

BERKELEY USD

AR 6164.6 Instruction

Identification and Education Under Section 504

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)

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, genitourinary; hemic and lymphatic; skin; and endocrine. (34 CFR 104.3)

Mental impairment means any mental or psychological disorder, such as mental retardation, 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 include 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)

Referral, Identification, and 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, other school employee, student success team, foster parent, group home provider, or community agency may refer a student to the school site Section 504

Coordinator for consideration of eligibility as a disabled student under Section 504. Only the holder of educational rights may consent to evaluation for a Section 504 Plan, and sign the actual Section 504 Plan if the student is found eligible under Section 504.

(cf. 6164.5 - Student Success Teams)

2. The school site Section 504 Coordinator and Team shall promptly consider the referral and determine whether an evaluation under this procedure is appropriate. The District will conduct an evaluation if the student needs or is believed to need special education or related services under Section 504. This determination shall be based on a review of the student's school records (including academic, social and behavioral records); consultation with the student's teacher(s), other professionals, and the parent/guardian, as appropriate; and the student's needs.

3. If the school site Section 504 Team determines that evaluation for 504 eligibility is not warranted, the school site Section 504 Coordinator will inform the parent/guardian in writing within 30 days of receiving the referral and provide a copy of the procedural safeguards available, as described in the "Procedural Safeguards" section below.

4. 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 his/her initial placement. (34 CFR 104.35)

Prior to conducting an initial evaluation of a student for eligibility under Section 504, the district shall obtain written parent/guardian consent. The evaluation should be conducted within 60 days of obtaining 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 alignment 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 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 students 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 Section 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 not use one score or source of information to determine eligibility, and should not make a determination of eligibility solely on the basis of a student's grades. 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 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 aids and services 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.

(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)

(cf. 5141.22 - Infectious Diseases)

3. If the 504 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 education or related services are presently needed. The student's parent/guardian shall be informed in writing of parental 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 the student's individual needs. (34 CFR 104.34)

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 the student's record. Teacher(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.

(cf. 5125 - Student Records)

Review and Reevaluation

The Section 504 team shall monitor the progress of the student and, at least annually, shall review the effectiveness of the student's Section 504 services 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 nondisabled students. 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) A significant change of placement may occur when there is an exclusion from the educational program of more than 10 school days, a series of short-term exclusions (each 10 school days or fewer) from the educational program if the short-term exclusions total more than 10 school days and create a pattern of removal, and transferring a student from one type of program to another, or terminating or significantly changing a related service.

(cf. 5144.1 - Suspension and Expulsion/Due Process)

Procedural Safeguards

The school site Section 504 Coordinator 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 and representation by counsel. (34 CFR 104.36)

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

If a parent/guardian disagrees with any district action or decision regarding the identification, evaluation, or educational placement of a student under Section 504, parent/guardian may request an administrative review of the action or decision. The request for administrative review must be made within 30 days of the district's action or decision. Administrative review shall be held within 30 days of receiving the parent/guardian's request. If the parent/guardian is not satisfied with the resolution of the issue, the parent/guardian may request a hearing by a neutral party. A parent/guardian need not request administrative review before requesting a hearing by a neutral party; rather, as discussed below, the parent/guardian may request a Section 504 due process hearing immediately following any District action or decision regarding the identification, evaluation, or educational placement of the student under Section 504.

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 Section 504 Coordinator within 30 days of receiving the district's decision or, if an administrative review is held, within 30 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 (excluding when school is not in session) of receiving the parent/guardian's request, the Superintendent or designee and District Section 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 30 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 30-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:
 - . 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.
- a. Present written and oral evidence.
 - b. Question and cross-examine witnesses.
 - c. 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 the California Department of Education, State Court, or Federal Court.

Parents/guardians also may file a complaint regarding an alleged violation of Section 504 with the Office for Civil Rights (“OCR”). Additional information regarding OCR’s complaint process is available at:

<https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

San Francisco Office

Office for Civil Rights

U.S. Department of Education

50 United Nations Plaza, Mailbox 1200, Room 1545

San Francisco, CA 94102

Telephone: (415) 486-5555, Fax: (415) 486-5570

[Email: OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

Parents/guardians may file a Uniform Complaint concerning allegations of discrimination, including discriminatory harassment, intimidation, or bullying, in district programs and activities against any person based on, among other things, his/her actual or perceived disability.

More information regarding filing a Uniform Complaint is available from the BUSD Compliance Officer:

2020 Bonar Street, # 116
Berkeley, CA 94702
510.486.9338
nondiscrimination@berkeley.net

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)

(cf. 5145.6 - Parental Notifications)

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