

## **SECTION 504 OF THE REHABILITATION ACT OF 1973**

It is the policy of the Vista Unified School District to provide a free and appropriate public education to each disabled student within the District, regardless of the nature or severity of the disability. A free and appropriate public education is the provision of regular or special education and/or related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled persons are met.

It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate education services. Students may be disabled under Section 504 and thereby require program accommodation in order to receive an appropriate education even though they do not require services pursuant to the Individuals with Disabilities Education Act (IDEA). A student with a disability, under Section 504, is a student who has a physical or mental impairment, which substantially limits one or more major life activities. Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, speaking, breathing, learning and working.

### **Access to Services**

All faculty are to include the following (or paraphrase) in course handouts. They also should make an announcement of the same policy in class at the first or second meeting of the class. Schools should include announcement in newsletters.

If you have a physical, psychiatric/emotional, medical or learning disability that may have impact on your ability to carry out assigned course work, I would urge that you and/or your parent or guardian contact your Guidance Counselor or Assistant Principal who will review your concerns and determine, with you, what accommodations are necessary and appropriate. All information and documentation of disability is confidential.

Aside from it being good educational policy to make all our students feel welcome, it is now a legal requirement that we make reasonable accommodations for our students with disabilities. Since faculty cannot reasonably be expected to identify every disability that would pose a problem, this announcement makes it clear that the faculty member will welcome input from the affect student.

The following regulations and procedures are intended to implement the legal requirements of the District under Section 504 of the Rehabilitation Act of 1973. Such regulations and procedures shall be applied to those students who are handicapped as defined under Section 504 but do not qualify for services under the Individuals with Disabilities Education Act (20 U.S.C.1400 et seq.)

## I. Definitions

Pursuant to Federal law an individual is entitled to the provisions of Section 504 of the Rehabilitation Act of 1973 if they are a qualified handicapped person.

"**Handicapped person**," means any person who:

1. Has a physical or mental impairment, which substantially limits one or more major life activities, and
2. Has a record of such an impairment, (such as diabetes, ADHD, severe allergies, any I.D.E.A. handicapping condition).
3. Is regarded as having such an impairment.

"**Major life activities**" means: Caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"**Has a record of such an impairment**" means: Has a history of, or has been classified as having a mental or physical impairment that substantially limits one or more major life activities.

"**Is regarded as having an impairment**" means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the School District as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;  
or
3. Has none of the impairments defined above but is treated by a district as having such an impairment.

## II. Identification and Referral Procedures

Students who are requesting to be qualified as a "handicapped person" as that term is defined in 34 C.F.R. 104.3 shall be referred by a parent, teacher, other certificated school employee, Student Study Team, or community agency to the Guidance

**Counselor** at the high school and middle school or to the **Assistant Principal** at the elementary school level.

The referral shall be made in writing and given to the appropriate **Guidance Counselor/Assistant Principal** who shall be responsible for screening the referral. The **Guidance Counselor/Assistant Principal** shall be responsible for convening the **504 Team** who shall determine if:

1. Further assessment is necessary
2. The student qualifies as a disabled person and therefore qualifies for non-discrimination protection

3. The student's disability substantially affects a major life function (usually education) and therefore qualifies for a 504 plan.

Because many disabilities are invisible, students must provide documentation verifying them. This documentation is confidential and faculty members may request to see it with the student's permission.

The 504 Team will be composed of persons knowledgeable about the student, the student's individual needs, the meaning of evaluation data, and the placement options.

The 504 Team will meet with the parent or guardian of the student as well as the student, when appropriate. The purpose of the meeting will be to determine if the student is a qualified handicapped person and if so to document the eligibility. The qualified student will be identified as a handicapped individual within the meaning of Section 504. The student may require special services, both educational and of a related nature designed to meet his/her individual needs. Upon determination that the student is a qualified handicapped person, he/she is eligible for a free, appropriate public education.

The Student Study Team is recognized as another collaborative team of certificated staff which has purposes other than identification of qualified handicapped students under Section 504. However, this team of individuals may convene as the 504 Team provided such notice has been provided to the parent/guardian.

### **III. Evaluation and Service Plan Procedures**

1. This 504 Team shall consider all relevant information, diagnoses and assessments in order to determine the appropriate plan for the student's needs and develop an appropriate plan for the student.
2. Identified students who are handicapped, as defined under Section 504 of the Rehabilitation Act of 1973 and the regulations implementing that Act, shall be regarded as having an impairment by all staff members. Students may be so identified even though they do not require special education services pursuant to the Education of the Handicapped Act.
3. After eligibility is verified, the 504 Team will develop a written plan describing the student's handicap and how it substantially impacts the student's learning and the education placement or related services as appropriate. The plan will specify the necessary accommodations to be provided in the student's classroom(s) and related aids and services to be provided, and by whom.
4. The appropriate Assistant Principal or Guidance Counselor shall chair the Team meeting and appraise the Director of Student Services of all 504 students.
5. The Assistant Principal or Guidance Counselor will complete all of the necessary forms.

#### **IV. Team Guidelines**

1. It is anticipated that a handicapped student under Section 504 of the Rehabilitation Act who requires an educational program or services other than, or in addition to those provided to non handicapped students, shall be placed in the regular educational environment with the use of the supplementary aids and services. However, if the Team determines that the education of the pupil in the regular educational environment, with the use of supplementary aids and services, does not provide a free appropriate public education for the student, the Team will recommend an evaluation to Special Education. In rare instances, a handicapped student who does not qualify for special education under IDEA (an Individual with a Disability Education Act) but is qualified under Section 504 may require related aids and services outside of the regular classroom in order to receive an appropriate education. All placements shall be in the least restrictive environment appropriate.
2. The parent or guardian of the student, as well as the student, shall be provided an opportunity to participate in 504 Team meeting to discuss the tentative conclusion of the Team. The parent or guardian will be given the opportunity to examine relevant records.
3. The decision of the 504 Team shall be in writing with a copy provided to the parent/guardian. If the parent does not agree with the Team's recommendation, the parent may appeal the 504 Team's decision. The appeal shall be submitted to the District's Section 504 Coordinator. The Section 504 Coordinator for the District is the Director of Student Services. The parent always has the right to file directly with the Office of Civil Rights.
4. If a plan for providing educational and/or related services is developed, all appropriate school personnel who work with the student shall be informed of the plan.

#### **V. Team Review**

1. The 504 Team via the Guidance Counselor or Assistant Principal will monitor the effectiveness of the plan annually to ensure the handicapped student's needs are met as adequately as the needs of non handicapped students.
2. Prior to any subsequent significant change in placement, an evaluation of the student's needs will be conducted as necessary, and the 504 Team shall set forth in writing the changes as appropriate. When change is proposed as the result of recommended disciplinary action, the Team shall meet to determine the following:
  - a. Relationship of behavior (subject of discipline) and handicap, and,
  - b. Appropriateness of current program and placement.

## VI. Evaluations

1. The District will be responsible for:
  - a. conducting assessments
  - b. reviewing existing data
  - c. considering assessments by practitioners outside the District done by properly certified professionals in the area of the claimed disability to understand the educational needs of students determined to be eligible or those referred for eligibility.
2. The 504 Team is encouraged to draw upon information from many sources in making their eligibility determination. To this end, assessments conducted in relation to a referral to Special Education services may be used. In addition, existing data and informal assessments by certificated staff and observations may also be used and relied upon.

Informal observation and assessment by certificated staff shall not require written consent of the parent/guardian. Notice to the parent/guardian shall be provided in advance of all formal testing to be conducted by the District. Consent by the parent/guardian shall be required in advance of any such assessment. In the event that the parent does not consent to the testing, the parent/guardian shall be advised of their due process rights. Failure of the parent/guardian to consent to assessment or to access their due process rights shall waive any claim they may have for the provision of Section 504 identification and services for the named student.

## VII. Annual Notices of Nondiscrimination

All students are notified annually by a Health Education, Pupil Services and Parents or Students' Rights Requiring Annual Notification. Paragraph 1, 2 and 3 which follow consists of a more detailed notification of our commitment to non-discrimination and non-harassment of individuals with disabilities.

1. **District Nondiscrimination policy (supported by Federal Regulations, Title VI, Title IX, and Section 504 of the Rehabilitation Act of 1973).**  
The Board of Education is committed to equal opportunity for all individuals in education and in employment and does not discriminate on the basis of sex, ethnic group classification, ancestry, religion, age, physical or mental disability, or any other unlawful consideration. Questions or concerns regarding these rights or allegation of discrimination should be directed to the Assistant Superintendent/Personnel Services for adult concerns, or the Section 504 Coordinator for student concerns.
2. **Nondiscrimination Policy Section 504 of the Rehabilitation Act of 1973**  
Section 504 is an Act which prohibits discrimination against persons with a disability in any program receiving Federal financial assistance. The Act

defines a person with a disability as anyone who:

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

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

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

If the parent or guardian disagrees with the determination made by the professional staff of the school district, he/she has a right to a hearing **with an impartial hearing office**. If there are questions, please contact the Section 504 Administrator at (760) 726-2170, extension 2253.

### 3. **Disability Harassment**

All school districts have been notified by the United States Department of Education (USDE), as well as, the Office of Civil Rights (OCR) and Office of Special Education and Rehabilitation Services (OSERS), regarding prohibition of disability harassment.

Preventing and responding to disability harassment is of great importance because students have a vested right to have equal access to education. Students must be provided with a free appropriate public education (FAPE) **as well as be free of disability harassment which may interfere** with their ability to receive an education that is critical to their advancement.

The legal references regarding disability harassment are found in:

- a. Section 504 of the Rehabilitation Act of 1973
- b. Title II of the Americans with Disabilities Act of 1996
- c. State and local civil rights law
- d. Child abuse laws
- e. Criminal laws

Schools must maintain a standard of equal access.

It is believed that intimidation or abusive behavior toward a student based on disability creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities.

Schools must examine if these acts are sufficiently severe, persistent, or pervasive.

Verbal acts and name calling such as "retarded", "deaf and dumb", nonverbal behavior, graphic and written statements, physical threats, harmful or humiliating acts such as blocking a wheelchair are regarded as harassing behaviors.

School personnel who subject students to inappropriate physical restraint or deny access to lunch, field trips, assemblies, and extracurricular activities because of their disability as well as belittling and criticizing, taunting, mocking or intimidating students will be viewed as causing disability harassment.

Schools have a legal responsibility to prevent disability harassment.

### **VIII. Due Process**

Upon referral or at the meeting of the **School Intervention Team**, the parent/guardian shall be advised of the **procedural safeguards**. Such notice shall be provided in writing and any questions may be addressed either by the **504 Team**, the Section 504 District Administrator or the site administrator.

The procedural safeguards shall include the right to an **impartial hearing** on the following issues:

1. Disagreement about eligibility
2. Disagreement about program and/or placement including related services
3. Disagreement with the 504 Team's decision re discipline (relation of behavior/handicap and/or appropriateness of placement)

As part of these procedural safeguards, parents shall have the following rights:

1. Notice of hearing date, time and location
2. The right to examine all relevant records and receive copies of such records at cost
3. The right to be represented or accompanied and advised by an individual with special knowledge or training
4. The right at hearing to present evidence, confront, cross examine and compel attendance of school employees as witnesses, the right of a record of the meeting and a written determination including findings of fact and conclusions of law

In addition to the procedures set forth above, and at the sole discretion of the District, an offer for mediation may be made. As part of an offer for mediation, a timeline will be set for resolution of the matter. If the timeline is not met or mediation does not resolve

the issue, a hearing will be scheduled and held.

The cost of the mediator, if any, and the hearing officer and related costs shall be paid for by the District. Each party shall pay for their own costs related to representation and presentation of their case.

The hearing will be conducted in accordance with the "Procedural Safeguards: Hearing Procedures pursuant to Section 504 Rehabilitation Act." (see Appendix A). The decision of the impartial Hearing Officer may be appealed only to a court of competent jurisdiction. The parties shall abide by the decision of the Section 504 Hearing Officer unless appealed and the decision is stayed by the court.

If parents, students or any adults on behalf of students feel discrimination has occurred based upon physical or mental disability, but is not directly related to identification, evaluation, and/or educational placement of a student, they may file a discrimination complaint with the Office of Civil Rights, U.S. Department of Education, Old Federal Building, 50 United Nations' Plaza, San Francisco, CA 94102-4102.

## **IX. Discipline of Handicapped Students**

The provisions of District policy which relate to discipline of students with exceptional needs shall apply to students determined to be handicapped under Section 504 of the Rehabilitation Act except that there shall be no requirement for a pre expulsion assessment.

In general, upon a recommendation for expulsion by the Principal or Assistant Principal or designee, of a qualified handicapped student under Section 504, a **School Intervention Team** shall be convened to determine:

1. If the conduct is related to the student's handicapping condition.
2. If the student is appropriately placed.
3. If the behavior is related to the handicap.
4. If the placement is determined not to be appropriate, the expulsion shall not proceed. If the parent disagrees with the determination of the **504 Team**, the parent may request a hearing, as specified in Section IV, within **5 calendar days** of the **504 Team** meeting/decision. All other provisions relating to due process and applicable timelines shall be followed as set forth above in Section IV.

If a hearing is requested, the District may decide to proceed with the expulsion after a determination by the **504 Team** but prior to the determination of the hearing officer.

Suspensions of qualified handicapped students shall not exceed beyond 10 consecutive school days and shall be processed in accordance with relevant provisions of the Education Code.

## APPENDIX A

### Procedural Safeguards: Hearing Procedures Pursuant to Section 504 Of The Rehabilitation Act of 1973

#### 1. Purpose and Scope

The purpose of this Hearing Procedure is to provide an avenue for the resolution of complaints which allege discrimination on the basis of disability pursuant to Section 504 of the Rehabilitation Act of 1973, with respect to the identification, evaluation, and placement for qualified disabled students. Federal Regulation 34 CFR 104.36 states: *"A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, 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."*

#### 2. Definitions

- A. "Appellant" means parents, guardian, or student.
- B. "Days" means calendar days.
- C. "District" means the Vista Unified School District.
- D. "Employee" means a person who is on the payroll of the District.
- E. "Student" means a disabled person enrolled in one of the schools operated by the District or of the age for enrollment and residing in the District.
- F. "Parent" means natural parent, guardian and surrogate parent.

#### 3. Procedures

- A. **Notice of Appeal Rights.** The District will notify parents annually through the District published **Annual Notice to Parents** of their right to appeal.
- B. **Rights Relating to Records.** Parents have the right review relevant records regarding their child. Records may be reviewed at the school site or at the Administrative Service Center in according with the procedures set forth in California Education Code section 49069.
- C. **Conditions Under Which Appeals May be Filed.** A parent or student may appeal decisions made by the District relating to any of the following:
  - 1. Identification of the student as disabled pursuant to 34 CFR 104.3(j).
  - 2. Evaluation procedures utilized with the student pursuant to 34 CFR 104.35.

3. Educational placement/services recommended for the student in accordance with 34 CFR 104.33.

If the student is or is believed to be eligible for Special Education, administrative proceedings under IDEA should be exhausted prior to the utilization of Section 504 proceedings.

- D. **Written Request by Parent Making Appeal.** The parent/guardian or student making an appeal of a decision of the District pursuant to these procedures must submit a written request for review. A parent/guardian or student making an oral request will be assisted by the District in making a written request. The written request shall be directed to the District's Section 504 Coordinator who is the Director of Student Support Services or designee and shall indicate the following:
1. Specific nature of the decision(s) made by the District of which the appellant disagrees.
  2. The specific relief the appellant is seeking through the appeal procedures.
  3. Any other information the appellant believes will assist in understanding the appeal.

- E. **Designation of the Individual to Review Appeal and Conduct the Hearing.** Within seven days of receipt of a written appeal and request for hearing, the Section 504 Coordinator or his/her designee shall select a hearing officer from a list maintained by the District.

Persons whose names appear upon the list shall meet all of the following requirements:

1. Be qualified to review District decisions related to Section 504 of the Rehabilitation Act.
2. Be impartial and unbiased.
3. Not be an employee of the District or a member of the District's Governing Board.

The individual so selected will, prior to the hearing, review the District's action and notify the parties in writing of the date, time and place of the hearing, allowing at least ten days notice. Either party to the hearing may request a continuance. A continuance may be granted by the hearing officer upon a showing of good cause. Any continuance shall extend the time for rendering a final decision for a period only equal to the length of the continuance. The hearing shall be conducted and a written decision mailed to all parties within 45 days from the date of the selection of the hearing officer.

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

1. The right to be accompanied and advised by counsel and by

individuals with special knowledge or training relating to the problems of disabled children.

2. The right to present evidence, written arguments and oral arguments.
3. The right to confront, cross-examine, and compel the attendance of witnesses.
4. The right to a written or electronic verbatim record of the hearing.
5. The right to written findings of fact and the decision.
6. The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing if that evidence was reasonably discoverable.

The individual conducting the hearing pursuant to these procedures may uphold, reverse, or modify the District's determination with respect to:

1. Identification of the student as disabled pursuant to 34 CFR 104.3(j).
2. Evaluation procedures utilized with the student pursuant to 34 CFR 104.35
3. Educational placement/services recommended for the student in accordance with 34 CFR 104.33.

The decision of the hearing officer shall be binding on the parties, subject to review by any court of competent jurisdiction.