

Fresno Unified Administration Regulation (BP) 6164.6 Identification And Education Under Section 504

The Governing Board believes that all children, including children with disabilities, should have the opportunity to learn in a safe and nurturing environment. The Superintendent or designee shall work to identify children with disabilities who reside within the jurisdiction of the district in order to ensure that they receive educational and related services required by law.

The Superintendent or designee shall provide qualified students with disabilities with a free appropriate public education (FAPE), as defined under Section 504 of the federal Rehabilitation Act of 1973. Such students shall receive regular or special education and related aids and services designed to meet their individual educational needs as adequately as the needs of students without disabilities are met. (34 CFR 104.33)

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 0430 - Comprehensive Local Plan for Special Education)
(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)
(cf. 5141.22 - Infectious Diseases)
(cf. 5141.23 - Asthma Management)
(cf. 5141.24 - Specialized Health Care Services)
(cf. 5141.27 - Food Allergies/Special Dietary Needs)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))
(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

In addition, qualified students with disabilities shall be provided an equal opportunity to participate in programs and activities that are integral components of the district's basic education program, including, but not limited to, extracurricular athletics, interscholastic sports, and/or other nonacademic activities. (34 CFR 104.37)

(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)
(cf. 6145.5 - Student Organizations and Equal Access)

The district's local control and accountability plan shall include goals and specific actions to improve student achievement and other outcomes of students with disabilities. At least annually, the Superintendent or designee shall assess the district's progress in attaining the goals established for students with disabilities and shall report these results to the Board. (Education Code 52052, 52060)

In providing services to students with disabilities under Section 504, the Superintendent or designee shall ensure district compliance with law, including providing the students and their parents/guardians with applicable procedural safeguards and required notifications. Any dispute as to the identification, evaluation, or placement of any student with a disability shall be resolved in accordance with the processes specified in the "Procedural Safeguards" section of the accompanying administrative regulation.

The superintendent or designee 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 other capacity except as hearing officer and shall not have any professional or personal involvement that would affect their impartiality or objectivity in the matter.

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 their

parent/guardian, except when a fee is imposed on nondisabled 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. (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 themselves 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, Referral Procedures, or Evaluation

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

1. A parent/guardian, teacher, or other school employee, student success team, or community agency may refer a student to the principal or 504 Coordinator for identification as a student with a disability under Section 504.
2. Upon receipt of any such referral, the principal, 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. 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.
3. If it is determined that the 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 their initial placement. 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 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 their impaired sensory, manual, or speaking skills, except where those skills are the factors that the tests purport to measure

Section 504 Services Plan and Placement

Services and placement decisions for student with disabilities shall be determined as follows:

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.

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)

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 aides and services necessary to ensure that the student receives FAPE.

The parents/guardians shall be invited to participate in the Section 504 Student Study Team meeting and shall be given an opportunity to examine all relevant records.

3. If the Section 504 Student Study 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 determination that no special services are presently needed. The student's parent/guardian shall be informed in writing of their 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 their individual needs.

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 their student record. The student's teachers(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

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.

Prior to any subsequent significant change in placement, a reevaluation of the student's needs will be conducted. 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. They 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)

If a parent/guardian disagrees with any district action or decision regarding the identification, evaluation, or education placement of their child under Section 504, they may request a Section 504 due process hearing within 30 days of that action or decision.

Parents/Guardians may initiate the following three procedures. Parent/Guardians are encouraged to utilize Levels One and Two, but may proceed directly to Level Three if they so choose.

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

LEVEL ONE: In writing, request a meeting with the Section 504 Student Study Team in an attempt to resolve the disagreement through an administrative review. This meeting shall be held within fifteen (15) school days after receiving the parents/guardians' 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, an impartial hearing with the district's:

Section 504 Coordinator
Fresno Unified School District
1301 M Street, Fresno, California 93721
(559) 457-3220

The request for the due process hearing shall include:

1. The specific nature of the decision with which they disagrees
2. The specific relief they seeks
3. Any other information they believe is pertinent to resolving the disagreement

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.

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.

The parties 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 with disabilities under Section 504
2. Present written and oral evidence

3. Question and cross-examine witnesses
4. 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. (34 CFR Part 104.36)

LEVEL THREE: Parents/guardians have the right to file a complaint with the Office of Civil Rights. The address of the regional office, which covers California, is:

United States Department of Education
Office of Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105-1818
415-486-5555

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)

Fresno Unified School District prohibits discrimination, harassment (including sexual harassment), intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age (40 and above), religious creed, religion, political belief or affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, childbirth, breastfeeding/lactation status, medical condition, military and veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

48980 Notification at beginning of term
49407 Liability for treatment
49408 Emergency information
49414 Emergency epinephrine auto-injectors
49414.5 Providing school personnel with voluntary emergency training
49414.7 Emergency medical assistance: administration of epilepsy medication
49422-49427 Employment of medication personnel, especially:
49423.1 Inhaled asthma medication
49480 Continuing medication regimens; notice

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5

600-611 Administering medication to students

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1400-1482 Individuals with Disabilities Education Act

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 Evaluation and placement

104.36 Procedural Safeguards

300.1-300.818 Individuals with Disabilities Education Act, especially:

300.301-300.306 Evaluations and reevaluations

COURT DECISIONS

Hood v. Encinitas Union School District, (2007) 486 F.3d 1099

Policy FRESNO UNIFIED SCHOOL DISTRICT

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