

Fremont Union High School District
Section 504 of the Rehabilitation Act of 1973
Notice of Parent/Guardian Rights and Procedural Safeguards

This is a notice of your rights under Section 504 of the Rehabilitation Act of 1973 ("Section 504") with respect to actions regarding the identification, evaluation or educational placement for students who, because of a disability, need or are believed to need special instruction or related services. Age of majority is the legal age at which an individual is no longer a minor and, as a young adult, has the right and responsibility to make certain legal choices that adults make. In the state of California, rights and procedural safeguards are the responsibility of the student upon their 18th birthday.

PURPOSE

It is the intent of the Fremont Union High School District ("District") to locate, identify, evaluate and provide a free appropriate public education ("FAPE") under Section 504 of the Rehabilitation Act of 1973 ("Section 504") to each student with a disability within its jurisdiction regardless of the nature or severity of the disability. Further, the District will provide regular or special education and related aids and services that are designed to meet the needs of each disabled students as adequately as the needs of non-disabled students. In addition to providing a FAPE to students with disabilities under Section 504, the District will not discriminate against students with a physical or mental impairment which substantially limits one or more major life activities, have a record of such an impairment, or those being regarded as having an impairment. Protections for these students are provided for elsewhere under District Board Policies and Regulations, state and federal law.

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.

DEFINITIONS AND ELIGIBILITY

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 an impairment.

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 made 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 earned 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 an 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, functions 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 activities utilized to determine Section 504 eligibility in the schools.

LOCATION AND NOTIFICATION PROCEDURES

1. The District shall annually undertake reasonable measures to locate and identify every qualified disabled student residing within the District's jurisdiction who is not receiving a public education, and to notify those students and their parent/guardian of the right to a FAPE under Section 504.
2. Location and notification procedures may include the District's annual notice, personal contacts, posting of notices, newspaper advertisements, press releases, and communications with public and private community agencies.
3. When a student is identified, he or she should be referred to the school's Section 504 Site Coordinator, following the procedures set forth below.

IDENTIFICATION AND REFERRAL PROCEDURES

1. Any student may be referred, in writing, by parent, guardian, teacher, counselor, related service provider, other school staff, and/or community agency to the school's Section 504 Site Coordinator.
2. Based upon a review of relevant and available information regarding the student referred or based upon a meeting of the school site's Student Study Team or Section 504 Service Plan team, the District shall determine whether an evaluation under Section 504 is appropriate. The District shall evaluate any student who, because of disability, needs, or is believed to need, regular or special education or related aids and services.
3. If the request for evaluation is denied, the District or the school site's Student Study Team or Section 504 Service Plan team will inform the parent/guardian of the decision through prior written notice in writing and provide him/her with a copy of his/her parent/guardian rights and procedural safeguards under Section 504.
4. If the District or the school site's Section 504 Service Plan team determines an evaluation under Section 504 is appropriate, the team will forward a letter and/or an assessment plan requesting consent for evaluation of the student to the parent/guardian, along with a copy of the District's notice of parent/guardian rights and procedural safeguards under Section 504.

EVALUATION, ELIGIBILITY AND PLACEMENT DETERMINATIONS

1. The evaluation of students suspected of having a disability under Section 504 will be carried out by qualified evaluators selected by the District.
2. When selecting tests and other evaluation materials, the District will ensure that they are: validated for the specific purpose for which they are used; administered by trained personnel in conformance with the instructions provided by their producer; tailored to assess specific areas of educational need and not merely those which are designed to

provide a single general intelligence quotient; and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

3. The District may administer and use formal and informal measures as deemed necessary. If the team is going to conduct formal assessment and/or observations in order to determine eligibility, then the team must obtain informed and written consent from the parent/guardian before the student is evaluated.
4. Additionally, if the student's Section 504 Service Plan team determines that a medical examination is necessary for a Section 504 determination, the District is responsible for the costs of the examination.
5. Once the evaluations are completed, the District will schedule a Section 504 meeting to consider the results of the evaluations; and, the student's Section 504 Service Plan team will determine whether the student is eligible under Section 504 by deciding whether the student has a physical or mental impairment that substantially limits one or more major life activities. A Section 504 Service Plan team meeting shall be convened within a reasonable time period of receiving the parent/guardian's consent to assess.
6. The Section 504 Service Plan team is made up of a group of individuals, including persons knowledgeable about the student, the meaning of the evaluation data being considered, and placement options. The team will generally include student's parent/guardian and at least one of the student's general education teachers; and, may include: other teachers, individuals who can interpret the instructional implications of the assessment results, SST members, counselors, related service providers, the student, other school staff and administrators, and individuals who have knowledge or special expertise regarding the student. The determination of whether an individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the Section 504 Service Plan team.
7. The Section 504 Service Plan team, in deciding whether a student is eligible for a Section 504 Service Plan, will collect and carefully interpret evaluation data and in a making placement decision, the team will draw upon information from a variety of sources, including, but not limited to, observations, testing, reports, District evaluations, medical records, letters from doctors, health care plans, school records, school administration, school counselors, teachers and paraprofessionals that work with the student, the parent/guardian, and when appropriate, the student.
8. No final determination of whether the student will or will not be identified as a disabled student within the meaning of Section 504 will be made without first inviting the parent/guardian of the student to participate in a Section 504 Service Plan team meeting

concerning such determination. The parent/guardian will receive reasonable notice of all Section 504 Service Plan team meetings.

9. If the Section 504 Service Plan team finds the student ineligible under Section 504, this decision shall be documented in writing, at which time the parent/guardian shall be notified of his/her parent/guardian rights and procedural safeguards under Section 504, including the right to an impartial hearing.
10. For students who are determined, through the evaluation process, to be eligible under Section 504, the Section 504 Service Plan team shall develop a Section 504 Service Plan.
11. The Section 504 Service Plan will describe the student's disability; regular or special education; related aids and services; and, accommodations and/or modifications that are needed in order to provide the student with a FAPE, and how the placement, services, and accommodations and/or modifications will be provided to the student and by whom.
12. A copy of the plan shall be maintained electronically at the school site. All school staff who work with the student shall be informed of the elements of the student's Section 504 Service Plan.
13. The parent/guardian must consent to the student's Section 504 Service Plan prior to the implementation of the plan; however, they do not need to consent to future changes in services in order for those changes to take place. Students who are eligible under Section 504 do not have a right to stay put in cases when a dispute arises.
14. A student with a disability shall be placed in a regular education environment of the District, unless the Section 504 Service Plan team determines that his/her education in such a placement cannot be achieved satisfactorily with the use of supplementary aides and services. The student with a disability shall be educated with non-disabled students to the maximum extent appropriate.
15. The parent/guardian shall be notified in writing of the final decision concerning the placement, services, and accommodations and/or modifications to be provided, if any, and of his/her parent/guardian rights and procedural safeguards pursuant to Section 504, including the right to an impartial hearing.

REVIEW OF STUDENT PROGRESS

1. The Section 504 Service Plan team will meet annually to review the progress of students with disabilities and the effectiveness of the student's Section 504 Service Plan to determine whether services are appropriate, and that the needs of students with disabilities are being met as adequately as the needs of nondisabled students.
2. Should a parent/guardian request a Section 504 meeting, the District will convene one within a reasonable time period of the receipt of the request.

3. Prior to any subsequent significant change in placement, a reevaluation of the student's needs will be conducted. The parent/guardian will receive reasonable prior written notice of any meeting convened to propose a significant change in placement.
4. The Section 504 Service Plan team may also determine that the student no longer has a mental or physical impairment that substantially limits a major life activity. If the Section 504 Service Plan team so determines, the record of the Section 504 Service Plan team meeting will state the basis for the team's decision.

DISCIPLINE

In disciplinary situations, students who have a Section 504 Service Plan may be suspended or placed in an alternative interim setting to the same extent these options would be used for children without disabilities, for not more than five (5) consecutive school days at a time unless the suspension is extended pursuant to a recommendation for expulsion. The total number of school days removed may not exceed ten (10) cumulative school days in the same school year for separate incidents of misconduct, before triggering the manifestation determination process. The removals may be to an appropriate interim alternative education setting, another setting, or suspension.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal, child is entitled to a manifestation determination meeting within ten (10) school days of the District's decision to change the student's placement. The child's parent/guardian must be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine (based upon a review of all relevant information in the student's cumulative and Section 504 Service Plan files, the Student's Section 504 Service Plan, any teacher observations, and any relevant information provided by the parent/guardian) whether the student's alleged behavior was a manifestation of his/her disability by answering the inquiry required by the IDEA. As of the 2015-2016 school year, the questions are::

- Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or,
- Whether the conduct in question was the direct result of District's failure to implement the student's current Section 504 Service Plan.

If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of the student's disability. However, if the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of the student's disability and the District may take disciplinary action against the student, such as expulsion, in the same manner as it would with a child without disabilities. If the student's behavior is determined to be a manifestation of his or her disability, the District must conduct a functional behavior assessment, and implement a behavioral support plan for the student. In this situation, if a behavioral support plan has already been developed, the District will review the plan and modify it as necessary to address the behavior in question. However, regardless of whether a student's behavior was a manifestation of the student's disability, the District may determine, following assessment, that a change of placement is appropriate for the student. The District may proceed with this change of placement following notice to the parents; consent is not required for a change of placement pursuant to Section 504.

PROCEDURAL SAFEGUARDS

1. The parent/guardian shall be notified in writing of all actions regarding the identification, evaluation, and educational placement of a student who, because of a disability, needs, or is believed to need, special instruction or related services pursuant to Section 504. Notifications will include a statement of parent/guardian rights to:

- a. Examine relevant records. Upon parent/guardian request, records may be reviewed at the school site or at the District Office. Copies of student records may be obtained within five (5) business days of the request pursuant to District policies.
 - b. Have an impartial hearing with opportunity for participation by the parent/guardian and his/her counsel.
 - c. Seek review in federal court if the parent/guardian disagrees with the hearing decision.
2. Notifications shall also set forth the procedure for requesting an impartial hearing. Requests shall be made to: Nancy Sullivan, District Section 504 Administrator, FUHSD, 589 W. Fremont Avenue Sunnyvale, CA 94087.
 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. The parent/guardian is encouraged to utilize Levels One and Two, but he/she may proceed directly to Level Three if he/she so chooses.

LEVEL ONE: In writing, the parent/guardian may request a meeting with the Section 504 Service Plan team in an attempt to resolve the disagreement. This meeting shall be held within **ten (10) school days** after receiving the parent/guardian's 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, a meeting with the District Section 504 Administrator for Fremont Union High School District

Nancy Sullivan
District Section 504 Administrator
Fremont Union High School District
589 W. Fremont Ave. Sunnyvale, CA 94087
Ph: 408-522-2232

This meeting shall be held within a reasonable period of time after receiving the parent/guardian's request.

At the request of either the District or the parent/guardian, and on mutual agreement of the parties, the parties may pursue dispute resolution through mediation. If the parties agree to mediation, a time line will be set for the convening of the mediation.

The District shall choose the neutral mediator, and the cost of the mediation, if any, shall be paid by the District.

LEVEL THREE: If the disagreement is not resolved, or upon initial request, a due process hearing may be requested by the student's parent/guardian ("Section 504 due process hearing"). The proceedings will be presided over and decided by an impartial hearing officer.

Impartial hearing officer means a person selected by the District to preside at a due process hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties. To ensure impartiality of the hearing officer, the hearing officer shall not be employed by or under contract with the District in any capacity at the time of the due process hearing, nor shall the hearing officer have any professional or personal involvement that would affect his or her objectivity or impartiality.

The steps involved in initiating and implementing a Section 504 impartial hearing are as follows:

- a. The parent/guardian shall have the right to an impartial hearing with an opportunity for participation by the parent/guardian and representation by counsel.
- b. A request in writing for a Section 504 due process hearing must be filed in the office of the District Section 504 Administrator.

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- c. A request for a Section 504 due process hearing must be in writing and received by the District within **ninety (90) days** from the time the parent/guardian received written notice of the decision leading to the request for such hearing. Upon receipt of such a request from the parent/guardian, the District may schedule a Section 504 Service Plan team meeting, and make relevant personnel available within a reasonable time period. A parent/guardian or student making an oral request may be assisted by the District in making a written request.
- d. A request for a Section 504 due process hearing shall contain the following:
 - i. A statement requesting a hearing.
 - ii. The specific nature of the decision(s) made by the District the Section 504 Service Plan team with which the parent/guardian disagrees.
 - iii. The specific relief the parent/guardian seeks.
 - iv. Any other information the parent/guardian believes will assist in understanding the request.

- e. Within a reasonable time following receipt of a written request for hearing, the District Section 504 Administrator will select an impartial hearing officer.
- f. 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 in any capacity other than that of a hearing officer at the time of the due process hearing.
 - iii. Not have any professional or personal involvement that would affect his or her impartiality or objectivity in the matter.
- g. Hearing notifications shall be given to the parent/guardian at least twenty (20) calendar days prior to the date set for the hearing. The notice shall contain a statement regarding the time and place for the hearing as well as the name of the hearing officer. This notice shall be accompanied by a copy of the District's notice of parent/guardian rights and procedural safeguards pursuant to Section 504.
- h. Within **sixty (60)** calendar days of receipt of the parent/guardian's request for a Section 504 due process hearing, the hearing shall be conducted. Within **ninety (90) calendar** days of the receipt of the parent/guardian's request, a written decision shall be mailed to all parties. This time frame may be extended by mutual agreement of the parties.
- i. A 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 have a disability within the meaning of Section 504.
 - ii. Receipt of notice from the other party or parties, at least ten (10) business days prior to the hearing that they will utilize the services of an attorney, except for good cause shown.
 - iii. The right to prohibit the introduction of evidence at the hearing that has not been disclosed to the other party or parties at least five (5) business days prior to hearing except for good cause shown.
 - iv. The right to present evidence, written and oral.
 - v. The right to produce outside expert testimony.
 - vi. The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.

- vii. The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.

In cases where foreign language translation is necessary, a translator shall be provided by the District. This translator may be a current District employee.

- j. The parent/guardian involved in the hearing will be given the right to:
 - i. Have the student present at the hearing;
 - ii. Open the hearing to the public, but not the press, should they so choose; and
 - iii. Have an opportunity to participate in the impartial hearing.
- k. The hearing officer shall render a decision pursuant to the legal standards set forth in 34 Code of Federal Regulations part 104 and related law.
- l. Either party may seek review of the hearing officer's decision by timely filing with a court of competent jurisdiction.
- m. The cost of the hearing officer shall be borne by the District. Reimbursement of attorneys' fees, expert witness fees, and other costs is available only as authorized by law.
- n. All written correspondence shall be provided in English and/or translated into the primary language of the home at the request of the parent/guardian. If translation of written correspondence is requested, the District shall provide said translation within a reasonable time period of the receipt of parent/guardian's request for translation of written correspondence.

The school Section 504 Site Coordinator is _____. Should you have any concerns or questions about your parent/guardian rights and/or procedural safeguards pursuant to Section 504, you may contact this individual at _____. If an issue cannot be resolved at the school site level, and should you wish to discuss the matter further, you may contact Nancy Sullivan, District Section 504 Administrator at 589 W. Fremont Ave, Sunnyvale, CA 95087, (408) 522-2232.