

Identification And Education Under Section 504 Of The Rehabilitation Act Of 1973

Purpose

It is the intent of the Fresno Unified School District ("District") to ensure that students with disabilities within the meaning of Section 504 of the Rehabilitation Act of 1973 ("Section 504") are identified, evaluated, and provided with a free appropriate public education.

Students who, because of a Section 504-qualifying disability, need, or are believed to need, regular or special education or related services are addressed under this policy.

Students who are identified as individuals with exceptional needs according to the Individuals with Disabilities Education Act (IDEA) criteria are not addressed under this policy.

Definitions

For the purpose of implementing Section 504 of the Rehabilitation Act of 1973, the following terms and phrases shall have only the meanings specified below:

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 nondisabled students are met, without cost to the student or his/her parent/guardian, except when a fee is imposed on nondisabled students. (34 CFR 104.33)

(cf. 3260 - Fees and Charges)

Student with a disability means a student who has a physical or mental impairment which substantially limits one or more major life activities. (34 CFR 104.3)

Physical 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. (34 CFR 104.3)

Mental impairment means any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (34 CFR 104.3)

Substantially limits major life activities means limiting a person's ability to perform functions such as caring for himself/herself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major life activities also includes major bodily functions such as functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Substantially limits shall be determined without regard to the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses. Mitigating measures include, but are not limited to, medications, prosthetic devices, assistive devices, learned behavioral, or adaptive neurological modifications which an individual may use to eliminate or reduce the effects of an impairment. (42 USC 12102;

34 CFR 104.3)

Identification and Referral Procedures

1. Any student not served under the IDEA who, because of disability, needs or is believed to need regular or special education or related services, in order to receive a free appropriate public education, may be referred by a parent/guardian, teacher, other school employee, student success team, or community agency to the school site principal or School Site Section 504 Coordinator.

Students exiting from a program pursuant to the IDEA, or found ineligible under the IDEA, will be referred to the school's Section 504 Student Study Team when a student is determined to have disability but does not require special education and related services under the IDEA to determine whether the student may need regular or special education or related services, pursuant to Section 504 of the Rehabilitation Act of 1973.

2. Upon receipt of any such referral, the principal or School Site Section 504 Coordinator will bring the referral to the school's Section 504 Student Study Team, which will be composed of persons knowledgeable about the student's individual needs, the student's school history, the meaning of evaluation data, and placement options. The School Site Section 504 Coordinator will monitor the composition of the Section 504 Student Study Team to ensure that qualified personnel participate.
3. The Section 504 Student Study Team will promptly consider the referral and make a determination as to whether an additional evaluation under the procedure outlined below is needed. This determination shall be based on a review of the student's school records, including those in academic and nonacademic (e.g. social and behavioral) 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. Students requiring evaluation will be referred to appropriate evaluation specialists at the school site. Prior to conducting an initial evaluation for eligibility under Section 504, the district shall obtain written consent from the student's parent/guardian.

Evaluation

The evaluation of students with disabilities within the meaning of Section 504 and formulation of a Section 504 plan for services will be carried out by the Section 504 Student Study Team according to the following procedures:

1. The district's evaluation procedures shall ensure that the 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 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

2. The determination of whether a student is a student with a disability under Section 504 shall not demand an extensive analysis or be foreclosed solely on the basis of bottom-line measures, such as grades.

Section 504 Services Plan and Placement

1. For a student who has been determined a student with a disability within the meaning of Section 504, the Section 504 Student Study Team shall be responsible for determining what, if any, regular or special education and related aids and services are necessary to ensure that the student receives a FAPE.

2. In interpreting evaluation data and making placement decisions, the Section 504 Student Study 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 placement decision is made in conformity with 34 CFR 104.34. (34 CFR 104.33)

3. The parents/guardians shall be invited to participate in the Section 504 Student Study Team meeting where services for the student, if any, will be determined.

Parents/guardians shall, upon request, be given an opportunity to examine in advance all relevant records.

4. If the Section 504 Student Study Team determines that the student has a disability within the meaning of Section 504 requiring accommodations and/or modifications to his/her educational program, the Section 504 Student Study Team will develop a written plan describing the disability and any regular or special education or related services needed. The plan will specify how the services will be provided, by whom and how the plan is to be monitored. A copy of the plan shall be maintained in the student's cumulative file. The student's teacher(s) and any other staff, who provide services to the student shall be informed of the plan's requirements.

5. The Section 504 Student Study Team may also determine that the student is not eligible for services under Section 504. If the Section 504 Student Study Team so determines, the record of the Section 504 Student Study Team meeting will state the basis for the Team's decision. The parents/guardians will be provided a copy of the record/plan and an opportunity to review it, and parents/guardians will be asked to sign the record/plan which documents the team's decision.

6. In all cases, a student shall be placed in the regular educational environment of the district, 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 non-disabled students to the maximum extent appropriate to the individual needs of the student. (34 CFR 104.34)

7. The parents/guardians shall be notified in writing of the final decision concerning the services to be provided, if any, and of the Section 504 procedural safeguards, including the right to an impartial hearing.

8. The district shall complete the identification, evaluation, and placement process within a reasonable time frame.

Review and Reevaluation

1. The Section 504 Student Study Team shall monitor the progress of the student and, at least annually, review the effectiveness of the student's Section 504 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 the non-disabled students. In addition, the needs of each student with a disability under Section 504 shall be reevaluated at least once every three years.
2. Prior to any subsequent significant change in placement, a reevaluation of the student's needs will be conducted. (34 CFR 104.35) Parents/guardians will receive reasonable written notice of any meeting convened to propose a significant change in placement.

Procedural Safeguards

The Superintendent or designee shall notify the parents/guardians of students with disabilities of all actions and decisions by the district 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 district'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)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

1. The parents/guardians of a student with a disability shall be notified in writing of all district decisions concerning the identification, evaluation, or educational placement of their child.
2. The parents/guardians of a student with a disability have the right to review relevant records regarding their student. Upon parents' request, records may be reviewed at the school site or at the district office. Copies of student records may be obtained pursuant to applicable provisions of the law.
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. Parents/guardians are encouraged to utilize Levels One and Two, but they may proceed directly to Level Three if they so choose.

LEVEL ONE: In writing, request a meeting with the Section 504 Student Study Team in an attempt to resolve the disagreement. This meeting shall be held within a reasonable period of time after receiving the parents/guardians' request.

LEVEL TWO: If disagreement continues, request in writing a meeting with the district's Section 504 Coordinator, 1301 M Street, Fresno, California 93721, (559) 457-3220. This meeting shall be held within a reasonable period of time after receiving the parents/guardians' request.

LEVEL THREE: If disagreement continues following the meetings at Levels One and Two, or if a parent/guardian chooses to proceed directly to Level Three, a parent/guardian may request in writing an impartial hearing.

4. The parents/guardians shall have the right to an impartial hearing ("Section 504 Due Process Hearing"). Section 504 Due Process Hearings shall be conducted in accordance with the following procedures:

- a. A request in writing for a Section 504 impartial hearing must be filed in the office of the district's Section 504 Coordinator, 1301 M Street, Fresno, California 93721, telephone: (559) 457-3220.
- b. A request for an impartial hearing must be in writing and generally received by the district within 180 calendar days from the time the parents/guardians received written notice of the decision leading to the request for the impartial hearing. This timeframe may be extended for good cause or by mutual agreement of the parties. A parent/guardian or student making an oral request for an impartial hearing will be assisted by the district in making a written request.
- c. A request for an impartial hearing shall contain the following:
 - i. The specific nature of the decision(s) made by the district with which the person disagrees.
 - ii. The specific relief the person seeks.
 - iii. Any other information the person believes will assist in understanding the request.
- d. Within 30 days following receipt of a written request for hearing, the district's Section 504 Coordinator will select an impartial hearing officer. This 30-day deadline may be extended for good cause or by mutual agreement of the parties.
- e. 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 or the SELPA of which the district is a member in any capacity other than that of a hearing officer.
 - iii. Not have any professional or personal involvement that would affect his or her impartiality or objectivity in the matter.
- f. 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.
- g. Any 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 are disabled within the meaning of Section 504.
 - ii. The right to present evidence, written and oral.
 - iii. The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.
 - iv. The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.
 - v. The right to prohibit the introduction of evidence at the hearing that has not been disclosed to the other party or parties at least 10 calendar days prior to the hearing except for good cause shown.

- vi Receipt of notice from the other party or parties at least 10 calendar days prior to the hearing that they will utilize the services of an attorney, except for good cause shown.
- h. The hearing officer shall render a decision pursuant to the legal standards set forth in 34 CFR 104.
- i. Either party may seek review of the hearing officer's decision by timely filing with a court of competent jurisdiction.
- j. Reimbursement of attorneys' fees, expert witnesses' fees, and other costs is available only as authorized by law.

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)

Suspension/Expulsion of Section 504 Students

Before implementing a suspension or expulsion that constitutes a significant change in the placement of a student with a disability, the Section 504 Student Study Team must conduct a manifestation determination meeting for the student to determine whether the misconduct in question is caused by, or has a direct and substantial relationship to, the student's disability and whether the misconduct was a result of an inappropriate 504 Plan or its lack of proper implementation.

A significant change in placement includes the exclusion of a child for an indefinite period, or the exclusion of a child for more than 10 consecutive school days in a school year.

A series of suspensions each of which is 10 or fewer school days in duration, but that creates a pattern of exclusions, may also constitute a "significant change in placement."

1. Manifestation Determination

The Section 504 Student Study Team must convene and determine whether the misconduct is caused by, or has a direct and substantial relationship to, the student's disability or whether the misconduct was a direct result of an inappropriate 504 Plan or its lack of proper implementation. The student's parent/guardian will be given reasonable notice of the meeting. The Section 504 Student Study Team should have available to it evaluation information related to behavior, and the information must be recent enough to afford an understanding of the student's current behavior. This may require reevaluation under Code of Federal Regulations, Title 34, Part 104.35(a). The determination may not be made by the individuals responsible for the school's regular disciplinary procedures, such as the school principal or school Board officials, who lack the necessary expertise and personal knowledge about the student to make such a determination. These individuals, however, may participate as members of the placement decision group.

2. Procedural Safeguards

When the placement of a student with disabilities is changed for disciplinary reasons, the student and his/her parent/guardian are entitled to the procedural protections required by Section 504. These protections, as set forth herein, include appropriate notice to parents/guardians, an opportunity for their examination of records, an impartial hearing with the participation of parents/guardians and an opportunity for their representation by counsel and a review procedure. Thus, after a reevaluation of the then current placement, if the parents/guardians disagree with the determination regarding the relationship of the behavior to the disability, or with the subsequent placement proposal in those cases where the behavior is determined to be caused by the disability, they may request an impartial hearing, pursuant to the guidelines set forth in this administrative regulation.

Fresno Unified School District does not harass, intimidate, or discriminate on the basis of race, color, ethnicity, national origin, ancestry, age, creed, religion, political affiliation, gender, gender identity or expression or genetic information, mental or physical disability, sex, sexual orientation, parental or marital status, military veteran status, or any other basis protected by law or regulation, in its educational program(s) or employment.

Regulation FRESNO UNIFIED SCHOOL DISTRICT

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