regarding the identification, evaluation, or educational placement of students with disabilities or suspected disabilities. Notifications shall include a statement of their right to: (34 CFR 104.36)

1. Examine relevant records
2. Have an impartial hearing with an opportunity for participation by the parents/guardians and their counsel

3. Have a review procedure

Notifications shall also detail the parent/guardian's right to file a grievance with the district over an alleged violation of Section 504; have an evaluation that draws on information from a variety of sources; be informed of any proposed actions related to eligibility and plan for services; receive all information in the parent/guardian's native language and primary mode of communication; periodic reevaluations and an evaluation before any significant change in program/service modifications; an impartial hearing if there is a disagreement with the district's proposed action; be represented by counsel in the impartial hearing process; and appeal the impartial hearing officer's decision.

If a parent/guardian disagrees with decisions regarding the identification, evaluation, or educational placement of his/her child under Section 504, he/she may request a Section 504 due process hearing in accordance with the following procedures:

1. Within 30 days after receipt of the district's decision with which the parent/guardian disagrees, the parent/guardian may request an administrative review of the decision.

The 504 Coordinator shall designate an appropriate administrator to meet with the parent/guardian to attempt to resolve the issue. This review shall be held within 14 days of receiving the parent/guardian's request.

2. If the parent/guardian chooses not to request an administrative review or if the review does not resolve the issue, the parent/guardian may request in writing a Section 504 due process hearing. The parent/guardian's request for a hearing shall be made within 30 days of receiving the district's decision or within 14 days of completion of the administrative review. 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 30 days of receiving the parent/guardian's request, the Superintendent or designee and 504 Coordinator shall select an impartial hearing officer. This 30-day deadline may be extended for good cause or by mutual agreement of the parties.

The 504 Coordinator shall maintain a list of impartial hearing officers who are qualified and willing to conduct Section 504 hearings. To ensure impartiality, such officers shall not be employed by or under contract with the district in any capacity other than that of hearing officer and shall not have any professional or personal involvement that would affect their impartiality or objectivity in the matter.

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-day

deadline may be extended for good cause or by mutual agreement of the parties.

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.

Notifications

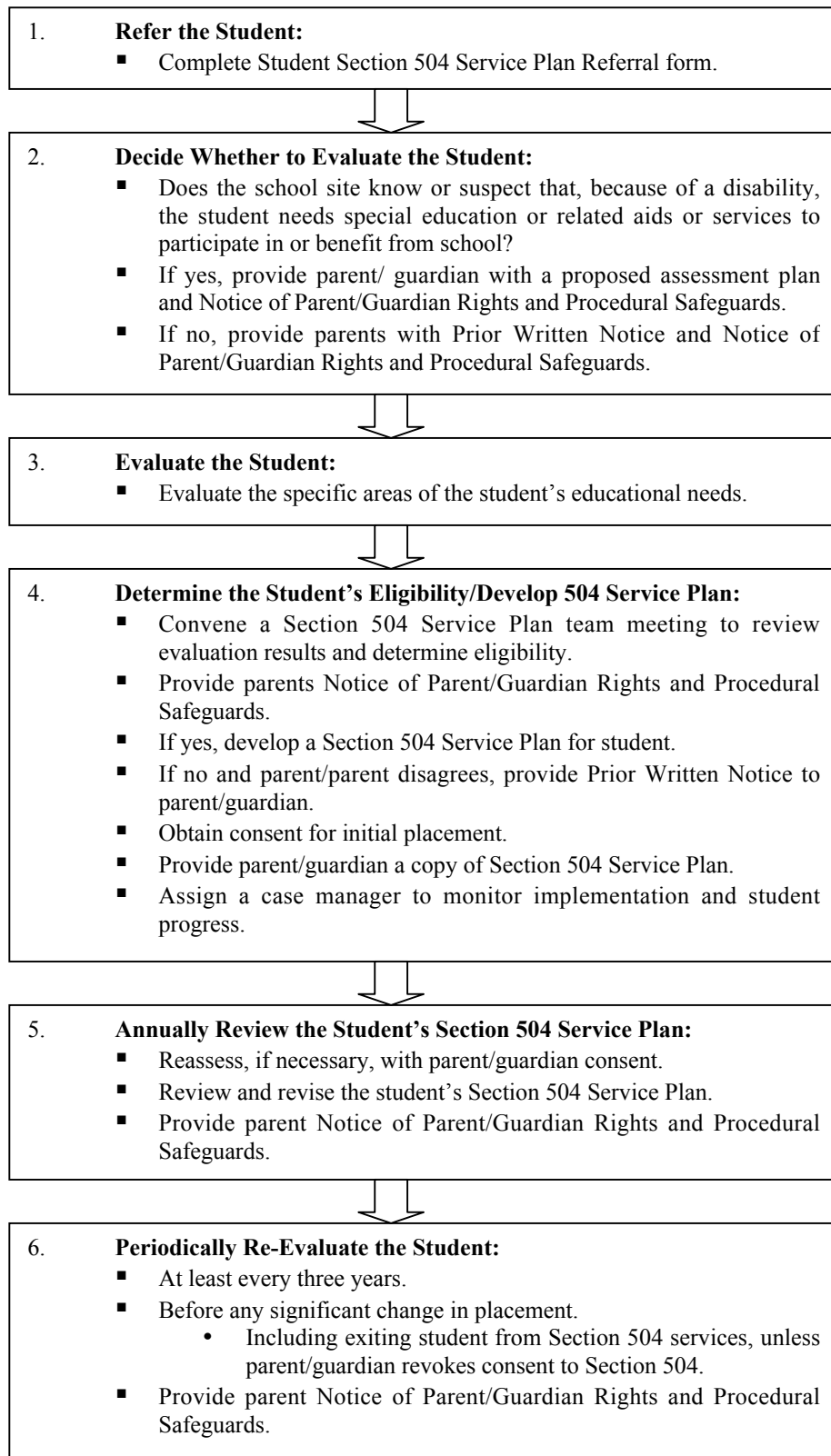
The Superintendent or designee shall ensure that the district has taken appropriate steps to notify students and parents/guardians of the district's duty under Section 504. (34 CFR 104.32)

District Coordinator for Implementation of Section 504

The district has designated the following individual to coordinate its efforts to comply with the requirements of law, Board policy, and administrative regulation pertaining to the implementation of Section 504: 934 CFR 104.7)

District Section 504 Administrator
Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, CA 90404

Section 504 Process Flow Chart





Santa Monica
Malibu Schools

Santa Monica-Malibu Unified School District
1651 Sixteenth Street • Santa Monica, California 90404 • 310.450.8338

SECTION 504 FORMS

Santa Monica-Malibu Unified School District
Section 504 Service Plan Checklist

Student's Name:	Grade:	Age:	Date of Birth:
School:	Site Chairperson:		
Parent/Guardian(s) Name:		Phone: (Home)	(Work)
Address:	(Street)	(City)	(State) (Zip Code)

Section 504 Service Plan Referral Date _____

Consent to Assess Letter/Form Date Sent _____

Date Received _____

Notice of Section 504 Service Plan Team Meeting Date Sent _____

Date Received _____

Initial 504 Service Plan Meeting: Date _____

- Define and state purpose of Section 504
- Provide Notice of Parent/Guardian Rights and Procedural Safeguards
- Develop Section 504 Service Plan

Section 504 Service Plan Review Meeting Date Scheduled (at least annually)

Date _____

If Student is not found eligible: Date _____

- Provide parent/guardian with Prior Written Notice
- Provide parent with Notice of Parent/Guardian Rights and Procedural Safeguards

Santa Monica-Malibu Unified School District Referral for Section 504 Service Plan

Referred By: _____ **Date:** _____

Administrator or Site Chairperson Referred to: _____

Student's Name (Last)	(First)	(Middle)	Grade	Age	Date of Birth
Referral Date	School			Student's Counselor	
Parent/Guardian One Name	Parent/Guardian Two Name			Phone (Home) (Work)	
Primary Address		(City)	(State)	(Zip Code)	

<p>1. What are your specific concerns about the student's performance?</p> <p>Academic:</p> <p>Behavioral:</p>
<p>2. What interventions have been tried to help the student?</p> <p>What were the results?</p>
<p>3. What other problems, concerns, or observations would you like to share?</p>

Referring Party – check appropriate box

- None
- Additional parent/guardian correspondence
- Medical or psychological report
- Educational assessment
- Student Success Team Referral
- Other _____

Specific Reason for Referral:

- | | | |
|-------------------------------------|---|---------------------------------------|
| <input type="checkbox"/> Academic | <input type="checkbox"/> Physical | <input type="checkbox"/> Work Habits |
| <input type="checkbox"/> Behavioral | <input type="checkbox"/> Social/Emotional | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Health | <input type="checkbox"/> Speech/Language | _____ |
| <input type="checkbox"/> Hearing | <input type="checkbox"/> Vision | _____ |

Educational History

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Resource Specialist Program | <input type="checkbox"/> Title 1/SCE |
| <input type="checkbox"/> Special Day Class | <input type="checkbox"/> Speech |
| <input type="checkbox"/> Section 504 | <input type="checkbox"/> ELD |
| <input type="checkbox"/> Support | <input type="checkbox"/> Other _____ |

Student Performance Summary

Yes	No	Don't Know	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	On standardized achievement test (i.e., STAR, Metropolitan 8) the student scores markedly below the grade level. (Attach copy.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	On the district outcome assessments, the student performs below the standard.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	On grade reports there is an overall pattern of poor grades (significantly below average – D's and F's). (Attach copy.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Student has received disciplinary action for inappropriate behavior.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Student has special health care needs (Medication, allergy, etc.) during class activities, including lunch.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Student has a pattern of excessive absences and/or tardies. (Attach attendance profile.)

Attachments: _____

Santa Monica-Malibu Unified School District

SECTION 504 SERVICE PLAN TEACHER FEEDBACK FORM

(To be completed as part of referral and/or evaluation for a Section 504 Service Plan)

Student: _____ Teacher: _____

Class: _____ From: _____ Date: _____

Please Return by: _____

This student is being reviewed for possible intervention. Please respond to each item, indicating your observations of this student and his/her school functioning. The information will be utilized in support planning for this student.

Your feedback may be shared directly with students and parents.

<u>Classroom Behavior</u>	Low	Avg	High		
Follows directions	1	2	3	4	5
Brings materials to class	1	2	3	4	5
Behavior and comments	1	2	3	4	5
Participates in class discussions	1	2	3	4	5
Stays on task during class	1	2	3	4	5
Peer/adult relationships	1	2	3	4	5
Overall effort and attitude	1	2	3	4	5

<u>Academic Skills</u>	Low	Avg	High		
Reading: decoding & oral	1	2	3	4	5
Reading: comprehension	1	2	3	4	5
Reading: fluency & speed	1	2	3	4	5
Writing: grammar & mechanics	1	2	3	4	5
Writing: content & quality	1	2	3	4	5
Math: operations & calculations	1	2	3	4	5
Math: reasoning & word problems	1	2	3	4	5

<u>Cognitive/Processing/Memory Skills</u>	Low	Avg	High		
Auditory processing/listening	1	2	3	4	5
Visual processing abilities	1	2	3	4	5
Abstract thinking & reasoning	1	2	3	4	5
Memory	1	2	3	4	5
Attention & concentration	1	2	3	4	5
Speaking/expression of ideas	1	2	3	4	5

<u>Classroom Performance/Student Skills</u>	Low	Avg	High		
Note-taking skills	1	2	3	4	5
Completes tests in allotted time	1	2	3	4	5
Test and Quiz grades	1	2	3	4	5
Long-term assignment completion	1	2	3	4	5
Overall quality of work	1	2	3	4	5
Homework completion	1	2	3	4	5

Have you observed this student to...? (Please check those which seem significant)	
<input type="checkbox"/>	have difficulty with relationships
<input type="checkbox"/>	present as exhausted, fatigued, low energy
<input type="checkbox"/>	seem easily angered or aggressive
<input type="checkbox"/>	be overly negative, pessimistic, or irritable
<input type="checkbox"/>	engage in self-injurious behavior or scars
<input type="checkbox"/>	make self-deprecating comments; self-esteem
<input type="checkbox"/>	seem disheveled, unkempt, or poor hygiene
<input type="checkbox"/>	be under the influence of drugs or alcohol
<input type="checkbox"/>	be sad, tearful, or having crying spells
<input type="checkbox"/>	have flat affect or fluctuating mood
<input type="checkbox"/>	seem overly anxious
<input type="checkbox"/>	have many health or somatic complaints
<input type="checkbox"/>	make suicidal comments or writings
<input type="checkbox"/>	to have suffered weight loss or weight gain

Current Grade/Performance: _____

What do you think are his/her strengths? _____

What do you think are his/her challenges? _____

What interventions or strategies have you tried, for how long, and with what success? _____

Ideas/Suggestions as to what might help this student succeed: _____



Santa Monica Malibu Schools

Santa Monica-Malibu Unified School District
1651 Sixteenth Street • Santa Monica, California 90404 • 310.450.8338

Date:

To:

Address:

Re:

Dear Mr. and Mrs. _____:

Your child has been referred for an evaluation to determine whether your child requires a Section 504 Service Plan pursuant to Section 504 of the Rehabilitation Act of 1973, for the following reason(s):

- The evaluation is required to determine whether your child may be eligible for regular or special education and related aids and services as a child with a disability within the meaning of Section 504.
- The evaluation is required to review you child's progress and the effectiveness of his/her existing Section 504 Service Plan.
- The evaluation is required to assess the appropriateness of a proposed change in placement for your child.
- The evaluation is required to assess whether your child continues to have a mental or physical impairment which substantially limits a major life activity.

Your signature to the enclosed proposed assessment plan reflects your consent to the District's proposed evaluation. Please return your consent to the proposed assessment plan to me at your earliest opportunity, but not later than 15 days from the date you receive this letter. Attached, you will find a copy of your procedural rights and safeguards under Section 504. Should you have any questions regarding this proposed evaluation or about your rights and procedural safeguards, please call me at () - .

Sincerely,

Name: _____

Title: _____

Enclosures: Notice of Parent/Guardian Rights and Procedural Safeguards
Proposed Assessment Plan

Santa Monica-Malibu Unified School District Proposed Assessment Plan

Date: _____

To parent/guardian of: _____ Birth date: _____ Grade: _____
 School: _____ Ethnicity _____ Primary language: _____ English proficiency: (CELDT Level) _____

- The district proposes to assess your child Student ID # _____
- to determine his/her eligibility for special education services as a result of a referral for an assessment. (pg. 2 of Plan Required)
- to determine the eligibility of your son/daughter for special education as part of a three year re-evaluation.
- to determine progress toward annual goals and objectives.
- to determine or review his/her eligibility for a Section 504 Service Plan.
- _____

The assessment may consist of an evaluation in any or all of the following areas:

	Evaluation Areas	Examiner/Title
<input type="checkbox"/>	Language Functions – Purpose: to measure your child’s ability to understand and use language and to speak clearly and appropriately. This may also include measures of auditory processing.	
<input type="checkbox"/>	Health – Purpose: Health information, including the results of a vision and hearing screening, is gathered to determine how your child’s health and development affect school performance.	
<input type="checkbox"/>	Social/Adaptive Behavior – Purpose: to better understand your child’s social and emotional development, how he/she gets along with others, and takes care of personal needs at home, school and in the community.	
<input type="checkbox"/>	Sensorimotor Functions – Purpose: to measure how well your child coordinates body movements in small and large muscle activities as well as how your child perceives the world through sensory input and integrates the visual and motor functions.	
<input type="checkbox"/>	Academic Achievement – Purpose: to measure skills which may include, reading, spelling, arithmetic, oral and written language skills, and/or general knowledge.	
<input type="checkbox"/>	Intellectual/Conceptual Ability – Purpose: to measure how well your child thinks, remembers, and solves problems. Verbal and non-verbal instruments are used as appropriate.	
<input type="checkbox"/>	Processing Skills – Purpose: to measure specific skills which affect your child’s ability to learn, including, visual and auditory memory, phonological processing, auditory processing, visual processing, and/or attention. Assessment may also be conducted in the areas of association, conceptualization, and expression.	
<input type="checkbox"/>	Other:	

Recent Assessments Conducted (Including District assessments, independent assessments, and assessment information from parent/guardian): _____

Assessment procedures may include in-class observation of students and review of records as appropriate.
 Assessments will be conducted by qualified staff and, when appropriate, utilizing qualified interpreters. You will be asked to participate in a meeting of the Individualized Education Program (IEP) team (or, if this assessment plan is for the purpose of determining eligibility for a Section 504 Service Plan, a Section 504 Service Plan team Meeting) following completion of the assessment. Results will be kept confidential. No individualized education program, special education program, and/or special education services will result from this assessment without your written consent.

A copy of the District’s notice of parent/guardian rights and procedural safeguards (either special education or Section 504) is included with this assessment plan for your review and information.

Parent/guardian: Please check one of more of the following and sign. Keep PINK COPY, return others.
 Return Plan within 15 days to sender:

- I consent to the proposed assessment described above. Name: _____
 I do not consent to the proposed assessment described above. Title: _____
 I request that the following information be considered. Phone Number: _____

 Signature of Parent/Guardian: _____ Date: _____

**SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
AUTHORIZATION FOR RELEASE OF INFORMATION**

A. Student/Patient Information

Name: _____ Date of Birth: _____
Home Address: _____
Telephone Number: _____ Medical Record Number (if applicable): _____
Previous School: _____ Present School: _____

B. Educational/Health Information to be Released From

Agency/Person: _____
Address: _____
Telephone Number: _____ Fax Number: _____

C. Educational/Health Information to be Released To and Used By

Agency/Individual: _____
Address: _____
Telephone Number: _____ Fax Number: _____

I authorize the District to further release the educational/health information to the following agencies or persons for the purposes stated below (attach additional pages if more space needed):

Agency/Individual: _____
Address: _____
Telephone Number: _____ Fax Number: _____

Agency/Individual: _____
Address: _____
Telephone Number: _____ Fax Number: _____

D. Purpose of the Requested Educational/Health Information

- Release of educational/health information at the request of student's parent, guardian or legal representative.
- Provide and plan educational services for student.
- Other: _____

E. Type/Description of Educational/Health Information to be Released

- | | |
|---|--|
| <input type="checkbox"/> History and Physical Exams | <input type="checkbox"/> Treatment Information |
| <input type="checkbox"/> Psychological Records | <input type="checkbox"/> Current Medical Information |
| <input type="checkbox"/> Mental Health Records | <input type="checkbox"/> Section 504 Service Plan/IEP/SST Data |
| <input type="checkbox"/> Immunization Record | <input type="checkbox"/> Admission and Discharge Summaries |
| <input type="checkbox"/> Other/Comments: _____ | |
- _____
- _____

F. Expiration of Authorization

Unless otherwise revoked, this Authorization is effective upon my signing and shall expire _____ (insert date or event). If no date is indicated, this Authorization will expire twelve (12) months after the date of signing this Authorization.

G. Signature

By signing below, I authorize the disclosure and use of the educational/health information specified above, and further acknowledge that I have read and understand the Authorization Restrictions and Rights.

Parent/Guardian Signature: _____ Date: _____

Print Name: _____ Relationship to Student: _____

Authorization Restrictions and Rights

1. Refusing to sign this Authorization will not affect the District's commitment to provide a quality education for your child. However, without the proper educational/health information, the District may not be able to properly plan and provide educational services for your child.
2. This Authorization may be revoked at any time. To revoke this Authorization, you must provide the organization or individual listed in Section B of this Authorization with a written request to revoke this Authorization. The revocation will take effect when the organization or individual listed in Section B receives your revocation. Any information disclosed before your revocation is received by the organization or individual listed in Section B may be used as permitted in this Authorization. Please provide the District with a copy of the revocation.
3. You have a right to receive a signed copy of this Authorization. Upon request, you will be provided a copy of this Authorization.
4. The District and many other organizations and individuals such as physicians, hospitals and health plans are required by law to keep your child's educational/health information confidential. If you authorize the disclosure of your child's educational/health information to a person or entity that is not legally required to keep it confidential, the information may be re-disclosed and may no longer be protected by state or federal law.
5. A photocopy or fax copy of this Authorization is as valid as the original.

Santa Monica-Malibu Unified School District Notice of Section 504 Service Plan Team Meeting

Student: _____ School: _____
 Parent/Guardian: _____
 Date of Birth: _____ Date This Notice Was Mailed: _____

Dear Parent/Guardian:

A Section 504 Service Plan team meeting has been scheduled for your child. You are an important member of your child's Section 504 Service Plan team. Your participation in this Section 504 Service Plan team meeting is essential to the development of your child's educational program. We hope that you will join us for this meeting. You have the right to have your child participate in the meeting if you feel it would be helpful. You may bring someone such as a social worker, service provider, or friend with you to this Section 504 Service Plan team meeting who has knowledge or special expertise regarding your child. If you have information you would like the Section 504 Service Plan team to consider during this meeting, please provide it to the District as soon as possible or during the meeting. If you need an interpreter for this meeting, please let us know in advance of this Section 504 meeting, so that the District can provide one for you.

The meeting has been scheduled for _____ at _____
(Date) (Time)

and will take place at _____.

The purpose of this meeting is (check all that are appropriate):

- To review initial Section 504 information and consider your child's eligibility for a Section 504 Service Plan..
- To conduct an annual review of your child's Section 504 Service Plan.
- To discuss possible changes in the Section 504 Service Plan.
- To conduct manifestation determination.
- Other: _____

The following people have been invited to attend your child's Section 504 Service Plan team meeting:

- | | |
|--|---|
| <input type="checkbox"/> Administrator/Designee:
<input type="checkbox"/> District Section 504 Coordinator:
<input type="checkbox"/> School Psychologist:
<input type="checkbox"/> Other Service Provider/Assessor (Include Title):
<input type="checkbox"/> Student:
<input type="checkbox"/> Interpreter: | <input type="checkbox"/> General Education Teacher(s):
<input type="checkbox"/> School Section 504 Site Chairperson:
<input type="checkbox"/> Other Service Provider/Assessor (Include Title):
<input type="checkbox"/> Other Service Provider/Assessor (Include Title):
<input type="checkbox"/> Other (Include Title):
<input type="checkbox"/> Other (Include Title): |
|--|---|

Please Check One and Return to the District as Soon as Possible:

- I plan to attend the meeting. I understand that you will proceed with this meeting without me if I do not contact you to reschedule the meeting.
- I would like the meeting rescheduled. I prefer to meet at (time) _____ (date) _____.
- I do not plan to attend the meeting; the District may proceed without me.
- I do not plan to attend the meeting and will be sending _____ as my representative.
- This meeting was arranged by telephone on (date) _____; I have waived my advance notice for the meeting.

Parent/Guardian Signature _____ Date _____

Site Chairperson's Use Only
 Results of Attempts to Contact (e.g., correspondence, phone calls, visits to home or place of employment)

Response Record	Will Attend
Other (date) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Telephone Call (date) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Telephone Call (date) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Santa Monica-Malibu Unified School District
Section 504 of the Rehabilitation Act of 1973
Notice of Parent/Guardian Rights and Procedural Safeguards

This is a notice of your rights under Section 504 of the Rehabilitation Act of 1973 ("Section 504") with respect to actions regarding the identification, evaluation or educational placement for students who, because of a disability, need or are believed to need special instruction or related services.

PURPOSE

It is the intent of the Santa Monica-Malibu Unified School District ("District") to locate, identify, evaluate and provide a free appropriate public education ("FAPE") under Section 504 of the Rehabilitation Act of 1973 ("Section 504") to each student with a disability within its jurisdiction regardless of the nature or severity of the disability. Further, the District will provide regular or special education and related aids and services that are designed to meet the needs of each disabled students as adequately as the needs of non-disabled students. In addition to providing a FAPE to students with disabilities under Section 504, the District will not discriminate against students with a physical or mental impairment which substantially limits one or more major life activities, have a record of such an impairment, or those being regarded as having an impairment. Protections for these students are provided for elsewhere under District Board Policies and Regulations, state and federal law. (See District Board Policy 1312.3.)

Students who, because of a Section 504 disability, need or are believed to need regular or special education and services are addressed in this policy.

Students who are identified as eligible for special education and related services under the criteria set forth in the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA") are not addressed under this policy, as the needs of such students are provided for elsewhere under District Board Policies and Regulations, state and federal law, and Special Education Local Plan Area ("SELPA") procedures.

DEFINITIONS AND ELIGIBILITY

1. A student with a disability is one who:
 - a. Has a physical or mental impairment that substantially limits one or more major life activities, including learning;
 - b. Has a record of such an impairment; or
 - c. Is regarded as having such an impairment.

However, only students qualifying under subdivision (a) (*i.e.*, those with an actual physical or mental impairment that substantially limits one or more major life activities) are entitled to a FAPE and a Section 504 Service Plan under Section 504.

2. A physical or mental impairment means: 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, and specific learning disabilities. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The law does not limit eligibility to specific diseases or categories of medical conditions.
3. The term substantially limits shall be interpreted consistently with the findings and purpose of the Amendments to the Americans with Disabilities Act ("ADA") that went into effect on January 1, 2009. 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.

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, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or earned behavioral or adaptive neurological modifications. Thus, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

4. Major life activities include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Learning, reading, concentration, thinking, and communication are typically, but not always, the major life activities utilized to determine Section 504 eligibility in the schools.

LOCATION AND NOTIFICATION PROCEDURES

1. The District shall annually undertake reasonable measures to locate and identify every qualified disabled student residing within the District's jurisdiction who is not receiving a public education, and to notify those students and their parent/guardian of the right to a FAPE under Section 504.
2. Location and notification procedures may include the District's annual notice, personal contacts, posting of notices, newspaper advertisements, press releases, and communications with public and private community agencies.

3. When a student is identified, he or she should be referred to the school's Section 504 Site Chairperson, following the procedures set forth below.

IDENTIFICATION AND REFERRAL PROCEDURES

1. Any student may be referred, in writing, by parent, guardian, teacher, counselor, related service provider, other school staff, and/or community agency to the school's Section 504 Site Chairperson.
2. Based upon a review of relevant and available information regarding the student referred or based upon a meeting of the school site's Student Study Team or Section 504 Service Plan team, the District shall determine whether an evaluation under Section 504 is appropriate. The District shall evaluate any student who, because of disability, needs, or is believed to need, regular or special education or related aids and services.
3. If the request for evaluation is denied, the District or the school site's Student Study Team or Section 504 Service Plan team will inform the parent/guardian of the decision through prior written notice in writing and provide him/her with a copy of his/her parent/guardian rights and procedural safeguards under Section 504.
4. If the District or the school site's Section 504 Service Plan team determines an evaluation under Section 504 is appropriate, the team will forward a letter and/or an assessment plan requesting consent for evaluation of the student to the parent/guardian, along with a copy of the District's notice of parent/guardian rights and procedural safeguards under Section 504.

EVALUATION, ELIGIBILITY AND PLACEMENT DETERMINATIONS

1. The evaluation of students suspected of having a disability under Section 504 will be carried out by qualified evaluators selected by the District.
2. When selecting tests and other evaluation materials, the District will ensure that they are: validated for the specific purpose for which they are used; administered by trained personnel in conformance with the instructions provided by their producer; tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
3. The District may administer and use formal and informal measures as deemed necessary. If the team is going to conduct formal assessment and/or observations in order to determine eligibility, then the team must obtain informed and written consent from the parent/guardian before the student is evaluated.

4. Additionally, if the student's Section 504 Service Plan team determines that a medical examination is necessary for a Section 504 determination, the District is responsible for the costs of the examination.
5. Once the evaluations are completed, the District will schedule a Section 504 meeting to consider the results of the evaluations; and, the student's Section 504 Service Plan team will determine whether the student is eligible under Section 504 by deciding whether the student has a physical or mental impairment that substantially limits one or more major life activities. A Section 504 Service Plan team meeting shall be convened within a reasonable time period of receiving the parent/guardian's consent to assess.
6. The Section 504 Service Plan team is made up of a group of individuals, including persons knowledgeable about the student, the meaning of the evaluation data being considered, and placement options. The team will generally include student's parent/guardian and at least one of the student's general education teachers; and, may include: other teachers, individuals who can interpret the instructional implications of the assessment results, SST members, counselors, related service providers, the student, other school staff and administrators, and individuals who have knowledge or special expertise regarding the student. The determination of whether an individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the Section 504 Service Plan team.
7. The Section 504 Service Plan team, in deciding whether a student is eligible for a Section 504 Service Plan, will collect and carefully interpret evaluation data and in a making placement decision, the team will draw upon information from a variety of sources, including, but not limited to, observations, testing, reports, District evaluations, medical records, letters from doctors, health care plans, school records, school administration, school counselors, teachers and paraprofessionals that work with the student, the parent/guardian, and when appropriate, the student.
8. No final determination of whether the student will or will not be identified as a disabled student within the meaning of Section 504 will be made without first inviting the parent/guardian of the student to participate in a Section 504 Service Plan team meeting concerning such determination. The parent/guardian will receive reasonable notice of all Section 504 Service Plan team meetings.
9. If the Section 504 Service Plan team finds the student ineligible under Section 504, this decision shall be documented in writing, at which time the parent/guardian shall be notified of his/her parent/guardian rights and procedural safeguards under Section 504, including the right to an impartial hearing.
10. For students who are determined, through the evaluation process, to be eligible under Section 504, the Section 504 Service Plan team shall develop a Section 504 Service Plan.

11. The Section 504 Service Plan will describe the student's disability; regular or special education; related aids and services; and, accommodations and/or modifications that are needed in order to provide the student with a FAPE, and how the placement, services, and accommodations and/or modifications will be provided to the student and by whom.
12. A copy of the plan shall be maintained in the student's cumulative file and in the District's Section 504 file. All school staff who work with the student shall be informed of the elements of the student's Section 504 Service Plan.
13. The parent/guardian must consent to the student's Section 504 Service Plan prior to the implementation of the plan; however, they do not need to consent to future changes in services in order for those changes to take place. Students who are eligible under Section 504 do not have a right to stay put in cases when a dispute arises.
14. A student with a disability shall be placed in a regular education environment of the District, unless the Section 504 Service Plan team determines that his/her education in such a placement cannot be achieved satisfactorily with the use of supplementary aides and services. The student with a disability shall be educated with non-disabled students to the maximum extent appropriate.
15. The parent/guardian shall be notified in writing of the final decision concerning the placement, services, and accommodations and/or modifications to be provided, if any, and of his/her parent/guardian rights and procedural safeguards pursuant to Section 504, including the right to an impartial hearing.

REVIEW OF STUDENT PROGRESS

1. The Section 504 Service Plan team will meet annually to review the progress of students with disabilities and the effectiveness of the student's Section 504 Service Plan to determine whether services are appropriate, and that the needs of students with disabilities are being met as adequately as the needs of nondisabled students.
2. Should a parent/guardian request a Section 504 meeting, the District will convene one within a reasonable time period of the receipt of the request.
3. Prior to any subsequent significant change in placement, a reevaluation of the student's needs will be conducted. The parent/guardian will receive reasonable prior written notice of any meeting convened to propose a significant change in placement.
4. The Section 504 Service Plan team may also determine that the student no longer has a mental or physical impairment that substantially limits a major life activity. If the Section 504 Service Plan team so determines, the record of the Section 504 Service Plan team meeting will state the basis for the team's decision.

DISCIPLINE

In disciplinary situations, students who have a Section 504 Service Plan may be suspended or placed in an alternative interim setting to the same extent these options would be used for children without disabilities. School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days. Additionally, removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct may be made.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal, child is entitled to a manifestation determination meeting within ten (10) school days of the District's decision to change the student's placement. The child's parent/guardian must be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine (based upon a review of all relevant information in the student's cumulative and Section 504 Service Plan files, the Student's Section 504 Service Plan, any teacher observations, and any relevant information provided by the parent/guardian) whether the student's alleged behavior was a manifestation of his/her disability by answering the inquiry required by the IDEA. As of the 2008-2009 school year, the questions are::

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or,
- Whether the conduct in question was the direct result of District's failure to implement the student's current Section 504 Service Plan.

If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of the student's disability. However, if the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of the student's disability and the District may take disciplinary action against the student, such as expulsion, in the same manner as it would with a child without disabilities. If the student's behavior is determined to be a manifestation of his or her disability, the District must conduct a functional behavior assessment, and implement a behavioral support plan for the student. In this situation, if a behavioral support plan has already been developed, the District will review the plan and modify it as necessary to address the behavior in question. However, regardless of whether a student's behavior was a manifestation of the student's disability, the District may determine, following assessment, that a change of placement is appropriate for the student. The District may proceed with this change of placement following notice to the parents; consent is not required for a change of placement pursuant to Section 504.

PROCEDURAL SAFEGUARDS

1. The parent/guardian shall be notified in writing of all actions regarding the identification, evaluation, and educational placement of a student who, because of a disability, needs, or is believed to need, special instruction or related services pursuant to Section 504. Notifications will include a statement of parent/guardian rights to:

- a. Examine relevant records. Upon parent/guardian request, records may be reviewed at the school site or at the District Office. Copies of student records may be obtained within five (5) business days of the request pursuant to District policies.
 - b. Have an impartial hearing with opportunity for participation by the parent/guardian and his/her counsel.
 - c. Seek review in federal court if the parent/guardian disagrees with the hearing decision.
2. Notifications shall also set forth the procedure for requesting an impartial hearing. Requests shall be made to: District Section 504 Administrator, Santa Monica-Malibu Unified School District, 1651 16th St., Santa Monica, CA 90404.
 3. If a parent/guardian disagrees with the identification, evaluation or placement of a student with disabilities under Section 504, he/she may initiate the following procedures. The parent/guardian is encouraged to utilize Levels One and Two, but he/she may proceed directly to Level Three if he/she so chooses.

LEVEL ONE: In writing, the parent/guardian may request a meeting with the Section 504 Service Plan team in an attempt to resolve the disagreement. This meeting shall be held within ten (10) school days after receiving the parent/guardian's request. This time frame may be extended by mutual agreement of the parties.

LEVEL TWO: If disagreement continues, the parent/guardian may request, in writing, a meeting with the District Section 504 Administrator for Santa Monica-Malibu Unified School District:

District Section 504 Administrator
Santa Monica-Malibu Unified School District
1651 16th St., Santa Monica, CA 90404
Ph: 310-450-8338
Fax: 310-452-4352

This meeting shall be held within a reasonable period of time after receiving the parent/guardian's request.

At the request of either the District or the parent/guardian, and on mutual agreement of the parties, the parties may pursue dispute resolution through mediation. If the parties agree to mediation, a time line will be set for the convening of the mediation.

The District shall choose the neutral mediator; and, the cost of the mediation, if any, shall be paid by the District.

LEVEL THREE: If the disagreement is not resolved, or upon initial request, a due process hearing may be requested by the student's parent/guardian ("Section 504 due

process hearing"). The proceedings will be presided over and decided by an impartial hearing officer.

Impartial hearing officer means a person selected by the District to preside at a due process hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties. To ensure impartiality of the hearing officer, the hearing officer shall not be employed by or under contract with the District in any capacity at the time of the due process hearing, nor shall the hearing officer have any professional or personal involvement that would affect his or her objectivity or impartiality.

The steps involved in initiating and implementing a Section 504 impartial hearing are as follows:

- a. The parent/guardian shall have the right to an impartial hearing with an opportunity for participation by the parent/guardian and representation by counsel.
- b. A request in writing for a Section 504 due process hearing must be filed in the office of the District Section 504 Administrator.

District Section 504 Administrator
Santa Monica-Malibu Unified School District
1651 16th St., Santa Monica, CA 90404
Ph: 310-450-8338
Fax: 310-452-4352

- c. A request for a Section 504 due process hearing must be in writing and received by the District within ninety (90) days from the time the parent/guardian received written notice of the decision leading to the request for such hearing. Upon receipt of such a request from the parent/guardian, the District may schedule a Section 504 Service Plan team meeting, and make relevant personnel available within a reasonable time period. A parent/guardian or student making an oral request may be assisted by the District in making a written request.
- d. A request for a Section 504 due process hearing shall contain the following:
 - i. A statement requesting a hearing.
 - ii. The specific nature of the decision(s) made by the District the Section 504 Service Plan team with which the parent/guardian disagrees.
 - iii. The specific relief the parent/guardian seeks.
 - iv. Any other information the parent/guardian believes will assist in understanding the request.

- e. Within a reasonable time following receipt of a written request for hearing, the District Section 504 Administrator will select an impartial hearing officer.
- f. A hearing officer selected by the District must satisfy the following requirements:
 - i. Be qualified to review District decisions relating to Section 504.
 - ii. Not be an employee of, or under contract with, the District in any capacity other than that of a hearing officer at the time of the due process hearing.
 - iii. Not have any professional or personal involvement that would affect his or her impartiality or objectivity in the matter.
- g. Hearing notifications shall be given to the parent/guardian at least twenty (20) calendar days prior to the date set for the hearing. The notice shall contain a statement regarding the time and place for the hearing as well as the name of the hearing officer. This notice shall be accompanied by a copy of the District's notice of parent/guardian rights and procedural safeguards pursuant to Section 504.
- h. Within sixty (60) calendar days of receipt of the parent/guardian's request for a Section 504 due process hearing, the hearing shall be conducted. Within ninety (90) calendars of the receipt of the parent/guardian's request, a written decision shall mailed to all parties. This time frame may be extended by mutual agreement of the parties.
- i. A party to the hearing shall be afforded the following rights:
 - i. The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of students who have a disability within the meaning of Section 504.
 - ii. Receipt of notice from the other party or parties, at least ten (10) calendar days prior to the hearing, that they will utilize the services of an attorney, except for good cause shown.
 - iii. The right to prohibit the introduction of evidence at the hearing that has not been disclosed to the other party or parties at least five (5) calendar days prior to hearing except for good cause shown.
 - iv. The right to present evidence, written and oral.
 - v. The right to produce outside expert testimony.
 - vi. The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.

- vii. The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.

In cases where foreign language translation is necessary, a translator shall be provided by the District. This translator may be a current District employee.

- j. The parent/guardian involved in the hearing will be given the right to:
 - i. Have the student present at the hearing;
 - ii. Open the hearing to the public, but not the press, should they so choose; and
 - iii. Have an opportunity to participate in the impartial hearing.
- k. The hearing officer shall render a decision pursuant to the legal standards set forth in 34 Code of Federal Regulations part 104 and related law.
- l. Either party may seek review of the hearing officer's decision by timely filing with a court of competent jurisdiction.
- m. The cost of the hearing officer shall be borne by the District. Reimbursement of attorneys' fees, expert witness fees, and other costs is available only as authorized by law.
- n. All written correspondence shall be provided in English and/or translated into the primary language of the home at the request of the parent/guardian. If translation of written correspondence is requested, the District shall provide said translation within a reasonable time period of the receipt of parent/guardian's request for translation of written correspondence.

The school Section 504 Site Chairperson is _____.
Should you have any concerns or questions about your parent/guardian rights and/or procedural safeguards pursuant to Section 504, you may contact this individual at _____. If an issue cannot be resolved at the school site level, and should you wish to discuss the matter further, you may contact the District Section 504 Administrator at Santa Monica Unified School District, 1651 16th St., Santa Monica, CA 90404, (310) 450-8338.

For information regarding a student's right to be protected from discrimination, including grievance procedures, please refer to District Board Policy 1312.3.

Santa Monica-Malibu Unified School District
Section 504 Service Plan

Meeting Date: _____

Next Review Date: _____

I. General Information

Student's Name:		Grade:	Age:	Date of Birth:
Referral Date:	School:		Site Chairperson:	
Parent/Guardian(s) Name:			Phone: (Home)	
			(Work/Cell)	
Address: (Zip Code)	(Street)	(City)	(State)	

<p><u>Purpose of Meeting</u> (Check all that apply.)</p>
<p><input type="checkbox"/> Eligibility</p> <p><input type="checkbox"/> Develop Section 504 Service Plan</p> <p><input type="checkbox"/> Annual Review</p> <p><input type="checkbox"/> Conduct Manifestation Determination Review</p> <p><input type="checkbox"/> Other:</p>

II. Review of Relevant Information

Parent/Guardian Observation/Input:

Teacher Observation/Input:

Summary of Evaluation Information: Identify evaluation procedure(s), review of existing records, and results. (Attach documentation if appropriate.)

Areas of Strength:

Areas of Concern:

Attendance

Levels of Achievement

Behavior

Other: _____

Health

III. Eligibility Determination

Based on the evaluation data gathered, the Section 504 Service Plan team answered the following questions to determine Section 504 eligibility.

(Yes) (No) Does the student have a physical or mental impairment? If Yes, describe the impairment: _____

(Yes) (No) Does the physical or mental impairment substantially limit one or more major life activities? If yes, check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> caring for oneself | <input type="checkbox"/> performing manual tasks |
| <input type="checkbox"/> seeing | <input type="checkbox"/> hearing |
| <input type="checkbox"/> eating | <input type="checkbox"/> sleeping |
| <input type="checkbox"/> walking | <input type="checkbox"/> standing |
| <input type="checkbox"/> lifting | <input type="checkbox"/> bending |
| <input type="checkbox"/> speaking | <input type="checkbox"/> breathing |
| <input type="checkbox"/> learning | <input type="checkbox"/> reading |
| <input type="checkbox"/> concentrating | <input type="checkbox"/> thinking |
| <input type="checkbox"/> communicating | <input type="checkbox"/> other: _____ |

(Yes) (No) Does the student require the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met? (**Note:** If the student's needs are such that he/she may require special education and related services under the IDEA, a referral to special education should be considered.)

If all questions were answered "Yes," the student is eligible for a free appropriate public education under Section 504 and the Section 504 Service Plan should be developed.

If any answer is "No," the student is not eligible under Section 504 for a Section 504 Service Plan.

IV. Manifestation Determination**N/A** (circle if not applicable)

Based upon a review of the information located in the student's cumulative and Section 504 file, the Student's Section 504 Service Plan, any teacher observations, and any relevant information provided by the parent/guardian,

- A. Was the conduct in question caused by or did it have a direct and substantial relationship to the student's disability? Yes No
- B. Was the conduct in question a direct result of the District's failure to implement the student's Section 504 Service Plan? Yes No

V. Summary of Findings

The Section 504 Service Plan team's review of relevant information and eligibility criteria indicates:

- The student is not eligible** for a Section 504 Service Plan and will continue to receive regular education resources and programs.
- The student is eligible** for a Section 504 Service Plan.
- The student remains eligible** under Section 504 and will receive an updated Service Plan.
- The student is no longer eligible** for Section 504 and is exited from the program. The student will now receive regular education without Section 504 services.
- The student remains eligible** under Section 504, but the parent/guardian hereby revokes his/her consent to Section 504. Therefore, the District will provide the parent/guardian with prior written notice and a date on which the Section 504 Service Plan will cease to be implemented.

If this is a manifestation determination meeting, the Section 504 Service Plan team's review of relevant information indicates the following:

- The student's conduct was not a manifestation** of his/her disability and disciplinary actions and/or change in placement may proceed.
- The student's conduct was a manifestation** of his/her disability and disciplinary action and/or change in placement may not proceed.

If you disagree with the Section 504 Service Plan team's decision, please contact the District's Section 504 Administrator at (510) 741-2820 to discuss your concerns, or consult your Notice of Parent/Guardian Rights and Procedural Safeguards under Section 504 for other options.

VI. Service Plan

Area(s) of Difficulty	Regular or Special Education, Related Aids and Services and/or Accommodations/Modifications	Person(s) Responsible	Start/End Date

VII. Parent/Guardian Response

Parent/Guardian Statements	
<input type="checkbox"/> I agree with the Section 504 Service Plan.	
<input type="checkbox"/> I do NOT agree with the:	
<input type="checkbox"/> identification	
<input type="checkbox"/> evaluation	
<input type="checkbox"/> service plan	
<input type="checkbox"/> other: _____ _____ _____	
<input type="checkbox"/> I have received a copy of the Notice of Parent/Guardian Rights and Procedural Safeguards under Section 504	
<input type="checkbox"/> I am aware that Section 504 records will be destroyed three years after their usefulness ceases or on the student's 25 th birthday, whichever is sooner. I may request access to these records prior to destruction.	
Comments:	
Parent/Guardian Signature:	Date:
Parent/Guardian Signature:	Date:
Student Signature:	Date:

Signatures of Persons in Attendance		
Name:	Title:	Date:
Name:	Title:	Date:
Name:	Title:	Date:
Name:	Title:	Date:
Name:	Title:	Date:

**Santa Monica-Malibu Unified School District
Section 504 Prior Written Notice
Following a Section 504 Service Plan Team Meeting**

Date: _____

To: _____
Address: _____

Re: _____ Date of Birth: _____

Dear: _____

This letter is intended as a follow-up to your child's ____/____/____ Section 504 Service Plan team meeting. This letter serves as the [INSERT DISTRICT NAME]'s prior written notice regarding proposed or refused actions. The District is required to provide you with prior written notice when the District proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to your child.

On ____/____/____, we met to review the District's current evaluation data on your child including any recent evaluations completed by the District, any evaluations or information you provided to the Section 504 Service Plan team, current classroom based assessments, work samples, and observations, and your child's teacher and other staff observations.

The specific information/data used to make decisions at your child's ____/____/____ Section 504 Service Plan team meeting included:

Based upon this information, the Section 504 Service Plan team discussed and the District determined/offered the following:

Eligibility (Check if appropriate and discussed at the Section 504 Service Plan team meeting.):

- _____ Your child is eligible for Section 504.
- _____ Your child is not eligible for Section 504.

Eligibility options considered and why they were rejected:

Other factors relevant in the District's proposal/refusal:

Regular or Special Education and Related Aids and Services (Check if appropriate and discussed at the Section 504 Service Plan team meeting.):

_____ Based upon the information considered at your child's Section 504 Service Plan team meeting, the District determined that the following regular or special education and related aids and services are designed to meet your child's individual educational needs as adequately as the needs of his/her non-disabled peers: _____

Other regular or special education and related aids and services considered and why they were rejected:

Other factors relevant in the District's proposal/refusal:

Assessment (Check if appropriate and discussed at the Section 504 Service Plan team meeting.)

_____ The Section 504 Service Plan team considered, and the District determined, that additional assessment of your child is needed at this time. Please find attached the District's proposed assessment plan as discussed at the Section 504 Service Plan team meeting.

_____ The IEP team considered and the District determined that the additional assessment(s) you requested in the area(s) of _____ are not necessary in determining and providing a free appropriate public education to your child. Therefore, the District will not conduct the assessment(s) you requested at this time.

Other assessment options considered and why they were rejected:

Other factors relevant in the District's proposal/refusal:

The District requests that you return your child's signed Section 504 Service Plan and/or the enclosed assessment plan to the District as soon as possible. In addition, the District acknowledges your right to make informed decisions regarding your child's educational program. Please do not hesitate to contact me should you have any questions regarding your child's Section 504 Service Plan or need further information in order to respond to the District's proposal(s)/refusal(s) as detailed above.

Please find enclosed a copy of the District's procedural rights and safeguards under Section 504 for your review records. In addition to contacting the District, you may also contact the following agency to obtain assistance in understanding your rights:

Office for Civil Rights
90 7th Street, Suite 4-100
San Francisco, CA 94103

Thank you for your time and careful consideration in this matter. Again, if you have any questions or need further assistance, please do not hesitate to contact me at (_____) ____-____.

Sincerely,

(Signature of District Representative)

(Printed Name of District Representative)

(Title of District Representative)

Enclosures: Notice Parent/Guardian Rights and Procedural Safeguards Under Section 504
Section 504 Service Plan dated ____/____/____, if appropriate
Assessment Plan, if appropriate

[SAMPLE PRIOR WRITTEN NOTICE LETTER – TO BE USED WHEN PARENT/GUARDIAN REVOKES CONSENT TO SECTION 504 SERVICES]

[TO BE PLACED ON DISTRICT LETTERHEAD]

U.S. Mail and Certified Mail, Return Receipt Requested

[DATE]

[PARENTS' NAME & ADDRESS]

Re: **[STUDENT'S NAME]**

Dear **[PARENT/GUARDIAN'S NAME(S)]**,

This letter responds to your **[DATE]** letter, in which you revoked your consent for your child, **[NAME]**, to receive a Section 504 Service Plan from the **[SCHOOL DISTRICT]**. Please consider this the District's response to your request. **[WE SUGGEST THAT THIS LETTER IS SENT NO LATER THAN 10 SCHOOL DAYS FROM RECEIPT OF PARENT/GUARDIAN'S LETTER.]**

The District believes that **[NAME]** continues to require a Section 504 Service Plan and that the plan developed at the Section 504 Service Plan team meeting on **[DATE]** continues to be appropriate. This Section 504 Service Plan was developed based on the following information: **[SPECIFY EACH EVALUATION PROCEDURE, ASSESSMENT, RECORD, OBSERVATION AND/OR REPORT]**. However, based on the receipt of your written revocation of consent, the District will discontinue the implementation of all aspects of the Section 504 Service Plan for **[NAME]** on **[DATE]** **[WE SUGGEST THAT THE PLAN WILL CEASE TO BE IMPLEMENTED 10 SCHOOL DAYS FROM THE DATE OF THIS LETTER]**.

After that date, **[NAME]** will no longer receive the regular or special education and related aids and services that are contained in **[his/her] [DATE(S)]** Section 504 Service Plan, which include, but are not limited to: **[LIST PLACEMENT, SERVICES, ACCOMMODATIONS, MODIFICATIONS, AND/OR SUPPORTS, INCLUDING BEHAVIORAL SUPPORTS, STUDENT WILL NO LONGER RECEIVE]**. Beginning on **[DATE]** **[WE SUGGEST THE SCHOOL DAY AFTER THE DAY SPECIAL EDUCATION SERVICES STOP]**, **[NAME]** will be placed in **[DESCRIPTION OF GENERAL EDUCATION PLACEMENT]** without the supports contained in his/her Section 504 Service Plan. At that time, **[NAME]** will only have access to **[LIST ANY SUPPORTS, ACCOMMODATIONS AND/OR OPPORTUNITIES MADE AVAILABLE TO GENERAL EDUCATION STUDENTS]**.

Please be advised that after **[DATE]**, **[NAME]** will become a general education student and will no longer be entitled to the regular or special education and related aids and services that are contained in **[his/her] [DATE(S)]** Section 504 Service Plan and the rights and procedural

safeguards provided under Section 504 of the Rehabilitation Act of 1973. **[NAME]** will be treated as a general education student in all respects, including discipline, **[testing, and graduation, if appropriate]**. As a result, **[NAME]**'s disability will not be taken into consideration when determining appropriate disciplinary action and **[he/she]** will not be entitled to the IDEA's discipline protections. **[OPTIONAL LANGUAGE: Therefore, we encourage you to consider the possible consequences of removing your child from special education.]**

Your revocation of consent releases the District from liability for providing your child with a free appropriate public education. If, in the future, you would like your child to receive regular or special education and related aids and services through a Section 504 Service Plan, please contact us. The District will treat such a request as a request for an initial evaluation.

The District would like to meet with you on **[DATE]** to discuss your decision and its potential impacts. However, you are not obligated to meet with us and any meeting will not delay or deny the discontinuation of your child's Section 504 Service Plan. Please contact my office at **[INSERT CONTACT INFORMATION]** to confirm that you will attend the meeting. If we do not hear from you, we will assume that you do not wish to meet.

I have enclosed a copy of **[NAME]**'s **[DATE(S) OF MOST RECENT SECTION 504 SERVICE PLAN]** Section 504 Service Plan for your reference, as well as a copy of the District's parent/guardian rights and procedural safeguards under Section 504. Please feel free to contact me with any questions you may have at this time. You may also contact the Office for Civil Rights at 90 7th Street, Suite 4-100, San Francisco, CA 94103.

Thank you for your time and careful consideration in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

[NAME]

[TITLE]

[SCHOOL SITE OR SCHOOL DISTRICT]

Enclosures: Parent/guardian's written revocation of consent
Notice of Parent/Guardian Rights and Procedural Safeguards Under Section 504
[DATE(S) OF MOST RECENT SECTION 504 SERVICE PLAN] Section 504 Service Plan

APPENDIX

SELECTED AMERICANS WITH DISABILITIES ACT (“ADA”) CODE **SECTIONS**

42 U.S.C. §§ 12101 *et seq.* as amended by Public Law 110-325 (Sept. 25, 2008)

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

SEC. 3. DEFINITION OF DISABILITY.

As used in this Act:

(1) DISABILITY.—The term ‘disability’ means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) MAJOR LIFE ACTIVITIES.—

(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

(A) An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act 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.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) 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—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term ‘ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term ‘low-vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.”.

(b) CONFORMING AMENDMENT.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

SEC. 4. ADDITIONAL DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term ‘auxiliary aids and services’ includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

SELECTED § 504 REGULATIONS **34 C.F.R. §§ 104.31 et seq.**

Subpart D-Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education -- (1) General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a

handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility

and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

104.35 Evaluation and placement.

(a) *Pre-placement evaluation.* A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity 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 that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.38 Preschool and adult education.

A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

104.39 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within that recipient's program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.