

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

**Instruction****IDENTIFICATION AND EDUCATION UNDER SECTION 504**

The County Superintendent designates the following position as the County Superintendent's 504 Coordinator to implement the requirements of Section 504 of the federal Rehabilitation Act of 1973: (34 CFR 104.7)

Deputy Superintendent, Instructional Division  
Office of Fresno County Superintendent of Schools  
1111 Van Ness Avenue  
Fresno, CA 93721  
559-265-3090

Definitions

For the purpose of implementing Section 504, the following terms and phrases shall have only the meanings specified below:

1. Free appropriate public education (FAPE) means the provision of regular or special education and related aids and services, including, but not limited to, transportation and residential placement, designed to meet the individual educational needs of a student with a disability as adequately as the needs of students without disabilities are met, at no 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)
2. Student with a disability means a student who has a physical or mental impairment that substantially limits one or more major life activities; a student who has a record of such an impairment; or a student who is regarded as having such an impairment as described in 28 CFR 35.108(f). (28 CFR 35.108).

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

An individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. (28 CFR 35.108)

3. A physical or mental impairment means: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

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 or mental illness, and specific learning disabilities. The law does not limit eligibility to specific diseases or categories of medical conditions. (28 CFR 35.108)

4. Substantially limits is to be construed broadly and should not require extensive analysis. The determination of substantial limitation must be made on a case-by-case basis by a group of knowledgeable persons who draw upon information from a variety of sources. An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment. 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 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, medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetic devices (including limbs), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, assistive technology, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy. (42 USC 12102; 28 CFR 35.108)

5. Major life activity includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, 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, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions, as well as the operation of an individual organ within a body system.

#### Referral and Identification

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 Chairperson.
2. Based upon a review of relevant and available information regarding the student, the County Superintendent shall determine whether an evaluation under Section 504 is appropriate. The County Superintendent shall evaluate any student who, because of disability, needs, or is believed to need, regular or special education or related aids and services.

**FRESNO COUNTY SUPERINTENDENT OF SCHOOLS**

3. If the request for evaluation is denied, the County Superintendent will inform the parent/guardian of the decision through written notice and provide him/her with a copy of the County Superintendent's notice of parent/guardian rights and procedural safeguards under Section 504.
4. If the County Superintendent determines an evaluation under Section 504 is appropriate, the County Superintendent 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 County Superintendent's notice of parent/guardian rights and procedural safeguards under Section 504. (34 CFR 104.35)

**Evaluation**

1. The evaluation of students suspected of having a disability under Section 504 will be carried out by qualified evaluators selected by the County Superintendent.
2. When selecting tests and other evaluation materials, the County Superintendent 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). (34 CFR 104.35)
3. Additionally, if the County Superintendent determines that a medical examination is necessary for a Section 504 determination, the County Superintendent is responsible for the costs of the examination.

**Section 504 Services Plan and Placement**

1. Once the evaluation is completed, the County Superintendent will schedule a Section 504 Service Plan meeting during which the team will consider the results of the evaluations and determine whether the student is eligible for a Section 504 Service Plan. Eligibility is determined through a two-part process. First, the student must have a physical or mental impairment that substantially limits one or more major life activities; then, as a result of the disability, the student must require the provision of regular or special education and related aids and services that is designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met. This Section 504 Service Plan team meeting shall be convened within a reasonable time period (not to exceed sixty (60) calendar days, not including breaks in the regular school year in excess of five (5) schooldays) of receiving the parent/guardian's consent to evaluate the student.

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

2. The Section 504 Service Plan team shall be made up of a group of individuals, including persons knowledgeable about the student, the meaning of the evaluation data being considered, and placement options. (34 CFR 104.35) 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, 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.
3. In interpreting evaluation data and making placement decisions, the Section 504 Service Plan team shall draw upon information from a variety of sources, including, but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior, observations, testing, reports, County Superintendent 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. (34 CFR 104.35)
4. 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.
5. If the Section 504 Service Plan team determines, through the evaluation process, that the student is 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.
6. 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 for the student.
7. The student's Section 504 Service Plan will describe the student's disability and regular or special education; related aids and services; accommodations and/or modifications that are needed in order to provide the student with a FAPE; and how the regular or special education, related aids and services, and accommodations and/or modifications will be provided to the student and by whom.

The student shall be placed in the regular educational environment, unless the County Superintendent 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)

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

8. A copy of the student's Section 504 Service Plan shall be maintained in the student's cumulative file. All school staff who work with the student shall be informed of the elements of the student's Section 504 Service Plan.
9. The parent/guardian must consent to the student's Section 504 Service Plan prior to the implementation of the Plan; however, the parent/guardian does 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 when a dispute arises.
10. The parent/guardian shall be given a copy of the final Section 504 Service Plan following the Section 504 Service Plan team meeting along with a copy of the County Superintendent's notice of parent/guardian rights and procedural safeguards pursuant to Section 504, including the right to an impartial hearing.

Review and Reevaluation

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 whether the needs of students with disabilities are being met as adequately as the needs of nondisabled students. The parent/guardian will receive reasonable written notice prior to any Section 504 Service Plan meeting.
2. Should a parent/guardian request a Section 504 meeting, the County Superintendent will convene one within a reasonable time period (not to exceed thirty (30) calendar days, not including breaks in the regular school year in excess of five (5) schooldays) after the County Superintendent's receipt of the request.
3. A re-evaluation of the student will occur at least every three (3) years, or before any significant change in placement, including exiting the student from a Section 504 Service Plan. (34 CFR 104.35) A re-evaluation need not be conducted if the parent/guardian revokes consent to the Section 504 Service Plan.
4. If the Section 504 Service Plan team so determines that the student no longer has a mental or physical impairment that substantially limits a major life activity, 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 interim alternative education setting to the same extent these options would be used for children without disabilities. School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than five (5) consecutive

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

schooldays. Additionally, removals of not more than ten (10) non-consecutive schooldays in the same school year for separate incidents of misconduct may be made.

After a student with a disability has been removed from his or her current placement for more than ten (10) total schooldays in the same school year, the student is entitled to a manifestation determination meeting within ten (10) schooldays of the County Superintendent's decision to change the student's placement. The student'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 two inquiries:

- 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 County Superintendent'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. If the student's behavior is determined to be a manifestation of his or her disability, the County Superintendent must conduct a functional behavioral assessment, and implement a behavioral intervention plan for the student. If a behavioral intervention plan has already been developed, the County Superintendent will review the plan and modify it as necessary to address the behavior in question.

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 County Superintendent may take disciplinary action against the student, such as expulsion, in the same manner as it would with a child without disabilities. Moreover, as appropriate, the student should receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. If the student already has a behavioral intervention plan, the County Superintendent should review the plan and modify it as necessary to address the behavior violation so that it does not recur.

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, regular or special education; related aids and services; and/or accommodations and/or modifications pursuant to Section 504. Notifications will include a statement of parent/guardian rights to:
  - a. Examine relevant records pursuant to County Superintendent policies;
  - b. Have an impartial hearing with opportunity for participation by the parent/guardian and his/her counsel; and,

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

- c. Seek review in federal court if the parent/guardian disagrees with the hearing decision. (34 CFR 104.36)
2. If a parent/guardian disagrees with the identification, evaluation or placement of a student with a disability under Section 504, he/she may initiate the following procedures by requesting them in writing to the County Superintendent's Section 504 Coordinator: Deputy Superintendent, Educational Services, Office of Fresno County Superintendent of Schools, 1111 Van Ness Avenue, Fresno, CA 93721. 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.

- a. **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) schooldays after receiving the parent/guardian's request. This time frame may be extended by mutual agreement of the parties.
- b. **LEVEL TWO:** If disagreement continues, the parent/guardian may request, in writing, a meeting with the County Superintendent's Section 504 Coordinator:

Deputy Superintendent, Educational Services  
Office of Fresno County Superintendent of Schools  
1111 Van Ness Avenue

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

In lieu of this Level Two meeting or following this Level Two meeting, at the request of either the County Superintendent 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 County Superintendent shall choose the neutral mediator; and, the cost of the mediation, if any, shall be paid by the County Superintendent.

- c. **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 County Superintendent to preside at a due process hearing to ensure that proper procedures are followed and to ensure 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 County Superintendent in any capacity at the time of the due process hearing, nor shall the hearing officer have any

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

professional or personal involvement that would affect his or her objectivity or impartiality. Impartiality shall be determined by the County Superintendent.

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

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

Deputy Superintendent, Educational Services  
Office of Fresno County Superintendent of Schools  
1111 Van Ness Avenue  
Fresno, CA 93721

1. A request for a Section 504 due process hearing must be in writing and received by the County Superintendent within ninety (90) calendar 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 County Superintendent may schedule a Section 504 Service Plan team meeting, and make relevant personnel available within a reasonable time period (not to exceed thirty (30) calendar days, not including breaks in the regular school year in excess of five (5) schooldays). A parent/guardian or student making an oral request may be assisted by the County Superintendent in making a written request.
2. A request for a Section 504 due process hearing shall contain the following:
  - a. A statement requesting a Section 504 due process hearing.
  - b. The specific nature of the decision(s) made by the County Superintendent or the Section 504 Service Plan team with which the parent/guardian disagrees.
  - c. The specific relief the parent/guardian seeks.
  - d. Any other information the parent/guardian believes will assist in understanding the request.
- iii. Within a reasonable time following receipt of a written request for hearing, the County Superintendent Section 504 Coordinator will select an impartial hearing officer.

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

- iv. 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 County Superintendent's notice of parent/guardian rights and procedural safeguards pursuant to Section 504.
- v. 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.
- vi. A party to the hearing shall be afforded the following rights:
  - 1. The right to be accompanied and advised by counsel and/or by individuals with special knowledge or training relating to the problems of students who have a disability within the meaning of Section 504.
  - 2. 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 the individual(s) listed in Paragraph 6(a) above and the names of those individual(s).
  - 3. The right to a copy of all evidence to be used by the other party at the due process hearing at least five (5) calendar days prior to the due process hearing. The hearing officer may prohibit the introduction of evidence at the hearing that has not been disclosed to the other party at least five (5) calendar days prior to hearing except for good cause shown.
  - 4. The right to present evidence, written and oral, at the due process hearing.
  - 5. The right to produce outside expert testimony.
  - 6. The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.
  - 7. The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.
- vii. In cases where foreign language interpretation is necessary, an interpreter shall be provided by the County Superintendent. This interpreter may be a current County Superintendent employee.

## FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

- viii. The parent/guardian involved in the hearing will be given the right to:
1. Have the student present at the hearing;
  2. Open the hearing to the public, but not the press, should they so choose; and,
  3. Have an opportunity to participate in the impartial hearing.
- ix. 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.
- x. Either party may seek review of the hearing officer's decision by timely filing with a federal court of competent jurisdiction.
- xi. The cost of the hearing officer shall be borne by the County Superintendent. Reimbursement of attorneys' fees, expert witness fees, and other costs is available only as authorized by law.
- xii. 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 County Superintendent shall be provide said translation within a reasonable time period of the receipt of the parent/guardian's request for translation of written correspondence.

Adopted: 06/15/1995

Amended: 10/20/2011, 11/19/2020, 12/12/2023

6164.6, 12/2016; Doc# 123572-2