

PLEASANTON UNIFIED SCHOOL DISTRICT

NOTICE OF PARENT AND STUDENT RIGHTS UNDER SECTION 504 THE REHABILITATION ACT OF 1973

It is the intent of the Pleasanton Unified School District that students that may have a disability under Section 504 of the Rehabilitation Act of 1973 and their parents be informed of their rights.

The Rehabilitation Act of 1973, which includes "Section 504," is a nondiscrimination statute enacted by the United States Congress. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

An eligible student under Section 504 is a student who has a physical or mental impairment that substantially limits a "Major Life Activity," such as: learning, seeing, hearing, walking, standing, breathing, concentrating, thinking, communicating, and caring for oneself; or a "Major Bodily Function" such as: dysfunction of the immune system, normal cell growth, digestive, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Eligibility includes those students whose impairments may be episodic or in remission. Mitigating circumstances may not be taken into consideration when determining whether a child has a handicapping condition.

Eligibility: Some students may also be eligible for educational services under the Individuals with Disabilities Education Act ("IDEA").

The enabling regulations for Section 504, as set out in 34 C.F.R. Part 104, provide parents and/or students with the following rights:

1. **Application.** Section 504 protections apply to preschool, elementary, secondary and adult school programs or activities that receive federal financial assistance and to the recipients of said federal financial assistance for the operation of such programs and activities. **34 C.F.R. Section 104.31.**
2. **Parents' Rights.** You have a right to be informed by the District of your rights under Section 504. **34 C.F.R. Section 104.32.**
3. **FAPE.** If eligible under Section 504, your child has the right to a free appropriate public education designed to meet his/her individual educational needs as adequately as the needs of non-disabled students are met. **34 C.F.R. Section 104.33.**
4. **Free Education.** If eligible under Section 504, your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. If the District refers your child for aide, benefits or services by an entity not operated by the District it may be required to incur the cost of said aide, benefit or service, including the cost of transportation. Insurers and similar third parties are not relieved of an otherwise valid obligation to provide or pay for services provided to a disabled student. **34 C.F.R. Section 104.33.**
5. **Academic Setting.** Your child has a right to an education with persons who are not handicapped to the maximum extent appropriate. **34 C.F.R. Section 104.34.**
6. **Comparable Facilities.** If eligible under Section 504, your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. **34 C.F.R. Section 104.34.**
7. **Evaluations.** Your child has a right to an evaluation prior to an initial Section 504 placement and prior to any subsequent significant change in placement. **34 C.F.R. Section 104.35.**
8. **Evaluation Procedures.** Testing and other evaluation procedures must conform to the requirements of **34 C.F.R. Section 104.35** as to validation and administration, to ensure that they assess specific areas of educational need and are administered by trained and knowledgeable personnel. **34 C.F.R. Section 104.35.**
9. **Placement.** Placement decisions must be made by a group of persons, including persons knowledgeable about your child, drawing upon evaluation data from a variety of sources, which is documented and reviewed to consider the placement options and the legal requirements in conformity with the least restrictive environment and comparable facilities requirements. **34 C.F.R. Section 104.35.**
10. **Re-evaluations.** If eligible under Section 504, your child has a right to periodic re-evaluations prior to any significant change in placement. **34 C.F.R. Section 104.35.**
11. **Notice.** You have the right to receive notice as to yours and your child's rights as they pertain to the right to examine records, the right to an impartial hearing, the right to be represented by counsel, and the right to a review procedure concerning any decisions made on behalf of your child. **34 C.F.R. Section 104.36.**
12. **Non-academic Services.** Your child has the right to an equal opportunity to participate in extracurricular activities such as, counseling, athletics, recreation, and special interest groups or clubs. **34 C.F.R. Section 104.39.**
13. **Records.** You have the right to examine relevant educational records of your child. **34 C.F.R. Section 104.36.**
14. **Due Process Procedures.** You may have the right to an impartial hearing with respect to the District's action regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. **34 C.F.R. Section 104.36.**
15. **Periodic Review.** If eligible under Section 504, your child has a right to a periodic review of his or her Section 504 plan. Such meetings generally occur one time per year. However, if you believe that changes may be necessary to effectuate your child's educational program, you may request a Section 504 Plan meeting. The meeting shall be held within a reasonable period of time after receiving the parents' request.
16. **Pre-disciplinary Considerations.** If eligible under Section 504, your child has the right to a pre-disciplinary determination as to whether any misconduct was a manifestation of his or her disability.

If you disagree with the identification, evaluation, or placement of a student with disabilities under Section 504, you may initiate the following procedures. We encourage parents to utilize Levels One and Two in an effort to resolve issues informally, but you may go directly to Level Three.

LEVEL ONE: In writing, request a meeting with your child's Section 504 Team to discuss your concerns or in an attempt to resolve the disagreement. This meeting shall be held within a reasonable period of time after receiving the parents' request.

LEVEL TWO: If disagreement continues, request in writing a meeting with the District Section 504 Administrator, who is

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LEVEL THREE: If disagreement continues, or upon initial request, a parent/guardian may request in writing an impartial hearing. The steps involved in initiating and implementing a Section 504 impartial hearing are as follows:

- (a) A request in writing for a Section 504 impartial hearing must be filed in the office of the District's Section 504 Administrator. This request must generally be received by the District within thirty (30) calendar days from the parent or guardian's receipt of written notice of the decision leading to the request for the impartial hearing. This time frame may be extended for good cause or by mutual agreement. This time frame will also be renewed upon the parents' request for and participation in a scheduled Section 504 team meeting.
 - (b) The written request shall contain the following:
 - i) The specific nature of the decision(s) made by the District with which the person disagrees.
 - ii) The specific relief the person seeks.
 - iii) Any other information the person believes will assist in understanding the request.
 - (c) Within a reasonable period of time following receipt of a written request for hearing, the District Section 504 Administrator will select an impartial hearing officer.
 - (d) 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 or the SELPA of which the District is a member in any capacity other than that of a hearing officer.
 - iii) Not have any professional or personal involvement that would affect his or her impartiality or objectivity in the matter.
 - (e) Within sixty (60) days of receipt of parent's request, a hearing shall be conducted, and a written decision mailed to all parties.
 - (f) Any 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 are qualified disabled individuals within the meaning of Section 504.
 - ii) The right to present evidence, written and oral.
 - iii) The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.
 - iv) The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.
 - v) 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) calendar days prior to the hearing, except for good cause shown.
 - vi) Receipt of notice from the other party or parties at least ten (10) calendar days prior to the hearing that they will utilize the services of an attorney, except for good cause shown.
 - (g) The hearing officer shall render a decision pursuant to the legal standards set forth in 34 C.F.R., Part 104.
 - (h) Either party may seek review of the hearing officer's decision by timely filing an appeal with a court of competent jurisdiction.
 - (i) Reimbursement of attorneys' fees, expert witnesses' fees, and other costs is available only as authorized by law.
17. **District Level Complaints.** On Section 504 matters, including those related to your child's identification, evaluation, and placement, you may file a complaint with the District's Section 504 Administrator who will investigate the allegations in an effort to reach a prompt and equitable resolution.
18. **OCR Complaints.** You also have a right to file a complaint with the Office for Civil Rights. The address of the Regional Office that covers California is:

Office for Civil Rights, U.S. Department of Education
50 United Nations Plaza
San Francisco, California 94102
Main-Line 415-486-5555 TTY: (800) 877-8339
Fax: 415-486-5570
Email: ocr.sanfrancisco@ed.gov

19. **Suspension/Expulsion Discipline Considerations.**

- (a) No Section 504 student may be subject to a change of placement for disciplinary purposes for misconduct which is caused by or substantially related to his/her disability, or was the result of the District's failure to implement the child's Section 504 plan. A change of placement for disciplinary reasons may be the result of a series of removals (for disciplinary purposes) that constitute a pattern, as described in Paragraph (b), or an expulsion.
- (b) **Pattern of Removals.** When suspension results in a period of more than 10 consecutive school days, or a series of removals that constitute a pattern each of which is 10 or fewer days in duration, totaling more than 10 school days in a school year, or for behaviors which are substantially similar and are within close proximity to each other, the Section 504 Team must convene to determine whether the misconduct was caused by or substantially related to the student's disability, or it was the result of the District's failure to implement the Student's Section 504 Plan.
- (c) **Expulsion.** When expulsion is being considered, the Section 504 S Team must convene to determine whether the misconduct was caused by or substantially related to the student's disability, or it was the result of the District's failure to implement the student's Section 504 Plan. The parent or guardian will be given reasonable notice of the meeting.
- (d) **Evaluation.** Expulsion and/or a series of removals constitute a "significant change of placement" which warrants an evaluation. Initially, an evaluation shall be conducted to determine whether the behavior engaged in was a manifestation of the child's disability, as described in Paragraph's (a) through (c) above. If the Section 504 team determines that the behavior in question was a significant change of placement, the evaluation shall continue to determine whether the student's educational placement is appropriate and what, if any, modifications to the placement are necessary. (November 28, 2011 OCR Opinion, 112 LRP 7415.)
- (e) If the behavior in question is determined not to be a manifestation of the student's disability, the District will proceed in the same manner as it would with any non-disabled student.
- (f) If the parent/guardian disagrees with the Team's determination, he/she may appeal that determination under the procedures outlined in Step 14, above.
- (g) A parent or guardian's disagreement with the Team's determination or their request for an impartial hearing shall not preclude the District from proceeding with an expulsion or suspension of more than 10 days, if the Team has determined that the student's misconduct was not caused by or substantially related to the student's disability or the result of the District's failure to implement the student's Section 504 Plan.
- (h) **Disciplinary Consideration Exclusion.** *These procedural safeguards do not apply for action taken against a student who is currently using illegal drugs or alcohol, for the use or possession of illegal drugs or alcohol.* 20 U.S.C. Section 705 (20) (c) (iv).

REMINDER: The procedural safeguards outlined in this notice apply only to eligible handicapped students or their parents/guardians making claims under Section 504. Students or their parents/guardians making claims under the IDEA must follow IDEA procedures.