

IDENTIFICATION AND EDUCATION UNDER SECTION 504**A. Purpose and Scope**

The Governing Board recognizes the need to identify and evaluate children with disabilities in order to provide them with the services required by law.

The district shall provide a free appropriate public education (FAPE) to students who reside within the district and who are classified as disabled under Section 504 of the 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 nondisabled students are met. (34 CFR 104.33)

Students who, because of a Section 504 disability, need or are believed to need regular or special education and services are addressed in this policy. Students who are identified as eligible for special education and related services under the criteria set forth in the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") are not addressed under this policy, as the needs of such students are provided for elsewhere under district Board Policies and Regulations, state and federal law, and Special Education Local Plan Area ("SELPA") procedures.

B. Procedure**Definitions and Eligibility**

Free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 means the provision of either regular or special education and related aids and services, designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. (34 CFR 104.33)

Eligibility to receive FAPE under Section 504 means a student has a physical or mental impairment which substantially limits one or more major life activities. (34 CFR 104.33)

1. A student with a disability is one who
 - a. Has a physical or mental impairment that substantially limits one or more major life activities, including learning;
 - b. Has a record of such an impairment; or
 - c. Is regarded as having such impairment.

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However, only students qualifying under subdivision (a) (i.e., those with an actual physical or mental impairment that substantially limits one or more major life activities) are entitled to a FAPE and a Section 504 Service Plan under Section 504.

2. A physical or mental 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; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional, and specific learning disabilities. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The law does not limit eligibility to specific diseases or categories of medical conditions.
3. The term substantially limits shall be interpreted consistently with the findings and purpose of the Amendments to the Americans with Disabilities Act (“ADA”) that went into effect on January 1, 2009. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Whether an impairment substantially limits a major life activity shall be determined without regard to the ameliorative effects of mitigating measures such as: medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. Thus, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether impairment substantially limits a major life activity.

4. Major life activities include, but are not limited to, caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Learning, reading, concentration, thinking, and communication are typically, but not always, the major life ac-

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tivities utilized to determine Section 504 eligibility in the schools.

Referral, Identification, and Evaluation

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 a site-level or district-level Section 504 Coordinator. The principal at each school site (or designee) is designated as the site-level Section 504 Coordinator. The Director of Special Education (or designee) is designated as the district-level Section 504 Coordinator. For information or questions concerning the site-level or district-level Section 504 Coordinator, please contact the Tracy Unified District Office at 1875 W. Lowell Ave. Tracy, CA 95376.
2. Upon receipt of a referral for eligibility, the site-level or district-level 504 Coordinator shall within a reasonable time 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 academic and nonacademic areas of the school program; consultation with the student's teacher(s), other professional, and the parent/guardian, as appropriate; and analysis of the student's needs and any other relevant information.

If it is determined that an evaluation is unnecessary, the site-level or district-level 504 Coordinator shall inform the parents/guardians in writing of this decision and of the procedural safeguards, as describe in the "Procedural Safeguards" section below.

3. If it is determined 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, unless agreed otherwise. (34 CFR 104.35)
4. Prior to conducting an evaluation of a student for eligibility under Section 504, the district shall obtain written parent/guardian consent.
5. The district's evaluation procedures shall ensure tests and other evaluation materials, if any: (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 IQ score
 - c. Reflect aptitude or achievement or whatever else the tests purport to measure

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and do not reflect the student's impaired sensory, manual, or speaking skills unless the test is designed to measure these particular deficits

Section 504 Services Plan and Placement

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. (34 CFR 104.35)

In interpreting evaluation data and making placement decisions, the team shall draw upon information from a variety of sources, including such sources as 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 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.
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 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, 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 his/her 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 service plan shall be kept in his/her student record. The district staff members who provide services to the student shall be informed of the student's Section 504 services plan's requirements.

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Review and Reevaluation

1. The 504 team shall monitor the progress of the student and 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. The team shall review the student's plan periodically. In addition, the student's eligibility under Section 504 and whether the services provided in the 504 plan are appropriate and adequate should be reevaluated periodically. In determining the need for periodic review and evaluation, the 504 team shall be guided by the IDEA provisions requiring annual review and triennial reevaluation. Additionally, the need for periodic review and reevaluation shall be considered on a case-by-case basis – e.g. prior to a significant change in placement or upon parental request.
2. A reevaluation of the student's needs shall be conducted before any subsequent significant change in placement. (34 CFR 104.35)

Procedural Safeguards

1. Parents/guardians shall be notified in writing of all district decisions regarding the identification, evaluation, or educational placement of students with disabilities or suspected disabilities. Notifications shall include a statement of their right to: (34 CFR 104.36)
 - a. Examine relevant records
 - b. Have an impartial hearing with an opportunity for participation by the parents/guardians and their counsel
 - c. Have a review procedure

Notification shall also set forth the procedure for requesting an impartial hearing. Requests shall be made to the Director of Special Education.

If a parent/guardian disagrees with decisions regarding the identification, evaluation, or educational placement of his/her child under Section 504, he/she may request a Section 504 due process hearing in accordance with the following procedures:

(Note: If a parent/guardian wishes to file a complaint alleging that a student with a disability has been subjected to discriminatory treatment (e.g., harassment or accessibility issues), he/she may file a complaint in accordance with the district's uniform complaint procedures.)

1. Within 30 days after receipt of the district's decision with which the parent/guardian disagrees, the parent/guardian may request an administrative review of the decision

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in writing.

The 504 Coordinator shall designate an appropriate administrator to meet with the parent/guardian to attempt to resolve the issue. This review shall be held within 14 days of receiving the parent/guardian's request.

2. If the parent/guardian chooses not to request an administrative review or if the review does not resolve the issue, the parent/guardian may request in writing a Section 504 due process hearing. The parent/guardian's request for a hearing shall be made within 30 days of receiving the district's decision or within 14 days of completion of the administrative review. 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.

To ensure impartiality, such officers 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

TUSD Board Acknowledged: 09.10.13

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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)

Adopted: -----

Revised: -----