

SECTION 504 OF THE REHABILITATION ACT OF 1973

The following regulations and procedure are intended to implement the legal requirements of the Mendocino County Office of Education (MCOE) under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Such regulations and procedures shall be applied to those students who are disabled as defined under Section 504 but do not qualify for services under the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.).

I. Definitions

Pursuant to federal law an individual is entitled to the provisions of Section 504 if he/she is an otherwise qualified disabled person.

“Disabled person” means any person who 1) has a physical or mental impairment, which substantially limits one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment.

“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

“Has a record of such an impairment” means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” means a) has a physical or mental impairment that does not substantially limit major life activities but that is treated by the County Office as constituting such a limitation; b) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or c) has none of the impairments defined above but is treated by the County Office as having such an impairment.

II. Identification and Referral Procedures**A. Team**

A student who qualifies as a “disabled person,” as that term is defined at 34 C.F.R. 104.3, shall be referred by a parent, teacher, other certificated school employee, Student Study Team, Special Education Individualized Education Plan (IEP) team or community agency to the 504 Team for identification and evaluation of the student’s individual education needs.

The referral shall be made in writing and given to the site principal who shall be responsible for convening the Team.

The Team will be composed of persons knowledgeable about the student, the student’s individual needs, the meaning of evaluation data, and the placement options. The site principal will monitor the composition of the Team to ensure that qualified personnel participate in the evaluation process.

The Team will evaluate the nature of the student’s disability in light of the provisions of 34 C.F.R. Sec. 104.3 and the criteria of 34 C.F.R. Sec. 104.35. No final determination will be made by the Team without first inviting the parent/guardian of the student to participate in a meeting concerning the recommendation that the student be identified as a disabled individual within the meaning of Section 504 and who may require special services, both educational and of a related service nature designed to meet the individual needs of the student. The purpose is to provide the eligible student with a free, appropriate public education.

The Team is recognized as a collaborative team of certificated staff which has purposes other than identification of qualified disabled students under Section 504. However, this group of individuals may convene as the Team provided such notice has been provided to the parent/guardian.

B. Evaluation and Service Plan Procedures

The 504 Team shall have the following responsibilities:

1. The Team shall consider all relevant information and assessments to determine eligibility and program need. Assessments necessary to understand educational needs of the student shall be conducted by the professional staff of the county office pursuant to 34 C.F.R. Section 104.35(b).
2. The Team shall identify students who are disabled as defined under Section 504 and the regulations for implementing it. (Students may be so identified even though they are not eligible for services under federal and state special education laws and do not require special education services pursuant to the Education of the Handicapped Act).
3. When the Team determines eligibility, the Team will develop a written plan describing the disability and the educational program, placement or related services as appropriate. The plan will specify how the regular or modified education and related aids and services will be provided, and by whom. The Team may also determine that no special education or related services are necessary for the student to have a free, appropriate public education.
4. The Team may also refer the student to an IEP team for determination of eligibility under P.L. 94-142. Such special education service will be determined and provided in accordance with an IEP prepared under P.L. 94-142. In the event of such referral, the Team may develop an interim program/placement for the student.
5. The designated MCOE representative shall write a brief report of the Team meeting and complete the necessary forms.

C. Team Guidelines

1. It is anticipated that a disabled student under Section who requires an educational program or services other than, or in addition to, that provided to nondisabled students shall be placed in the regular educational environment with the use of the supplementary aids and services. However, if the 504 Team determines that the education of the student in the regular educational environment with the use of supplementary aids and services does not provide a free, appropriate public education for the student, changes in placement may be made. In infrequent instances, a disabled student who does not qualify for special education under the criteria of P.L. 94-142 but is qualified under Section 504 may require special education or related aids and services outside of the regular classroom in order to receive an appropriate education. All placements shall be in the least restrictive environment appropriate.
2. The parent/guardian of the student shall be provided an opportunity to participate in the Team meeting to discuss the tentative conclusion of the Team. The parent/guardian will be given the opportunity to examine relevant records.
3. The decision of the Team shall be in writing with a copy provided to the parent/guardian. If the parent does not agree with the Team recommendation, the parent may access the due process provisions and have a hearing on the disputed issues.
4. If a plan for providing educational and/or related services is developed, all appropriate school personnel who work with the student shall be informed of the plan.

D. Team Review

1. The 504 Team will monitor the effectiveness of the plan annually to determine whether adjustments in the plan are necessary, and to assure that the agreed upon services are being provided as needed to ensure that the disabled student's needs are met as adequately as the needs of nondisabled students.

2. Prior to any subsequent significant change in placement, an evaluation of the student's needs will be conducted as necessary, and the Team shall set forth in writing the changes as appropriate. When change is proposed as the result of recommended disciplinary action, the Team shall meet to determine the following:
 - a. Relationship of behavior (subject of discipline) and disability, and
 - b. Appropriateness of current program and placement.

III. Assessments

MCOE will be responsible for conducting assessments necessary to understand the educational needs of students determined to be eligible or those referred for eligibility. To this end assessments conducted in relation to a referral to Special Education services shall be used. In addition, informal assessments by certificated staff and observations may also be used and relied upon.

Informal observation and assessment by certificated staff shall not require written consent of the parent/guardian. Notice to the parent/guardian shall be provided in advance of all formal testing to be conducted by the County Office. Consent by the parent/guardian shall be required in advance of any such assessment. If the parent does not consent to the testing the parent/guardian shall be advised of his/her due process rights.

Failure of the parent/guardian to consent to assessment or to access his/her due process rights shall waive any claim he/she may have for the provision of Section 504 identification and services for the named student.

The County Superintendent or designee or the Team shall present the proposed assessment plan to the parent in writing for his/her consent.

IV. Due Process

Upon referral or at the meeting of the 504 Team, the parent/guardian shall be advised of the procedural safeguards. Such notice shall be provided in writing and any questions may be addressed either by the Team, the Section 504 Compliance Officer or the site administrator.

The procedural safeguards shall include the right to an impartial hearing on the following issues:

1. Disagreement about eligibility,
2. Disagreement about assessment,
3. Disagreement about program and/or placement, including related services,
4. Disagreement with the Team decision on discipline (relation of behavior/handicap and/or appropriateness of placement).

As part of these procedural safeguards, parents shall have the following rights:

1. notice of hearing date and time,
2. the right to be represented or accompanied and advised by an individual with special knowledge or training,
3. the right at hearing to present evidence, confront, cross examine and compel attendance of school employees as witnesses, the right of a record and to a written determination including findings of fact and conclusions of law.

In addition to the procedures set forth above, and at the sole discretion of the County Office, an offer for mediation may be made. As part of an offer for mediation, a timeline will be set for resolution of the matter. If the timeline is not met or mediation does not resolve the issue, a hearing will be scheduled and held.

The cost of the mediator, if any, and the hearing officer and related costs shall be paid for by the County Office. Each party shall pay for their own costs related to representation and presentation of their case.

When a parent/guardian decides to access his/her procedural rights under this policy, he/she must file a written request for due process within 14 calendar days of the date of the action or the date of the written notice. A form shall be available from the County Office. The notice must be received within the 14-calendar day period, either by the site principal or the Superintendent's Office.

The County Superintendent or the Section 504 Compliance Officer shall then be responsible for arranging for the hearing. The hearing shall be held within 20 calendar days after a hearing officer has been retained. The County Office shall be responsible for notifying the parent/guardian of the date, time and location of the hearing. Both the County Office and the parent/guardian are advised to provide written notice of witnesses to be called and to provide copies of documentary evidence to the hearing officer and the other side at least 5 calendar days in advance of the hearing.

Continuances for either party may be granted by the hearing officer for good cause.

A record of the hearing shall be maintained. Either party requesting a transcript of the hearing shall pay the cost of such transcription.

A written decision by the hearing officer shall be filed, including findings of fact and conclusions of law, within 15 calendar days after the matter has been submitted. In the event the hearing officer requires a transcription of the hearing, the matter shall not be considered submitted until the transcript is received by the hearing officer. Issues to be determined by the hearing officer shall be limited to those listed above. The hearing officer shall have no jurisdiction with regard to issues of compliance or attorney fees.

Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence which reasonable persons are accustomed to rely upon in the conduct of serious affairs.

V. Discipline of Disabled Students

The provisions of County Office policy which relate to discipline of students with exceptional needs shall apply to students determined to be disabled under Section 504, except that there shall be no requirement for a pre-expulsion assessment.

In general, upon a recommendation for expulsion of a qualified disabled student under Section 504, the 504 Team shall be convened to determine if the conduct is related to the student's disabling condition and if the student is appropriately placed. If the behavior is related to the disability or if the placement is determined not to be appropriate, the expulsion shall not proceed. If the parent disagrees with the determination of the Team, a hearing request may be made as specified above within 5 calendar days of the Team meeting/decision. All other provisions relating to due process and applicable timelines shall be followed as set forth above in Section IV.

In the event of a hearing request by the parent/guardian, the expulsion may proceed after a determination by the Team but prior to the determination of the hearing officer. Expulsions shall be processed in accordance with the Education Code.

Suspensions of qualified disabled students shall not exceed beyond 10 consecutive school days and shall be processed in accordance with relevant provisions of the Education Code.