

REGULATION 6164.6: Identification and Education Under Section 504

Comparison Chart

Section: Instruction

SUMMARY OF UPDATE

Summary of Update: Regulation updated to reflect NEW FEDERAL REGULATIONS (81 Fed. Reg. 53203) which primarily revise definitions used in the Americans with Disabilities Act.

CSBA NOTE: Section 504 of the federal Rehabilitation Act of 1973 (29 USC 794) prohibits discrimination on the basis of disability. The following optional administrative regulation focuses on district procedures for identifying and evaluating students who are eligible to receive a free appropriate public education (FAPE) under Section 504 and is consistent with guidance from 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.

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. The district should fill in the blanks below to specify the position title and contact information of the designated employee(s).

PARA	Section	Sub-Section	November 18, 2004 CURRENT VERSION	December 2016 REVISED VERSION	CSBA MODIFICATIONS and/or NOTES
1			The Superintendent designates the following position as the district’s 504 Coordinator to implement the requirements of Section 504 of the federal Rehabilitation Act of 1973:	No change	
2			Senior Director of Student Services Silver Valley Unified School District P.O. Box 847, Yermo, CA 92398 760-254-2916 ext. 1157	No change	
			Definitions	No change	
1			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:	For the purpose of implementing Section 504, the following terms and phrases shall have only the meanings specified below:	CSBA NOTE: The following definitions are consistent with the Americans with Disabilities Act (ADA) Amendments Act of 2008 (42 USC 12101-12213), and its implementing

					regulations (28 CFR 35.101-35.190, as amended by 81 Fed. Reg. 53203).
2			Free and 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 imposed on nondisabled students.	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 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.	
3			Student with a disability means a student who has a physical or mental impairment which substantially limits one or more major life activities.	No change	CSBA NOTE: Pursuant to 28 CFR 35.108, a student is considered to have a disability 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. Accordingly, a student may have a disability and technically meet eligibility requirements under Section 504, but not actually need any services. A Dear Colleague Letter issued by OCR in July 2016 clarifies that a district is not required to provide additional services to a student with a disability if the student does not need any special education or related service as a result of the disability. However, Section 504 still 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, even if currently in remission, from trying out for the basketball team based on his/her history of cancer.

					As added by 81 Fed. Reg. 53203, 28 CFR 35.108 expands and clarifies the definition of "disability" and its associated terms. In general, the term "disability" must be interpreted broadly, in favor of providing "expansive coverage" to the maximum extent permitted by the ADA.
4		Physical 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.	Physical impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, immune, hemic, lymphatic, skin, and endocrine.		CSBA NOTE: As added by 81 Fed. Reg. 53203, 28 CFR 35.108 defines "physical and mental impairment" and provides a non-exhaustive list of conditions that qualify as physical and mental impairments, updated to include dyslexia, attention deficit hyperactivity disorder (ADHD), and disorders and conditions affecting the immune and circulatory systems. In the event that these conditions fall within the disabilities categories specified in the Individuals with Disabilities Education Act (IDEA), then the student may need to be considered for services under that law; see BP/AR 6164.4 - Identification and Evaluation of Individuals for Special Education.
5		Mental impairment means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.	Mental impairment means any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.		
6		Substantially limits major life activities means limiting a person's ability to perform functions such as caring or himself/herself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major life activities also include major bodily functions such as functions of the immune system, normal cell growth, and	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		CSBA NOTE: 28 CFR 35.108, as added by 81 Fed. Reg. 53203, requires the term "substantially limits" to be construed broadly. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. Such comparison usually does not require scientific, medical, or statistical evidence. An impairment need not prevent or significantly or severely restrict the

		digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Substantially limits shall be determined without regard to the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses. Mitigating measures include, but are not limited to, medications, prosthetic devices, assistive devices, learned behavioral, or adaptive neurological modifications which an individual may use to eliminate or reduce the effects of an impairment.	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. 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.	performance of a major life activity in order to qualify as substantially limiting. 28 CFR 35.108 also provides that (1) in determining whether or not an impairment substantially limits a major life activity, the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses, may not be considered; (2) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and (3) an impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment. Additionally, 28 CFR 35.108 expands the definition of "major life activities" to include the operation of specific major bodily functions.
		<u>Referral, Identification, and Evaluation</u>	No change	
1		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:	No change	CSBA NOTE: 34 CFR 104.35 requires the district to conduct an evaluation of any student who needs or is believed to need special education or related services under Section 504. However, the law does not require a specific procedure for referral of a student for the evaluation. Items #1-2 below provide such a procedure and should be modified to reflect district practice.
	1	A parent/guardian, teacher, school employee, student success team, or community agency may refer a student to the principal or 504 Coordinator for identification as a student with a disability under Section 504.	A parent/guardian, teacher, other school employee, student success team, or community agency may refer a student to the principal or 504 Coordinator for identification	

			as a student with a disability under Section 504.	
	2	Upon receipt of any such referral, the principal, 504 Coordinator, or other qualified individual with expertise in the area of the student's suspected disability shall 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 those in 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.	No change	
	2	If it is determined that an evaluation is unnecessary, the principal or 504 Coordinator shall inform the parents/guardians in writing of this decision and of the procedural safeguards available, as described in the "Procedural Safeguards" section below.	No change	
	3	If it is determined that the 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 his/her initial placement.	If the 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 his/her initial placement.	
	3	Prior to conducting an initial evaluation of a student for eligibility under Section 504, the district shall obtain written parent/guardian consent.	No change	CSBA NOTE: OCR has interpreted Section 504 to require districts to obtain parent/guardian permission for initial evaluations. Although the law is silent on the form of parent/guardian consent, it is recommended that the district obtain such consent in writing. The following paragraph should be modified to reflect district practice.

	3	The district's evaluation procedures shall ensure that the tests and other evaluation materials:	No change	CSBA NOTE: 34 CFR 104.35 requires that the district's evaluation and placement procedures include the elements specified in items #a-c below.
	a	Have been validated and are administered by trained personnel in conformance with the instruction provided by the test publishers	No change	
	b	Are tailored to assess specific areas of educational need and are not merely designed to provide a single general intelligence quotient	No change	
	c	Reflect the student's aptitude or achievement or whatever else the tests purport to measure rather than his/her impaired sensory, manual, or speaking skills, except where those skills are the factors that the tests purport to measure	No change	
		<u>Section 504 Services Plan and Placement</u>	No change	
			Services and placement decisions for students with disabilities shall be determined as follows:	Paragraph added
	1	A multi-disciplinary 504 team shall be convened to review the evaluation data in order to make placement decisions.	A multidisciplinary 504 team shall be convened to review the evaluation data in order to make placement decisions.	
	1	The 504 team shall consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.	The 504 team shall consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.	
	1	In interpreting evaluation data and making placement decision, 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	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.	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.	
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.	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.	CSBA NOTE: While there is no specific requirement that a Section 504 services plan (sometimes called an accommodation plan) be in writing, it is strongly recommended that the district develop a written plan for each student detailing the regular and/or special education and related services that the student will be provided in order to ensure that the student is receiving FAPE in accordance with 34 CFR 104.33.
2		The parents/guardians shall be invited to participate in the meeting and shall be given an opportunity to examine all relevant records.	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 determination 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.	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 person with a disability under Section 504 and shall state the basis for the determination 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	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.	be educated with those who are not disabled to the maximum extent appropriate to his/her individual needs.	
5		The district shall complete the identification, evaluation and placement process within a reasonable time frame.	The district shall complete the identification, evaluation, and placement process within a reasonable time frame. The district shall adhere to this time frame regardless of any extended school breaks or times that school is otherwise not in session.	CSBA NOTE: The law does not specify a time frame for completion of the evaluation and placement process, but OCR requires completion within "a reasonable amount of time." Generally, compliance with the timelines in the IDEA will be considered "reasonable" and thus in compliance with Section 504. However, Section 504 does not provide for an automatic suspension of the timelines during extended breaks or when schools are not in session, as is permitted for the IDEA-associated timelines pursuant to Education Code 56043 and 56321. For timelines under the IDEA, see AR 6164.4 - Identification and Evaluation of Individuals for Special Education.
6		A copy of the student's Section 504 services plan shall be kept in his/her student record. The student's teacher(s) and any other staff who provide services to the student shall be informed of the plan's requirements.	A copy of the student's Section 504 services plan shall be kept in his/her student record. The student's teacher(s) and any other staff who provide services to the student shall be informed of the plan's requirements.	
7		The student's plan shall include a schedule for periodic review of the student's needs and indicate that this review may occur sooner at the request of the parent/guardian or school staff.	Delete	
1		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.	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.	

		<u>Review and Reevaluation</u>	No change	
1		The 504 team shall monitor the progress of the student and, at least annually, shall review 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 non-disabled students. In addition, each student with a disability under Section 504 shall be reevaluated at least once every three years.	The 504 team shall monitor the progress of the student and, at least annually, shall review 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 students without disabilities are met. In addition, each student with a disability under Section 504 shall be reevaluated at least once every three years.	CSBA NOTE: 34 CFR 104.35 requires the district to establish procedures for the periodic reevaluation of a student who has been identified as needing services under Section 504. A reevaluation procedure consistent with the IDEA is one means of meeting this requirement. The following section should be modified to reflect district practice.
2		A reevaluation of the student's needs shall be conducted before any subsequent significant change in placement.	A reevaluation of the student's needs shall be conducted before any subsequent significant change in placement.	CSBA 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.
		<u>Procedural Safeguards</u>	No change	
1		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 shall also 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.	No change	CSBA NOTE: 34 CFR 104.36 requires districts to adopt a system of procedural safeguards which must include the rights of parents/guardians to receive notice, examine relevant records, have an impartial hearing in which they would have an opportunity to participate and be represented by legal counsel, and a process for review of the hearing and decision as detailed in the following section.

				Timelines suggested in this section should be revised to reflect district practice; however, OCR requires that the due process hearing procedures be completed within a "reasonably prompt time frame."
2		If a parent/guardian disagrees with any district action or decision regarding the identification, evaluation or educational placement of his/her child under Section 504, he/she may request a Section 504 due process hearing within 30 days of that action or decision.	No change	CSBA NOTE: 34 CFR 104.36 requires that the district's procedural safeguards for Section 504 include an impartial hearing to resolve disagreements about the provision of FAPE. This Section 504 due process hearing is separate from the due process hearing procedures under the IDEA and from the district's uniform complaint procedures, which are used to resolve complaints regarding discriminatory treatment (e.g., harassment or accessibility issues). See BP/AR 1312.3 - Uniform Complaint Procedures.
3		Prior to requesting a Section 504 due process hearing, the parent/guardian may, at his/her discretion, but within 30 days of the district's action or decision, request an administrative review of the action or decision. The Coordinator shall designate an appropriate administrator to meet with the parent/guardian to attempt to resolve the issue and the administrative review shall be held within 14 days of receiving the parent/guardian's request. If the parent/guardian is not satisfied with the resolution of the issue, he/she may request a Section 504 due process hearing.	Prior to requesting a Section 504 due process hearing, the parent/guardian may, at his/her discretion, but within 30 days of the district's action or decision, request an administrative review of the action or decision. The Coordinator shall designate an appropriate administrator to meet with the parent/guardian to attempt to resolve the issue and the administrative review shall be held within 14 days of receiving the parent/guardian's request. If the parent/guardian is not satisfied with the resolution of the issue, or if the parent/guardian did not request an administrative review, he/she may request a Section 504 due process hearing.	CSBA NOTE: According to OCR, the parent/guardian cannot be required to participate in an administrative review prior to exercising his/her right to a Section 504 due process hearing. Districts with questions should consult legal counsel, as appropriate.
4		Section 504 due process hearing shall be conducted in accordance with the following procedures:	No change	

1		The parent/guardian shall submit a written request to the Coordinator within 30 days of receiving the district's decision or, if any administrative review is held, within 14 days of the completion of the review. The request for the due process hearing shall include:	No change	
	a	The specific nature of the decision with which he/she disagrees	No change	
	b	The specific relief he/she seeks	No change	
	c	Any other information he/she believes is pertinent to resolving the disagreement	No change	
2		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 timeline may be extended for good cause or by mutual agreement of the parties.	No change	
3		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.	No change	
4		The parties to the hearing shall be afforded the right to:	No change	
	a	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	Be accompanied and advised by legal counsel and by individuals with special knowledge or training related to the problems of students with disabilities under Section 504	
	b	Present written and oral evidence	No change	
	c	Question and cross-examine witnesses	No change	

		d	Receive written findings by the hearing officer stating the decision and explaining the reasons for the decision	No change	
5			If desired, either party may seek a review of the hearing officer's decision by a federal court of competent jurisdiction.	No change	
			<u>Notifications</u>	No change	
1			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.	No change	