

Administrative Regulation

AR 6164.6

Instruction

Identification And Education Under Section 504

Note: Section 504 of the federal Rehabilitation Act of 1973 (29 USC 794) prohibits discrimination on the basis of disability. Pursuant to 34 CFR 104.7, the district is required to designate the person(s) responsible for the overall implementation of the requirements of Section 504, as specified below.

Note: The U.S. Department of Education Office for Civil Rights (OCR), which is responsible for enforcing the provisions of Section 504 and also for receiving and handling complaints from parents/guardians, students, and advocates has issued guidance on Section 504 requirements. In its Dear Colleague Letter issued in January 2012, and the attached Questions and Answers on ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools, OCR clarifies the extent to which 29 USC 705, which was amended by the Americans with Disabilities Amendments Act (ADA) of 2008, affects the definition of "disability" and "substantially limits" for Section 504 purposes. In addition, in January 2013, OCR issued another Dear Colleague Letter to clarify districts' obligations under Section 504, particularly as they relate to providing students with disabilities an opportunity to participate in extracurricular athletics and other nonacademic activities that are a part of the overall education program.

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 specifically authorized by law for all students. (34 CFR 104.33)

(cf. 3260 - Fees and Charges)

Note: Pursuant to 34 CFR 104.3, a student is considered disabled when he/she has a physical or mental impairment that substantially limits a major life activity, has a record of such impairment, or is regarded as having such impairment. According to OCR, a district is required to provide FAPE only to those students whose impairment currently limits a major life activity. However, Section 504 requires districts to protect a student who has a record of, or is regarded as having, such an impairment from discriminatory treatment. For example, it would be discriminatory and thus illegal to prohibit a student who has a record of bone cancer, but is currently in remission, from trying out for the basketball team based on his/her history of cancer.

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)

Note: Examples of physical or mental impairments that may constitute disabling conditions under Section 504 if they substantially limit a major life activity may include, but not be limited to, diabetes; communicable diseases such as HIV/AIDS or asymptomatic carriers of the AIDS virus; tuberculosis; attention deficit disorder (ADD or ADHD); chronic asthma and severe allergies; physical disabilities such as spina bifida or hemophilia; and temporary disabilities depending on the anticipated length of disability, the seriousness of the illness/injury, and the needs of the student (e.g., students injured in accidents or suffering short-term illnesses). In the event that these conditions are severe enough to affect educational performance, then the student may need to be considered for services under the Individuals with Disabilities Education Act (IDEA); see BP/AR 6164.4 - Identification and Evaluation of Individuals for Special Education.

Physical or mental impairment means any of the following: (34 CFR 104.3)

1. 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.
2. Mental impairment means any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities

Substantially limits major life activities means limiting a person's ability to perform functions, as compared to most people in the general population such as caring for himself/herself, 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 major bodily functions such as functions of the immune system, special sense organs and skin, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, 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, prosthetic devices, assistive devices, 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)

District Coordinator for Implementation of Section 504

***Note: Pursuant to 34 CFR 104.7, the district is required to designate the person(s) responsible for the overall implementation of the requirements of Section 504. This individual may be the same person designated in the district's Uniform Complaint Procedures to ensure

compliance with specified programs and to receive complaints (see AR 1312.3 - Uniform Complaint Procedures) and/or the person identified to handle discrimination complaints (see BP 5145.3 - Nondiscrimination/Harassment). ***

The district has designated the following individual to coordinate its efforts to comply with the requirements of law, Board policy, and administrative regulation pertaining to the implementation of Section 504: (34 CFR 104.7)

Director, Student Support Services
1400 E. Janss Road
Thousand Oaks, CA 91362
805-497-9511

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 5145.3 - Nondiscrimination/Harassment)

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. Any student may be referred by a parent/guardian, teacher, other school employee, student success team, or community agency for consideration of eligibility as a disabled student under Section 504. This referral may be made to the principal or 504 Coordinator.

(cf. 6164.5 - Student Success Teams)

2. Upon receipt of a referral for eligibility, the principal or 504 Coordinator shall promptly convene a meeting of a multi-disciplinary 504 team to consider the referral and determine whether an evaluation of the student is appropriate.

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)

The team's determination shall be based on a review of the student's school records, including 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.

***Note: The U.S. Department of Education, Office of Civil Rights, has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. Although the law is silent on the form of parental consent, it is recommended that the district obtain such consent in writing. The following paragraph should be modified to reflect district practice. ***
Prior to conducting an evaluation of a student for eligibility under Section 504, the district shall obtain written parent/guardian consent.

If the 504 team determines that an evaluation is unnecessary, it shall inform the parents/guardians of this decision and of the procedural safeguards as described below.

3. If the team believes that a 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 initial placement and before any significant change in placement. (34 CFR 104.35)

The district's evaluation procedures shall ensure that 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 based solely on a single general IQ score

c. Reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills unless the test is designed to measure these particular deficits

***Note: 34 CFR 104.35 requires that the district's evaluation and placement procedures include the following elements. ***

4. 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)

Accommodation Plan and Placement

Note: While there is no specific requirement that a 504 plan be in writing, it is strongly recommended that the district develop a written 504 plan for each student detailing the accommodations and services that the student will be provided in order to ensure that the student is receiving a free appropriate public education in accordance with 34 CFR 104.33.

Note: In August 2007, the California Department of Education (CDE) issued a legal advisory regarding the settlement of a lawsuit concerning rights of students with diabetes to receive insulin. According to the CDE's legal advisory, appropriately licensed employees (i.e., school nurses), contracted registered nurses, the student, parent/guardian, or other individual designated by the parent/guardian may administer insulin during the school day. However, when such persons are not otherwise available, then federal law authorizes the district to train voluntary, unlicensed school employees (i.e., without a medical license) to administer insulin in accordance with the student's 504 plan. Districts must ensure that such unlicensed personnel are appropriately trained and supervised. See also BP/AR 5141.21 - Administering Medication and Monitoring Health Conditions.

***Note: The CDE's legal advisory also clarifies that a district may not have a general practice or policy that insulin or glucagon administration will only be provided by district personnel at one school or will always require removal from the classroom in order to receive diabetes-related health care services. In addition, a district may not require the parent/guardian to waive any

rights or agree to any particular placement or related services as a condition of administering medication or assisting students in the administration of medication at school. Pursuant to 34 CFR 104.35, such determinations must be based on each student's individual educational needs.***

1. If, upon evaluation, a student is determined to be eligible for services under Section 504, the 504 team shall meet to develop a written accommodation plan which shall specify placement, accommodations, and supplementary aids and services necessary to ensure that the student receives a free appropriate public education.

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)

(cf. 5141.23 - Asthma Management)

(cf. 5141.24 - Specialized Health Care Services)

(cf. 5141.26 - Tuberculosis Testing)

(cf. 5141.27 - Food Allergies/Special Dietary Needs)

2. If the 504 team determines that no services are necessary for the student, the record of the committee's meeting shall reflect the identification of the student as a disabled person under Section 504 and shall state the basis for the decision that no special services are presently needed. The student's parent/guardian shall be informed in writing of his/her rights and procedural safeguards.

3. 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 his/her individual needs. (34 CFR 104.34)

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

5. A copy of the student's accommodation plan shall be kept in his/her student record. The student's teacher, and any other staff who provide services to the student, shall be informed of the plan's requirements.

6. The District is committed to providing appropriate accommodations for all disabled elementary school aged students who are otherwise eligible to attend before and after school child care programs offered by the District.

(cf. 5125 - Student Records)

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

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

Note: 34 CFR 104.35 requires a district to establish procedures for the periodic reevaluation of a student who has been identified as needing accommodations under Section 504. The following section should be modified to reflect district practice.

1. The 504 team shall monitor the progress of the student and the effectiveness of the student's 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. The team shall review the student's accommodation plan annually. In addition, the student's eligibility under Section 504 shall be reevaluated at least once every three years.

Note: As part of its responsibilities pursuant to 34 CFR 104.35, the district is required to reevaluate a student's needs before a significant change in his/her placement. Examples of actions that might constitute a "significant change in placement" triggering a reevaluation include, but are not limited to, expulsions, suspensions that exceed 10 school days within a school year, or removal from a fully integrated curriculum to a resource room, home instruction, independent study, or continuation school.

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

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

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

Procedural Safeguards

***Note: 34 CFR 104.36 requires the district to establish and implement procedural safeguards that include the rights specified in items #1-3 below. ***

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.

Notifications shall include a statement of their right to: (34 CFR 104.36)

1. Examine relevant records
2. Have an impartial hearing with an opportunity for participation by the parents/guardians and their counsel
3. Have a review procedure

(cf. 5145.6 - Parental Notifications)

Notifications shall also detail the parent/guardian's right to file a grievance with the school district over an alleged violation of Section 504 regulation; right to have an evaluation that draws

on information from a variety of sources; right to be informed of any proposed actions related to eligibility and plan for services; right to receive all information in the parent/guardian's native language and primary mode of communication; right to periodic reevaluations and an evaluation before any significant change in program/service modifications; right to an impartial hearing if there is a disagreement with the school district's proposed action; right to be represented by counsel in the impartial hearing process; and right to appeal the impartial hearing officer's decision.

Note: Timelines suggested in the following paragraphs should be revised to reflect district practice.

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

If a parent/guardian disagrees with the identification, evaluation, or educational placement of his/her child under Section 504, he/she may initiate the following procedures:

1. Within 30 days of receiving the accommodation plan, file a written complaint with the 504 Coordinator detailing his/her disagreement and request that the 504 team review the plan in an attempt to resolve the disagreement. This review shall be held within 14 days of receiving the parent/guardian's request and the parent/guardian shall be invited to attend the meeting at which the review is conducted.
2. If disagreement continues, request in writing that the Superintendent or designee review the plan. This review shall be held within 14 days of receiving the parent/guardian's request, and the parent/guardian shall be invited to meet with the Superintendent or designee to discuss the review.
3. If disagreement continues, request in writing a Section 504 due process hearing. The request shall include:
 - a. The specific nature of the decision with which the parent/guardian disagrees
 - b. The specific relief the parent/guardian seeks
 - c. Any other information the parent/guardian believes pertinent

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.

The 504 Coordinator 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 capacity other than that of hearing officer and shall not have any professional or personal involvement that would affect their impartiality or objectivity in the matter.

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.

Any party 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 who are qualified as disabled under Section 504
2. Present written and oral evidence
3. Question and cross-examine witnesses
4. Receive written findings by the hearing officer

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

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)

CSBA (6/93 0/95) 11/07

Global Adoption: July 1, 2008

CVUSD 1/10 11/13 6/17