

# Identification and Education Under Section 504      Element Education, Inc.

The Executive Director designates the following position as the Charter School's 504 Coordinator to implement the requirements of Section 504 of the federal Rehabilitation Act of 1973: (34 CFR 104.7)

Student Support Manager  
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## Definitions

For the purpose of implementing Section 504, the following terms and phrases shall have only the meanings specified below:

**Educational Program** means the general, academic environment operated by Dehesa Charter School.

**Free appropriate public education (FAPE)** means the provision of regular or special education and related aids and services designed to meet the individual educational needs of a student with disabilities as adequately as the needs of students without disabilities are met, at no cost to the student or his/her parent/guardian except when a fee is specifically authorized by law for all students. (34 CFR 104.33)

**Student with a disability** means a student who has a physical or mental impairment which substantially limits one or more major life activities; or who has a record of such an impairment; or who is regarded as having such an impairment. (28 CFR 35.108)

**Physical impairment** means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, immune, hemic, lymphatic, skin, and endocrine. (28 CFR 35.108)

**Mental impairment** means any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability. (28 CFR 35.108)

**Substantially limits major life activities** means limiting a person's ability to perform functions, as compared to most people in the general population, including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, and working. Major life activities also includes, but is not to be limited to major bodily functions such as: functions of the immune system, special sense organs and skin, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions, as well as the operation of an individual organ within a body system.

The determination of whether an impairment substantially limits a student's major life activities shall be made without regard to the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses. Mitigating measures are measures that an individual may use to eliminate or reduce the effects of an impairment, including, but not limited to, medications, medical supplies or equipment, low-vision devices (which do not include ordinary eyeglasses or contact lens), prosthetics including limbs and devices, hearing aids and cochlear implants and other implantable

hearing devices , mobility devices, or oxygen therapy equipment and supplies, use of assistive technology, reasonable modifications or auxiliary aids or services, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy. (42 USC 12102; 28 CFR 35.108)

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. (28 CFR 35.108(d)(iii)) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. (28 CFR 35.108 (d)(iv)). An impairment need not prevent or severely restrict a major life activity to be considered substantially limiting. (28 CFR 35.108(d)(v))

Being regarded as having an impairment 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. (28 CFR 35.108(f)(2). The 6 month transitory part of the transitory and minor exception in paragraph (f)(2) does not apply to the “actual disability” or “record of” prongs of the definition of “disability.” The effects of an impairment lasting or expecting to last less than 6 months can be substantially limiting within the meaning of this section for establishing an actual disability or a record of a disability. (28 CFR 35.108(d)(ix)

In determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the major life activity, the manner in which the individual performs the major life activity, or the duration of time it takes the individual to perform the major life activity. Considerations of facts such as condition, manner or duration may include, among other things, considerations of the difficulty, effort or time required to perform a major life activity, pain experienced when performing a major life activity, the length of time a major life activity can be performed, or the way the impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of the mitigating measures, such as the negative effects of medication or burden associated with following a particular regimen, may be considered when determining whether an individual’s impairment substantially limited a major life activity. (28 CFR 35.108)

The determination of whether an individual has a disability should not demand extensive analysis and may not be foreclosed solely on the basis of an outcome measure, such as grades.

### Referral, Identification, and Evaluation

Any action or decision to be taken by the Charter School involving the referral, identification, or evaluation of a student with disabilities shall be in accordance with the following procedures:

1. A parent/guardian, Educational Facilitator, other school employee, Student Support Team (SST), or community agency may refer a student to the Student Services Manager/504 Coordinator for identification as a student with a disability under Section 504. Requests for evaluation shall be made in writing, and a copy of said request will remain in the student’s file regardless of the final determination.
2. Upon receipt of any such referral, the Student Services Manager/504 Coordinator, or other qualified individual with expertise in the area of the student's suspected disability shall consider the referral and determine whether an evaluation is appropriate within a reasonable amount of time. This determination shall be based on a review of the student's school records, including those in 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 Student Services Manager/504 Coordinator shall inform the parents/guardians in writing of this decision and of the procedural safeguards available, as described in the "Procedural Safeguards" section below.

If it is determined that an evaluation is necessary, the evaluation shall be completed and the multidisciplinary 504 team convened within 60 days of the parent/guardian's signature on the evaluation plan.

3. If the student needs or is believed to need special education or related services, the Charter School shall conduct an evaluation of the student prior to his/her 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 Charter School shall obtain written parent/guardian consent.

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

- a. Have been validated for the specific purpose for which they are used 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 merely designed to provide a single general intelligence quotient
- c. Reflect the student's aptitude or achievement or whatever else the tests purport to measure rather than his/her impaired sensory, manual, or speaking skills, except where those skills are the factors that the tests purport to measure

The evaluation of the student must be sufficient for the 504 Team to accurately and completely describe: (a) the nature and extent of the disabilities; (b) the student's special needs; (c) the impact upon the student's education; and (d) what general or special education and/or related aids and services are appropriate to ensure that the student receives a free appropriate public education. All significant factors related to the learning process for that student, including adaptive behavior and cultural and language background, must be considered. The evaluation may include, but is not limited to, student observation, performance-based testing, academic assessment information, and data offered by the student's teachers and parent/guardian.

### Section 504 Plan

Accommodation Plan decisions for students with disabilities shall be determined as follows:

1. A multidisciplinary 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 a Section 504 Plan (needs accommodations for

participation in the educational program, activities and/or school sponsored events), the team shall meet to develop a written 504 Accommodation plan. The 504 Team shall determine what, if any, supports are needed, and shall specify the types of regular or special education services, accommodations, and supplementary aids and supports 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. The Charter School will exercise reasonable flexibility in scheduling meetings in order to enable the parents/guardians to attend the meeting.

3. The team will sign and date any Section 504 plan to document each member's participation in the development of the plan, including the parents/guardians. The Charter School will provide parents/guardians an opportunity to review and request revisions to the plan. The Charter School will promptly provide the parents/guardians with a copy of the final document.
4. If the 504 team determines that the student is disabled, but no formal plan is necessary for the student, the record of the team's meeting shall reflect whether or not the student has been identified as a person with a disability under Section 504 and shall state the basis for the determination that no special services, accommodations and supports 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.
5. The student shall be placed in the general educational environment, unless the Charter School can demonstrate that the education of the student in the general education environment with the use of supplementary aids and supports 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)
6. The Charter School shall complete the identification, evaluation, and placement process within a reasonable time frame. The Charter School shall adhere to this time frame regardless of any extended school breaks or times that school is otherwise not in session.
7. A copy of the student's Section 504 plan shall be kept in his/her student record. The student's Educational Facilitator 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 School Director or designee at the school from which the student is transferring shall ensure that the School Director 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

The 504 team shall monitor the progress of the student and, at least annually, shall review the effectiveness of the student's Section 504 plan to determine whether the accommodations and supports are appropriate and necessary and whether the student's needs are being met as adequately as the needs of students without disabilities are met. In addition, each student with a disability under Section 504 shall be reevaluated at least once every three years.

A reevaluation of the student's needs shall be conducted before any subsequent significant change in placement. (34 CFR 104.35)

#### Procedural Safeguards

The Executive Director or designee shall notify the parents/guardians of students with disabilities of all actions and

decisions by the Charter School regarding the identification, evaluation, or educational placement of their children. He/she also shall notify the parents/guardians of all the procedural safeguards available to them if they disagree with the Charter School's action or decision, including an opportunity to examine all relevant records and an impartial hearing in which they shall have the right to participate. (34 CFR 104.36)

If a parent/guardian disagrees with any Charter School action or decision regarding the identification, evaluation, or educational placement of his/her child under Section 504, he/she may request a Section 504 due process hearing within 30 days of that action or decision.

Prior to requesting a Section 504 due process hearing, the parent/guardian may, at his/her discretion, but within 30 days of the Charter School's action or decision, request an administrative review of the action or decision. The Student Services Manager/ 504 Coordinator shall designate the School Director to meet with the parent/guardian to attempt to resolve the issue and the administrative review shall be held within 14 days of receiving the parent/guardian's request. If the parent/guardian is not satisfied with the resolution of the issue, or if the parent/guardian did not request an administrative review, he/she may request a Section 504 due process hearing.

A Section 504 due process hearing shall be conducted in accordance with the following procedures:

1. The parent/guardian shall submit a written request to the Student Support Manager within 30 days of receiving the Charter School's decision or, if an administrative review is held, within 14 days of the completion of the review. The request for the due process hearing shall include:
  - a. The specific nature of the decision with which he/she disagrees
  - b. The specific relief he/she seeks
  - c. Any other information he/she believes is pertinent to resolving the disagreement
2. Within 30 days of receiving the parent/guardian's request, the Executive Director or designee and Student Services Manager/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.
3. 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.
4. The parties to the hearing shall be afforded the right to:
  - a. Be accompanied and advised by legal counsel and by individuals with special knowledge or training related to the problems of students with disabilities under Section 504
  - b. Present written and oral evidence
  - c. Question and cross-examine witnesses
  - d. Receive written findings by the hearing officer stating the decision and explaining the reasons for the decision

If desired, either party may seek a review of the hearing officer's decision by a federal court of competent jurisdiction.

5. If the parent/guardian is alleging discrimination or harassment on the basis of disability in a Charter School program or activity, the parent/guardian may file a Uniform Complaint with the Student Services Manager/Section 504 Coordinator or the by email or fax. To investigate and resolve such complaints, the Charter School utilizes the Uniform Complaint procedures specified in AR 1312.3

Notifications

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

Board Adopted: \_\_\_\_\_, 2018