

NONDISCRIMINATION

The School shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries.

Education Code 1.002(a)

No officer or employee of the School shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any School program because of the student's race, religion, color, sex, or national origin.

Civ. Prac. & Rem. Code 106.001

The School may not deny services to any individual eligible to participate in its special education program, but it shall provide individuals with disabilities special educational services as authorized by law.

Education Code 1.002(b)

FEDERAL FUNDING
RECIPIENTS

No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any school that receives federal financial assistance, on the basis of any of the following protected characteristics:

1. Sex.
2. Race, color, or national origin.
3. Disability, or relationship or association with an individual with a disability. [See EHB, EHBA series, and GA]
4. Age.

20 U.S.C. 1681 (Title IX); 42 U.S.C. 2000d (Title VI); 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act); 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act [ADA]); 42 U.S.C. 6101 et. seq. (Age Discrimination Act of 1975)

SEXUAL HARASSMENT	Sexual harassment of students is discrimination on the basis of sex under Title IX. <u>Franklin v. Gwinnett County Schools</u> , 503 U.S. 60 (1992) [See also DIA and FFH]
TITLE IX COORDINATOR	TSD designates and authorizes the Title IX coordinator to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended. TSD shall make available, as required by law, the name, office address, email address, and telephone number of the employee(s) so designated.
ADA / SECTION 504 COORDINATOR	TSD designates and authorizes the ADA/Section 504 coordinator to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973 ("Section 504"), as amended. TSD shall make available, as required by law, the name, office address, email address, and telephone number of the employee(s) so designated.
SUPERINTENDENT	The Superintendent shall serve as coordinator for purposes of compliance with all other nondiscrimination laws.
GRIEVANCE PROCEDURES	The School must adopt and publish grievance procedures for prompt and equitable resolution complaints alleging any action that would be prohibited by these provisions. 34 C.F.R. 106.8 (Title IX), 104.7(b) (Section 504) [See FFH]
RETALIATION	The School shall not coerce, intimidate, threaten, retaliate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. 34 CFR 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX)

STUDENTS WITH
LEARNING
DIFFICULTIES

The Texas Education Agency shall produce and provide to schools a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Education Code 29.004. Each school year, the School shall provide the written explanation to a parent of each School student by including the explanation in the student handbook or by another means.

Education Code 26.0081

DISABILITY
DISCRIMINATION
ADA

Under the Americans with Disabilities Act (ADA), no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the School, or be subjected to discrimination by the School.

42 U.S.C. 12132; 28 CFR 35.130

SECTION 504

Under Section 504 of the Rehabilitation Act, 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. *29 U.S.C. 794(a)*

DEFINITIONS
'STUDENT WITH A
DISABILITY'

A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

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 medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

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.

A student meets the requirement of being “regarded as” having an impairment if the student establishes that he or she has been subjected to a prohibited action 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. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of 6 months or less.

29 U.S.C. 705(20)(B), 42 U.S.C. 12102(1), (3)–(4)

‘QUALIFIED
INDIVIDUAL WITH A
DISABILITY’

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the School. *42 U.S.C. 12131(2)*

‘MAJOR LIFE
ACTIVITIES’

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading,

concentrating, thinking, communicating, and working. "Major life activity" also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *42 U.S.C. 12102(2)*

REASONABLE
MODIFICATION

The School shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the School can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *28 CFR 35.130(b)(7)*

DIRECT THREAT

"Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided below. *28 CFR 35.104*

The ADA does not require the School to permit an individual to participate in or benefit from the services, programs, or activities of that School when that individual poses a direct threat to the health or safety of others.

In determining whether an individual poses a direct threat to the health or safety of others, the School must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

1. The nature, duration, and severity of the risk;
2. The probability that the potential injury will actually occur; and
3. Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will

mitigate the risk.

28 CFR 35.139

EQUAL
EDUCATIONAL
OPPORTUNITY

TSD shall provide necessary services and supports to provide students equal access to educational opportunities. [See EHBC]
Certain instructional or other accommodations, including on state-mandated assessments, may be made when necessary, when allowable, and when these accommodations do not modify the rigor or content expectations of a subject, course, or assessment.[See EKB]

If TSD has reason to believe that a student has a disability that may require additional services and supports in order for the student to receive an appropriate education as this term is defined by law, Section 504 and/or the Individuals with Disabilities Education Act (IDEA) shall govern the evaluation, services, and supports provided by TSD. [See also EHBA series]

FREE APPROPRIATE
PUBLIC EDUCATION
(FAPE)

The School shall provide a free appropriate public education to each qualified student with a disability within the School's jurisdiction, regardless of the nature or severity of the student's disability; excepting, notwithstanding anything contained herein to the contrary, TSD cannot admit, nor provide services to, any student:

1. whose needs are appropriately addressed in a home or hospital setting or a residential treatment facility; or

2. whose primary, ongoing needs are related to a severe or profound emotional, behavioral, or cognitive deficit.

Tex. Educ. Code § 30.051(a)

A student with a disability is "qualified" if he or she is between the ages of three and 21, inclusive. *20 U.S.C. 1421(B); 34 CFR 104.3(l)(2)*

An appropriate education is the provision of regular or special education and related services that are:

1. Designed to meet the student's individual educational needs as adequately as the needs of students who do not have disabilities are met; and
2. Based on adherence to procedures that satisfy federal requirements for educational setting, evaluation and placement, and procedural safeguards, as set forth below.

34 CFR 104.33(b)

Implementation of an individualized education program (IEP) under IDEA is one means for providing FAPE. *34 CFR 104.33(b)(2)*

EDUCATIONAL SETTING

Texas School for the Deaf is a state agency that provides 100% special education public education to students who are deaf and hard of hearing who may have additional disabilities. Students cannot apply, register, or enroll at the School if they do not have evidence that they are Deaf or Hard of Hearing (previously Auditorily Impaired) in Texas.

Since TSD is considered a special education placement, all of the students have a designated hearing loss and therefore are not "nondisabled".

NOTICE AND CONSENT

TSD shall seek written parental consent prior to conducting a formal evaluation. Ordinary observations in the classroom or other school setting shall not require prior parental consent.

EVALUATION AND PLACEMENT

The School shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education and related services. The School shall conduct an evaluation before the initial placement, or any significant

change in placement, of the student. *34 CFR 104.35*

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).

PLACEMENT PROCEDURES

In interpreting evaluation data and in making placement decisions, TSD shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and 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 34 C.F.R. 104.34.

The results of an evaluation shall be considered before any action is taken to place a student with a disability or make a significant change in placement in an

instructional program. In interpreting evaluation data and when making decisions related to necessary services and supports, each Section 504 committee shall carefully consider and document information from a variety of sources in accordance with law.

REVIEW AND
RE-EVALUATION
PROCEDURE

TSD shall establish procedures 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 [now IDEA] is one means of meeting this requirement. *34 C.F.R. 104.35*

To address the periodic reevaluation requirement of law, TSD shall adhere to the reevaluation timelines in the IDEA regulations. A parent, teacher, or other School employee may request a review of a student's services and supports at any time, but a formal reevaluation shall generally occur no more frequently than once a year.

MILITARY
DEPENDENTS

In compliance with the requirements of Section 504, and with Title II of the Americans with Disabilities Act (42 U.S.C. Sections 12131–12165), the School shall make reasonable accommodations and modifications to address the needs of incoming military dependents with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the School from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, § C [See FDD]*

EXAMINING
RECORDS

A parent shall make any request to review his or her child's education records to the campus principal or other identified custodian of records.

RIGHT TO AN
IMPARTIAL
HEARING

A parent shall be given written notice of the due process right under Section 504 to an impartial hearing if the parent has a concern or complaint about the School's actions regarding the identification, evaluation, or educational

placement of a student with a disability. The impartial hearing shall be conducted by a person who is knowledgeable about Section 504/Special Education issues and who is not employed by the School or related to a member of the Board in a degree that would be prohibited under the nepotism statute [see DBE]. The impartial hearing officer is not required to be an attorney.

PROCEDURAL
SAFEGUARDS

The School shall establish a system of procedural safeguards with respect to the identification, evaluation, and educational placement of persons who need or are believed to need special instruction or related services.

The system shall include notice, an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of IDEA is one means of meeting this requirement. *34 CFR 104.36*

RECORDS
RETENTION

Records specific to identification, evaluation, and placement as these pertain to Section 504 and Special Education shall be retained by TSD in accordance with law and TSDs local records control schedules.

CHILDREN WHO
ARE HOMELESS

TSD shall adopt policies and practices to ensure that homeless children are not stigmatized or segregated on the basis of their homeless status. [See FDC]

LIAISON

The School shall designate an appropriate staff person (social worker), able to carry out the required duties as the School liaison for homeless children. The School shall inform School personnel, service providers, advocates working with homeless families, parents and guardians of homeless children, and homeless children of the duties of the liaison. [See FFC]

42 U.S.C. 11432(g)(1)(J)(i), (ii), (g)(6)(B)

RELIGIOUS FREEDOM

The School may not substantially burden a student's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003* [See also DAA and GA]

ADVERSE ACTION
PROHIBITED

Notwithstanding any other law, TSD will not take any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization. *Gov't Code 2400.002* [See GA]

DISCRIMINATION ON
THE BASIS OF SEX
TITLE IX

No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination by any School receiving federal financial assistance. *20 U.S.C. 1681(a).*) [See FFH for information regarding Title IX coordinator designation, policy notification, and complaint procedures.]

The School shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein on the basis of sex, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. *34 CFR 106.3434* [See FFH for information on sexual harassment that may constitute discrimination on the basis of sex under Title IX.]

SEPARATE
FACILITIES

The School may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for one sex shall be comparable to the facilities provided for the other sex.
34 CFR 106.33

HUMAN SEXUALITY CLASSES	Portions of classes in elementary and secondary school that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.
SINGLE-SEX PROGRAMS	The School shall not, on the basis of sex, exclude any student from admission to an institution of vocational education or any other school or educational unit operated by the School unless the School otherwise makes available to the student, pursuant to the same policies and criteria of admission, comparable courses, services, and facilities. <i>34 CFR 106.35</i>
PREGNANCY AND MARITAL STATUS	The School shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. <i>34 CFR 106.40</i> [See FND]
PHYSICAL EDUCATION CLASSES	The School may group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.
SKILLS ASSESSMENT	Where use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the School shall use appropriate standards that do not have such effect.
CONTACT SPORTS	The School may separate students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact. <i>34 CFR 106.34</i>

ATHLETIC
PROGRAMS

The School shall not discriminate, on the basis of sex, in interscholastic or intramural athletics or provide any such athletics separately on such basis.

SINGLE SEX
TEAMS

The School may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but not for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.

EQUAL
ATHLETIC
OPPORTUNITIES

The School that operates or sponsors interscholastic or intramural athletics shall provide equal athletic opportunity for members of both sexes. The following factors shall be considered in determining whether the School provides equal athletic opportunities:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. Provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms and practice and competitive facilities;
8. Provision of medical and training facilities and services;

9. Provision of housing and dining facilities and services; and

10. Publicity.

34 CFR 106.41

Adopted: 05.29.1982

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