

SECTION

504

PLANS

SECTION 504 INTRODUCTION



The purpose of these Section 504 Guidelines is to serve as a resource on the subject of Section 504 of the Americans with Disabilities Act of 1973. The evolving legislation is complex and subtle in many of its requirements. But, once a basic understanding of the mandated components is explained, district and site personnel should have little difficulty in establishing meaningful practices.

Every school district in the United States is mandated to ensure that all students who have disabilities are identified, evaluated, and provided with appropriate services. Many of these students may not qualify for special education services under state or federal law, but they do qualify for services under Section 504 in regular education programs.

Section 504 of the Americans with Disabilities Act has been in place since 1973. It was interpreted for many years to be important in the areas of employment and facilities development. However, in recent years the Office of Civil Rights (OCR) has become very active in the field of educational programs as they respond to the rights of the disabled. They are now investigating the response of regular education to student who has significant disabilities and the accommodations provided to these students.

ACKNOWLEDGEMENTS



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- LRP Publications, "What Do I Do When.... The Answer Book on Section 504,"
Susan Gorn, 1998
- Section 504, the ADA, and Public Schools: A Handbook for Educators,
Tom E. C. Smith, Ed. D., 2001
- Understanding & Implementing Section 504, Jan Tomsy, Sharehold,
Lozano Smith Attorneys at Law, 2001
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**BOARD POLICY/
ADMINISTRATIVE
REGULATIONS**

IDENTIFICATION AND EDUCATION UNDER SECTION 504

The Governing Board recognizes the need to identify and evaluate residents with handicaps in order to provide them with appropriate educational opportunities. Such individuals may require reasonable accommodation under Section 504 of the federal Rehabilitation Act of 1973.

The Superintendent or designee shall establish procedures whereby parents/guardians or staff may request screening and evaluation for any student they believe to have a handicap that significantly impairs his/her learning.

A school site committee of knowledgeable professionals shall meet to evaluate the student's eligibility under Section 504, and the student's parent/guardian shall be invited to participate on this committee. The evaluation may include, but is not limited to, classroom and playground observation, performance-based testing, academic assessment information, and data offered by the parent/guardian.

If the student is found to have a defined handicap that significantly interferes with his/her learning, he/she shall be eligible for reasonable accommodation under Section 504, and the school site committee shall develop a written accommodation plan for the student. This plan shall specify the accommodations which will be made in the regular education program in order to ensure the student a free appropriate education; it shall also 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.

The school site committee shall provide the parent/guardian with a written copy of the accommodation plan. If the committee determines that no accommodation is needed, the parent/guardian shall receive a record of the proceedings stating the basis for this decision. Parents/guardians shall also receive a copy of the procedural safeguards guaranteed under the Code of Federal Regulations, Title 34, Part 104.36.

(cf. [0410](#) - Nondiscrimination in District Programs and Activities)

Legal Reference: (See next page)

IDENTIFICATION AND EDUCATION UNDER SECTION 504
(continued)

Legal Reference:

UNITED STATES CODE, TITLE 20

1232g *Family Educational Rights and Privacy Act of 1974*

1400-1482 *Individuals with Disabilities Education Act*

UNITED STATES CODE, TITLE 29

701-795a *Rehabilitation Act*

794 *Rehabilitation Act of 1973, Section 504*

CODE OF FEDERAL REGULATIONS, TITLE 34

104.1-104.61 *Nondiscrimination on the basis of handicap, especially*

104.1 *Purpose to effectuate Section 504 of the Rehabilitation Act of 1973*

104.3 *Definitions*

104.35 *Evaluation and placement*

104.36 *Procedural safeguards*

Southeastern Community College v. Davis (1970) 442 U.S. 397; 99 Supreme Court 2361

Policy

FONTANA UNIFIED SCHOOL DISTRICT

Adopted: October 6, 1993

Fontana, California

IDENTIFICATION AND EDUCATION UNDER SECTION 504

Parents/guardians shall be notified in writing of all district decisions regarding the identification, evaluation or reasonable accommodation of students with disabilities under Section 504. Notifications shall include a statement of their right:

1. To examine relevant records,
2. To have an impartial hearing with an opportunity for participation by the parent/guardian and their counsel, and
3. To have a review procedure. (Code of Federal Regulations, Title 34, Part 104.36)

The Superintendent or designee shall maintain a list of hearing officers who are qualified and willing to conduct Section 504 hearings. Such officers shall not be employed by or under contract with the district in any capacity other than that of hearing officer.

If a parent/guardian disagrees with the identification, evaluation or reasonable accommodation of a student with disabilities under Section 504, he/she may initiate the following procedures within 30 days of receiving the student's accommodation plan:

1. In writing, request a meeting with the school principal and school site committee in an attempt to resolve the disagreement. This meeting shall be held within 14 days of receiving the parent/guardian's request.
2. If disagreement continues, request in writing a meeting with the Superintendent or designee. This meeting shall be held within 14 days of receiving the parent/guardian's request.
3. If disagreement continues, request in writing a Section 504 hearing. The request shall include:
 - a. The specific nature of the decision with which the parent/guardian disagrees;
 - b. The specific relief the parent/guardian seeks; and
 - c. Any other information the parent/guardian believes pertinent.

IDENTIFICATION AND EDUCATION UNDER SECTION 504 (Continued)

A Section 504 hearing shall be held within 30 days of receiving the parent/guardian's request. The parent/guardian and counsel, if desired, shall participate and present issues, evidence and argument at the hearing. The Superintendent or designee shall represent the district at this hearing.

Within ten days of the hearing, the hearing officer shall notify the parent/guardian of his/her decision. If desired, either party may seek a review of this decision by a federal court of competent jurisdiction.

**ADMINISTRATIVE REGULATIONS
FOR DISABLED STUDENTS
UNDER SECTION 504 REHABILITATION ACT OF 1973**

Purpose of Section 504	The purpose of the Act and these procedures is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non disabled students.
Eligibility	An eligible student is a student who (a) has, (b) has a record of having, or (c) is regarded as having a physical or mental impairment which substantially limits a major life activity such as learning, self-care, walking, seeing, hearing, speaking, breathing, working, and performing manual tasks.
Educational Need	A substantial limitation on learning must be demonstrated by an educational need, i.e., a serious academic deficit and/or serious behavior problems resulting from the student's disability and not from other causes.
Definition of Impairment	"Physical or mental impairment" means (a) 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, genitor-urinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder; such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
Age	Eligible disabled students between the ages of 3 and 21 who have not graduated are covered by these procedures.
Dual Eligibility	Many disabled students will be eligible for educational services under both Section 504 and the Individuals with Disabilities Education Act (IDEA). The procedures set out herein applicable only to Section 504. Parents and/or students seeking services under the IDEA are referred to the district's Special Education Division and its designated contact person.
Placement of Section 504-ONLY Students	Disabled students who do not meet the specific criteria for eligibility under the IDEA may not be placed in special education programs. Students who meet the eligibility requirements for Section 504 only may be placed in, and receive services through, regular education programs on the same basis as non disabled students.

ADMINISTRATIVE REGULATIONS FOR DISABLED STUDENTS UNDER SECTION 504 REHABILITATION ACT OF 1973

Section 504	The District has designated Section 504 Coordinator. This person may be contacted at 9680 Citrus Avenue, Fontana, CA, (909) 357-5000. The campus 504 designee for each individual campus is the site Principal
Referrals	Parents or guardians shall make a written referral to the Section 504 Coordinator, or the campus designee, who will present their requests for educational services to a Section 504 Student Study Team for determination.
Parent Rights	The Section 504 Coordinator of campus designee will notify the parents of their rights under Section 504.
Section 504 Committee	The Section 504 Student Intervention Team shall be composed of at least two persons, including person(s) knowledgeable about the student, the meaning of the evaluation data, the placement options, the legal requirements to place a disabled child in the least restrictive environment, and the legal obligation to provide comparable facilities to disabled students.
Notice of Committee	Prior to taking any action regarding the Section 504 identification, evaluation, or placement of a student believed to be in need of special instruction or related services, the school district will provide the parents or guardian with prior written notice.
Pre-Placement Evaluation	<p>An evaluation shall be conducted before any action is taken to place a disabled student or make a significant change in placement in an instructional program.</p> <p>Evaluation data may include, but is not limited to, formal and informal test instruments, aptitude and achievement tests, teacher recommendations, physical or medical reports, student grades, progress reports, parent observations, and anecdotal reports.</p>
Adaptive Behavior	The evaluation shall include a consideration of the student's adaptive behavior, defined as the effectiveness with which the student meets the standards of personal independence and social responsibility expected of his or her age and cultural group.
IQ Score	Evaluation shall be tailored to assess specific areas of educational need. A single general IQ score does not constitute an evaluation.

ADMINISTRATIVE REGULATIONS FOR DISABLED STUDENTS UNDER SECTION 504 REHABILITATION ACT OF 1973

Test Validation

Formal test instruments shall be validated for the specific purpose for which they are used. They shall be administered by trained personnel in conformance with the instructions provided by their producer.

Re-Evaluation

Eligible disabled students shall be reevaluated every three years (or more frequently if conditions warrant).

Discipline/ Expulsion

Before an expulsion or other exclusion that constitutes a significant change in placement, (exceeds ten days) the Section 504 Student Intervention Team must conduct a “manifestation determination” to determine whether the student’s conduct was caused by his/her disabling condition. Such a determination should be based on current evaluation data. Section 504 does not contain a “stay put” provision. Therefore, if a dispute arises over the disciplining of a student, the District may place the student where the District believes is appropriate or expel the student pending the outcome of the due process hearing.

If it is determined by the Section 504 Student Intervention Team that the misconduct is not caused by the student’s disabling condition, the student may be excluded from school in the same manner as similarly situated non disabled students are excluded.

If it is determined by the Section 504 Student Intervention Team that the misconduct is caused by the student’s disabling condition, the student may not be expelled. The Section 504 Student Intervention Team must then determine whether the student’s current educational placement is appropriate.

Pursuant to “Appendix A” of 34 CFR Part 104, students who are substance abusers:

- (1) May be held to the same standard of performance and behavior that non disabled students are held to; and
- (2) May not be excluded from school if they can successfully participate in the educational program, comply with the rules, and their behavior does not impede the performance of other students.

Rules concerning use or possession of drugs and alcohol will be applied to substance abusers and will be enforced evenly with respect to all students, both disabled and non disabled.

ADMINISTRATIVE REGULATIONS FOR DISABLED STUDENTS UNDER SECTION 504 REHABILITATION ACT OF 1973

Due Process Rights

In the event of a disagreement between the parent/guardian and the School District in regard to the identification, evaluation, or educational placement of a disabled student, the parents or guardian have the right to an impartial hearing, with an opportunity to participate and be represented by an attorney.

Student Records

The parents or guardian shall have the opportunity to examine relevant education records upon reasonable notice during school hours or at other mutually convenient times by prior arrangement.

Grievance Process

Parents or guardians who wish to challenge a decision of the Section 504 Student Intervention Team shall file a written Parent's Notice of Appeal with the Section 504 Coordinator within 10 calendar days of the date of the Notice of the Section 504 Student Intervention Team.

Within 10 calendar days of the date of the Parents' Notice of Appeal, the District will schedule a hearing before an impartial hearing officer and provide the parents or guardian with a written Notice of Hearing that sets out the date, time and place for hearing and advises them of their right to participate and be represented by an attorney. Upon good cause shown and at the discretion of the hearing officer, either party may receive a continuance of the scheduled hearing date.

The hearing will be conducted informally and in a non adversarial manner. The Rules of Evidence and Procedure will not apply.

The hearing officer shall preside at the hearing and shall conduct the proceedings in an impartial manner to the end that all parties involved have an opportunity to:

- Present their evidence.
- Produce outside expert testimony and be represented by legal counsel and by individuals with knowledge or training with respect to problems of disabled students.

Parents involved in the hearing will be given the right to:

- Have the student present at the hearing.
- Open the hearing to the public.

In cases where there are language differences, an interpreter shall be provided.

The hearing officer shall review all relevant facts concerning the education placement.

ADMINISTRATIVE REGULATIONS FOR DISABLED STUDENTS UNDER SECTION 504 REHABILITATION ACT OF 1973

- The hearing officer shall determine, subject to appeal by judicial review, whether the District has met all procedural aspects of the education accommodation plan.
- The hearing officer shall render a decision, subject to judicial review that is binding on all parties, except that in all cases any action taken must comply with current California Revised Statutes and federal court decisions.
- The hearing officer shall ascertain that:
 - The procedures utilized in determining the student's needs have been appropriate in nature.
 - The student's rights have been fully observed.
 - The provision of aids, services, or programs to the student may afford a free and appropriate education.
- If the parent's primary language is other than English, then the hearing officer shall appoint an interpreter.

The District shall make an audio tape of the complete hearing. No written transcript will be required, but the parents or guardian shall be entitled to obtain a copy of the audio tape at reasonable cost.

The hearing officer will render a brief written decision at the conclusion of the hearing, or if it is imperative that the decision be taken under advisement, within 10 calendar days of the hearing. No written findings of fact or conclusions of law shall be required of the hearing officer.

The person who serves as impartial hearing officer must not be an employee of the School District and may not be related to any member of the board of trustees in a degree that would be prohibited under the Nepotism Statute.

The hearing officer need not be an attorney at law but shall be familiar with the requirements of Section 504.

The hearing officer will be paid by the School District as an independent contractor for services rendered in regard to the hearing. The hearing will be conducted without cost to the parents or guardian.

ADMINISTRATIVE REGULATIONS FOR DISABLED STUDENTS UNDER SECTION 504 REHABILITATION ACT OF 1973

Review Procedure

If the parents or guardian disagree with the decision of the impartial hearing officer, they may seek a review of the decision by a court of competent jurisdiction.

Complaints

Parents or guardians who allege that the School District has violated the provisions of Section 504 may: (1) file a complaint with the Section 504 Coordinator, who will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution; or (2) file a complaint with the Office of Civil Rights. The address of the Regional Office which covers California is:

United States Department of Education
Office for Civil Rights, Region IV
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, California 94102

DEFINITIONS

SECTION 504

DEFINITIONS



Under current Fontana Unified School District Board of Education Policy, a student who may need special services or programs within the intent of Section 504 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 impairment; or (c) Is regarded as having such impairment (34 C.F.R. Section 104.3). Students may be disabled under Section 504 and this policy even through they do not require services pursuant to the Individuals with Disabilities Education Act (IDEA).

“No otherwise qualified individual with disabilities in the United States shall, solely by reason of her or his disability, as defined in section 706(8) of this title, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

Individual with Disabilities

- “any individual who has a physical or mental impairment which substantially limits one or more of such person’s major life activities

Physical or mental Impairments

- Has a record of such impairment, or
- is regarded as having such impairment.”
- “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; genitourinary; hemic and lymphatic; skin; and endocrine; or
- any mental or physical disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

Major life activities

- “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”

Has a record of such an impairment

- “has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.”

DEFINITIONS-504 (continued)

Is regarded as having an impairment

- “has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;
- has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes or others toward such impairment; or
- has none of the impairments defined but is treated by a recipient as having such an impairment.”

PROCEDURAL FACTORS

SECTION 504

PROCEDURAL FACTORS



- Public Notice** - Continuing notice that the district does not discriminate on the basis of disabilities with regard to admission or access to and treatment or employment in programs and activities.
- Internal Notice** - Notice to staff and students to the same effect as above.
- Section 504 Coordinator** - The coordinator should be identified in above notices.
- Grievance Procedure-** A procedure for receiving complaints which incorporates appropriate due process standards and prompt or equitable resolutions to complaints.
- Reasonable Accommodation** - Accommodation for disabled persons, such as each of the following unless it demonstrably would impose an “undue hardship” on the operation of the program:
 - Accommodations readily accessible to and usable by disabled persons;
 - Acquisition or modification of equipment or devices;
 - Provision of readers or interpreters and other similar actions.
- Ready Accessibility** - Accessibility to disabled persons to all programs and activities.
- Individualized Evaluation** - (In the native language) for any student who is believed to have a mental or physical impairment which substantially limits one or more major life activities, or who has a record of such impairment, or who is regarded as having such an impairment.
- Appropriate Education** - For each student meeting any of the above criteria, provision of an appropriate education defined as regular or special education and related aids and services that are designed to meet his/her individual needs as adequately as the needs of non disabled persons are met.

- Parental Notice** - (In the native language) of the rights to:
- have an individualized evaluation;
 - examine relevant records;
 - demand an impartial hearing with the opportunity to be represented by counsel;
 - obtain a subsequent review.
- Comparable Facilities** - When there are separate classrooms for special education, they must be comparable to those for regular education.
- Non academic and Extra curricular Activities** - Disabled persons must be provided an equal opportunity for participation.
- Access for Disabled Students** - Disabled persons must be provided reasonable access to programs and activities including preschool education, day care, and adult education.

**SPECIAL
EDUCATION
VS.
SECTION 504**

SPECIAL EDUCATION VS. SECTION 504



COMPARISON SPECIAL EDUCATION AND SECTION 504

<u>Element</u>	<u>Special Education</u>	<u>Section 504</u>
General Purpose	Is a Federal funding statute whose purpose is to provide financial aid to states in their efforts to ensure adequate and appropriate services for disabled children.	Is a broad civil rights law which protects the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education.
Who is Protected?	Identifies all school-aged children who fall within one or more specific categories of qualifying conditions.	Identifies all school-age children as disabled who meet the definition of qualified disabled person; i.e., (1) has or (2) has had a physical or mental impairment which substantially limits a major life activity, or (3) is regarded as disabled by others. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself and performing manual tasks. The disabling condition need only substantially limit one major life activity in order for the student to be eligible.
Responsibility to Provide a Free and Appropriate Public Education (FAPE)	Both laws require the provision of a free public education to eligible students covered under them including individually designed instruction. The Individual Education Program (IEP) of IDEA will suffice for Section 504 written plan. Requires a written IEP document with specific content and a required number of specific participants at the IEP meeting.	Does not require a written IEP document, but does require a plan. It is recommended that the district document that a group of persons knowledgeable about the student convened and specified the agreed upon services.

**COMPARISON
SPECIAL EDUCATION AND SECTION 504 (Continued)**

<u>Element</u>	<u>Special Education</u>	<u>Section 504</u>
Special Education Vs. Regular Education	<p>“Appropriate education: means a program designed to provide “educational benefit.” Related services are provided if required for the student to benefit from specially designed instruction.</p> <p>A student is only eligible to receive IDEA services if the multi disciplinary team determines that the student is disabled under one or more of the specific qualifying conditions and requires specially designed instruction to benefit from education.</p>	<p>“Appropriate” means an education comparable to the education provided to non disabled students, requiring that reasonable accommodations be made. Related services, independent of any special education services as defined under IDEA, may be the reasonable accommodations.</p> <p>A student is eligible so long as he/she meets the definition of qualified disabled person; i.e., (1) has or (2) has had a physical or mental impairment which substantially limits a major life activity, or (3) is regarded as disabled by others. It is not required that the disability adversely affects educational performance, or that the student needs special education in order to be protected.</p>
Funding	<p>Provides additional funding for eligible students.</p>	<p>Does not provide additional funds. IDEA funds may not be used to serve children found eligible only under Section 504.</p>
Accessibility	<p>Requires that modifications must be made if necessary to provide access to a free appropriate education.</p>	<p>Has regulations regarding building and program accessibility, requiring that reasonable accommodations be made.</p>
Procedural Safeguards	<p>Both require notice to the parent or guardian with respect to identification, evaluation and/or placement. IDEA procedures will suffice for Section 504 implementation.</p>	

**COMPARISON
SPECIAL EDUCATION AND SECTION 504 (Continued)**

<u>Element</u>	<u>Special Education</u>	<u>Section 504</u>
Evaluation	<p data-bbox="583 260 889 291">Requires written notice.</p> <p data-bbox="583 369 1015 436">Delineates required components of written notice.</p> <p data-bbox="583 443 1015 510">Requires written notice prior to any change in placement.</p> <p data-bbox="583 516 1015 653">A full comprehensive evaluation is required, assessing all areas related to the suspected disability.</p> <p data-bbox="583 659 1015 835">The child is evaluated by a multi-disciplinary team or group. Requires informed consent before an initial evaluation is conducted.</p> <p data-bbox="583 884 1015 982">Requires reevaluations to be conducted at least every three years.</p> <p data-bbox="583 989 1015 1094">A reevaluation is not required before a significant change in placement.</p> <p data-bbox="583 1100 1015 1239">However, a review of current evaluation data, including progress monitoring, is strongly recommended.</p>	<p data-bbox="1050 260 1482 359">Does not require written notice, but a district would be wise to do so.</p> <p data-bbox="1050 365 1482 470">Written notice no required, but indicated by good professional practice.</p> <p data-bbox="1050 476 1482 581">Requires notice only before a “significant change” in placement</p> <p data-bbox="1050 659 1482 869">Evaluation draws on information from a variety of sources in the area of concern; decisions made by a group knowledgeable about the student, evaluation data, and placement options.</p> <p data-bbox="1050 875 1482 1022">Does not require consent, only notice. However, good professional practice indicates informed consent.</p> <p data-bbox="1050 1029 1482 1127">Requires periodic reevaluations. IDEA schedule for reevaluation will suffice.</p> <p data-bbox="1050 1134 1482 1205">Reevaluation is required before a significant change in placement.</p>

**COMPARISON
SPECIAL EDUCATION AND SECTION 504 (Continued)**

<u>Element</u>	<u>Special Education</u>	<u>Section 504</u>
	Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school and hearing officer concurs.	No provision for independent evaluations at district expense. A district should consider any such evaluations presented
Placement Procedures	<p>When interpreting evaluation data and making placement decisions, both laws require districts to:</p> <ol style="list-style-type: none"> a. Draw upon information from a variety of sources b. Assure that all information is documented and considered. c. Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options. d. Ensure that the student is educated with his/her non disabled peers to the maximum extent appropriate (least restrictive environment). 	
	An IEP review meeting is Required before any change in placement.	A meeting is not required for any change in placement.
Grievance Procedure	Does not require a grievance procedure, not a compliance officer.	Requires districts with more than 15 employees to (1) designate an employee to be responsible for assuring district compliance with Section 504 and (2) provide a grievance procedure for parents, students and employees.
Due Process	Both students require district to provide impartial hearings for parents or guardians who disagree with the identification, evaluation or placement of a student.	

**COMPARISON
SPECIAL EDUCATION AND SECTION 504 (Continued)**

<u>Element</u>	<u>Special Education</u>	<u>Section 504</u>
Exhaustion	Delineates specific requirements. Requires the parent or guardian to pursue administrative hearing before seeking redress in the courts.	Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details. Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible.
Enforcement	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Department of Education and the Office of Special Education Programs. The State Department of Education resolves complaints.	Enforced by the U.S. Office of Civil Rights. State Department of Education has no monitoring, complaint resolution or funding involvement.

DISCRIMINATION

SECTION 504 DISCRIMINATION



Discrimination under Section 504 occurs when a recipient of federal funds:

- Denies a disabled person the opportunity to participate in or benefit from an aid, benefit or service which is afforded non disabled students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disabling condition; expelling a student for behavior related to his/her disabling condition; refusing to dispense medication to a student who could not attend school otherwise).
- Fails to afford the disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving a passing grade in five subjects without regard to the student's disabling condition).
- Fails to provide aids, benefits, or services to the disabled person that are as effective as those provided to non disabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.
- Provides different or separate aids, benefits or services unless such action is necessary to be as effective as the aids, benefits or services provided to non disabled students (e.g., segregating students in separate classes, schools, or facilities, unless necessary).
- Aids or perpetuates discrimination by providing significant assistance to an agency, organization or person that discriminates on the basis of a disability (e.g., sponsoring a student organization that excludes persons with disabilities).
- Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of his/her disabling condition.
- Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
- In determining the site or location of a facility, makes selections which effectively exclude persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination. In *Hendricks v. Gilhool*, EHLR 441:352 (1989), the Pennsylvania Department of Education was found to have violated this section and the EHA by allowing students with disabilities to be located in inferior facilities, such as trailers, wings in basements, and unnecessarily restrictive classrooms due to a lack of classroom space.

**CONSIDER
SECTION 504**

CONSIDER SECTION 504



WHEN SHOULD A SCHOOL STAFF CONSIDER THE EXISTENCE OF A DISABILITY AND POSSIBLE SECTION 504 PROTECTION

- When suspension or expulsion is being considered for any student.
- When retention is being considered for any student.
- When a student shows a pattern of not benefiting from the instruction being provided.
- When a student returns to school after a serious illness or injury.
- When a student is referred for evaluation, but it is determined not to do an evaluation under the IDEA.
- When a student is evaluated and is found not to qualify for Special Education services under the IDEA.
- When a student exhibits a chronic health condition.
- When a student is identified as “at risk” or exhibits the potential for dropping out of school.
- When substance abuse is an issue.
- When a disability of any kind is suspected.
- When a new building or remodeling is being considered.
- When a student continues to display behavior problems.
- When a parent request consideration for 504 services.

PARENT RIGHTS

PARENT RIGHTS



PROCEDURAL SAFEGUARDS/PARENT RIGHTS

There are several times during the planning process when parents/guardians should be provided their rights under Section 504.

- When eligibility is determined.
- When a plan is developed.
- Before there is a significant change in the plan for services.

Notification should include the following rights under Section 504:

- Right to file a grievance with the school district over an alleged violation of Section 504 regulations.
- Right to have an evaluation that draws on information from a variety of sources.
- Right to be informed of any proposed actions related to eligibility and plan for services.
- Right to examine all relevant records.
- Right to receive all information in the parent's/guardian's native language and primary mode of communication.
- Right to periodic reevaluation and an evaluation before any significant change in program/service modifications.
- Right to an impartial hearing if there is a disagreement with the school district's proposed action.
- Right to be represented by counsel in the impartial hearing process.
- Right to appeal the impartial hearing officer's decision.

Section 504 regulations do not establish timelines for submission of a hearing request.

Section 504 regulations do not define "impartial." However, in similar processes, impartial has been defined as a person not employed by or under contract with the district in any capacity.

Section 504 regulations do not require that the selection of the hearing officer be a mutually agreed upon decision between the school district and the parents/guardians.

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

The Rehabilitation Act of 1973, commonly referred to as “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 (a) has, (b) has a record of having, or (c) is regarded as having, a physical or mental impairment which substantially limits a major life activity such as learning, self-care, walking, seeing, hearing, speaking, breathing, working, and performing manual tasks.

Dual Eligibility: Many students will be eligible for educational services under both Section 504 and the Individuals with Disabilities Act (IDEA). Students who are eligible under the IDEA have many specific rights that are not available to students who are eligible solely under Section 504. It is the purpose of this Notice form to set out the rights assured by Section 504 to those disabled students who do not qualify under the IDEA.

The enabling regulations for Section 504 as set out in 34 CFR Part 104 provides parents and/or students with the following rights:

1. You have a right to be informed by the school district of your rights under Section 504. (The purpose of this Notice form is to advise you of those rights) 34 CFR 104.32.
2. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of no disabled students are met. 34 CFR 104.33
3. Your child has the ri8ght to free educational services except for those fees that are imposed on non disabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.
4. Your child has a right to placement in the least restrictive environment. 34 CFR 104.34.
5. Your child has a right to facilities, services, and activities that are comparable to those provided for non disabled students. 34 CFR 104.34.
6. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent significant change in placement. 34 CFR 104.35.
7. Testing and other evaluation procedures must conform with the requirements of 34 CFR 104.35 as to validation, administration, areas of evaluation, etc., The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, anecdotal reports, and TEAMS/TAAS scores. 34 CFR 104.35.

8. Placement decisions must be made by a group of persons (i.e., the Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.
9. If eligible under Section 504, your child has a right to periodic reevaluations, generally every three years. 34 CFR 104.35.
10. You have the right to notice prior to any action by the district in regard to the identification, evaluation, or placement of your child. 34 CFR 104.36.
11. You have the right to examine relevant records. 34 CFR 104.36.
12. You have the right to an impartial hearing with respect to the district's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. 34 CFR 104.36.
13. If you wish to challenge the actions of the district's Section 504 Committee in regard to your child's identification, evaluation, or educational placement, you should file a written Notice of Appeal with the district's Section 504 Coordinator (Dennis E. Barnett, Director Child Welfare and Attendance, 9680 Citrus Avenue, Fontana, CA (909) 357-5000 Ext. 7095) within ten (10) calendar days from the time you received written notice of the Section 504 Committee's action(s). A hearing will be scheduled before an impartial hearing officer and you will be notified in writing of the date, time, and place for the hearing.
14. If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction. 34 CFR 104.36.
15. On Section 504 matters other than your child's identification, evaluation, and placement, you have a right to file a complaint with the district's Section 504 Coordinator (or designee), who will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution.
16. You also have a right to file a complaint with the Office of Civil Rights. The address of the Regional Office which covers California is:

United States Department of Education
Office for Civil Rights, Region IX
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, California 94102

**OFFICE OF CIVIL
RIGHTS
INVESTIGATIVE
PROCESS**

OFFICE OF CIVIL RIGHTS INVESTIGATIVE PROCESS



- Written complaint filed by anyone.
- OCR determines if it has jurisdiction:
 - Is the complaint complete?
 - Was it filled within 180 days of the discriminatory event?
 - Does it allege discrimination on the basis of age, sex, race or disability?
 - Is the alleged discriminator a recipient of federal financial assistance?
- Complainant notified of waiver provision if past 180 days.
- Determine if complaint is individual or class.
- If both parties agree, OCR will attempt to conciliate matter or parties can seek resolution on their own (individual).
- If complaint is complete, an acknowledgment letter sent to the school district within 15 days of receipt of complaint. The district is not entitled to a copy of the complaint. OCR typically asks for documents. The school district generally allowed at least 15 days to produce documents.
- OCR should issue its decision within 135 days of receipt of a complete complaint. However, cases are often “tolled” (delayed) due to witness unavailability.
- If there is a violation, OCR has 60 days to seek voluntary compliance.
- OCR is an investigative body and determines compliance; it is not an advocate for either side.
- OCR will generally accept a dismissal of the complaint by the complainant so long as it is before investigative work has begun. This is not necessarily true for class complaints.
- If a parent files for due process before or during the OCR investigation, OCR will generally delay completing its investigation until a due process decision is rendered, as long as the hearing is intended to cover the same issues as the complaint.
- OCR draws up an investigative plan.
- An investigator schedules an on-site visit with the school district to interview key witnesses, if necessary.
- OCR drafts Investigative Report and makes findings. If a violation is found, OCR works with the school district to correct the violation and to assure future compliance.

- If the school district refuses to negotiate, OCR can take the district to hearing.
- The school district can ultimately lose all federal funding, not just its IDEA monies. This only occurs when there is an absolute refusal to cooperate.
- The Complainant can ask for reconsideration of OCR's decision.
- OCR also conducts compliance reviews; no filing of a complaint is necessary.

SUGGESTIONS - OCR COMPLAINTS



- Never retaliate against the complainant, even if OCR decides in your favor. Be very careful with employees who work with parents.
- Never encourage employees to withhold, destroy or alter evidence or testimony.
- Be prepared for a lengthy process in which often neither side is satisfied. The process is very costly for the district, especially in staff time.
- Do not stop working with the student and the family.
- School districts are allowed to be represented by an attorney.
- Mediate whenever possible.
- Either party may request OCR to interview particular witnesses they deem important.
- A school district should never refuse to allow OCR to investigate a complaint or conduct a compliance review. Rather, if you feel you must, challenge OCR's ultimate findings and/or remedies. Case in point: DeKalb, Georgia School District.
- Complainants should not expect money damages or that a teacher be fired. Identify the remedy you desire at the beginning and ask OCR if they have the power to order such relief.
- OCR's role is to investigate a school district's compliance with PROCEDURES.
- Complainants should recognize that they are not likely to succeed in the following cases:
 - Swearing contests with no witnesses and no objective proof;
 - The amount of services a district provides a student;
 - When OCR is asked to substitute its judgment for that of the school district;
 - A placement decision if proper procedures were followed.

EXPULSION

EXPULSION



EXPELLING THE SECTION 504 STUDENT

Before an expulsion can take place for a previously identified Section 504 disabled student as defined under Section 504 of the Rehabilitation Act of 1973, a 504 Student Intervention Team must conduct a hearing to determine whether the student's conduct was caused by his/her disabling condition. This hearing shall take place prior to the Pre-Expulsion Due Process Hearing.

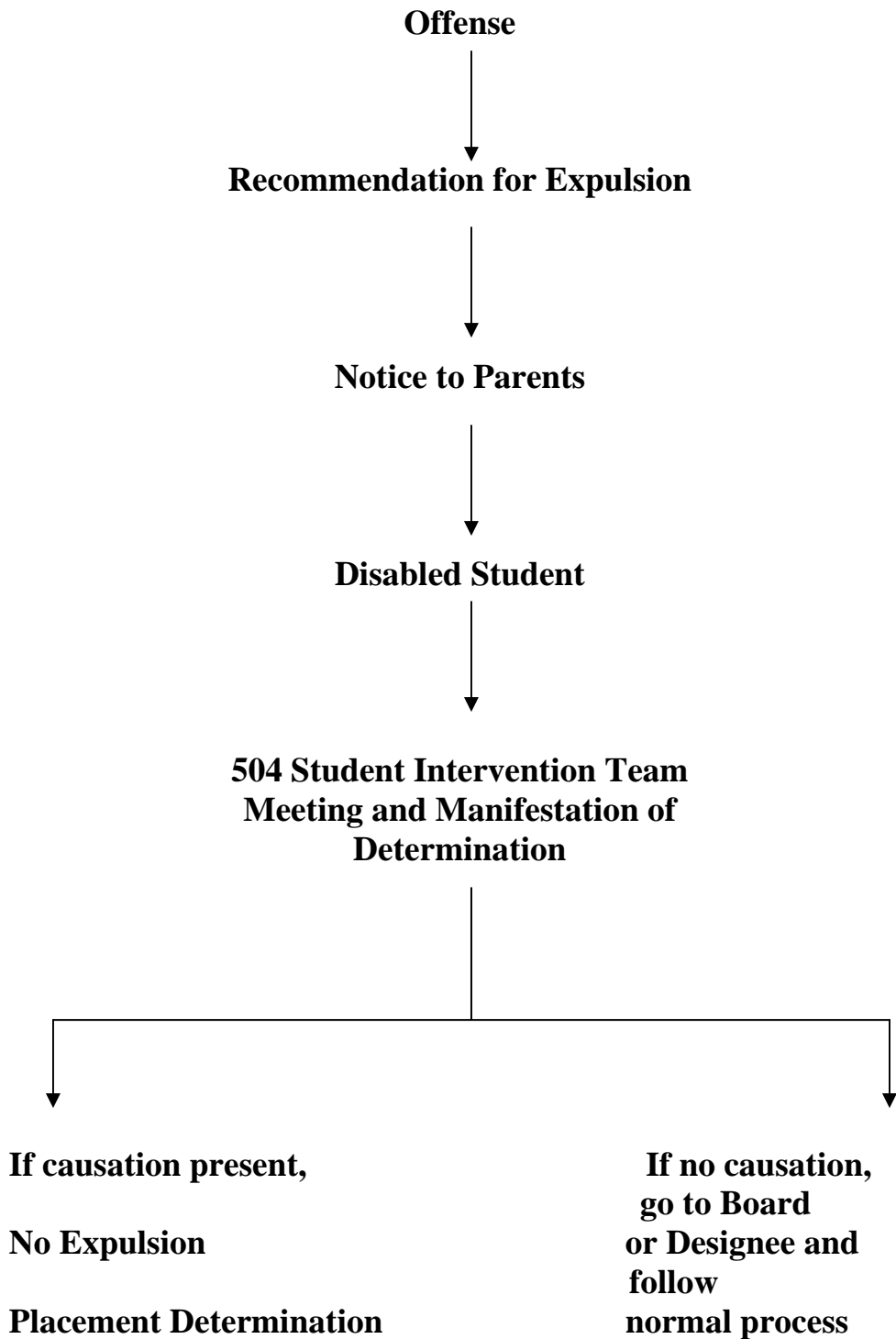
If it is determined by the 504 Student Intervention Team that the misconduct is not caused by the student's disabling condition, the student may be forwarded through the Expulsion Due Process in the same manner as a similarly situated non disabled student.

If it is determined by the 504 Student Intervention Team that the misconduct is caused by the student's disabling condition, the student may be expelled. The 504 Student Intervention Team must then determine whether the student's current placement is appropriate.

In the event of a disagreement between the parent/guardian and the School District in regard to the identification, evaluation, or educational placement of a disabled student, the parent or guardian has the right to an impartial hearing, with an opportunity to participate and be represented by an attorney.

If the parent, guardian or School District requests that a student recommended for expulsion be assessed to determine if the student has a 504 disability, this shall be done in compliance with Section 504 regulations, and the student's due process rights shall be protected just as with a previously identified disabled student.

SECTION 504 STUDENT EXPULSION FLOWCHART



**ANNUAL NOTICE
TO
PARENTS**

ANNUAL NOTICE TO PARENTS



Reference – “Annual Notice to Parents/Guardians section on Discrimination

NONDISCRIMINATION POLICY (Federal Regulations, Title VI, Title IX, and Section 504 of the Rehabilitation Act of 1973)

’The Fontana Unified School District does not tolerate discrimination. There shall be no discrimination including harassment with respect to color, race, ethnic group, creed, religion, national origin, sex, physical or mental disability or lack of English skills against students who are applying for admission to or who attend our schools except as otherwise provided by law. We also do not discriminate in our employment practices. Board Policy 5145.7 protects students at all grade levels. (E.C. 40, 200, 250, and 260)”

SECTION 504 FORMS

**STUDENT INTERVENTION TEAM
STUDENT CHECKLIST
SECTION 504
(Stapled to front of SIT Folder)**

STUDENT'S NAME: _____ DOB: _____

GRADE: _____ TEACHER: _____ SCHOOL: _____

FORM	FORM #	DATES
Section 504 Evaluation and Committee Meeting	Section 504-1	
Documentation of Section 504 Meeting	Section 504-2	
Authorization of Release of Information	Section 504-3	
Documentation of Section 504 Meeting	Section 504-4	
Letter for Section 504 Meeting Held Without Parent/Guardian	Section 504-5	
Section 504 Grievance Filing Form	Section 504-6	

**FONTANA UNIFIED SCHOOL DISTRICT
NOTICE TO PARENTS
SECTION 504 EVALUATION AND COMMITTEE MEETING**

NAME: _____ **BIRTHDATE:** _____

SCHOOL: _____ **GRADE:** _____

The student named above has been referred to the school district as possibly being eligible under Section 504 as a disabled student.

This letter is to provide you with written notice that an evaluation of your child will be performed at a Section 504 Committee Meeting. Your attendance at this meeting will be welcomed but is not required by law.

If your child is determined to be eligible under Section 504, the Committee will also develop an individual program to address your child's educational needs and make an appropriate placement.

Following the meeting, you will be informed in writing of all decision regarding your child's identification, evaluation, or placement as a Section 504 disabled student.

For your further information, we are enclosing a Notice of Parent and Student Rights under Section 504, the Rehabilitation Act of 1973. Please sign and return the white copy of this notice to verify that you have received your Notice of Parent and Student Rights.

If you have any questions or need additional information about this meeting, please contact;

Section 504 Campus Designee: _____

Telephone #: _____ Date Notice Sent: _____

Date of Meeting: _____ Time of Meeting: _____

_____ Yes, I plan to attend this meeting.

_____ No, I will be unable to attend this meeting.

Parent/Guardian Signature

Date

**FONTANA UNIFIED SCHOOL DISTRICT
DOCUMENTATION OF SECTION 504 MEETING**

Student's Name _____ Date of Birth _____

School _____ Grade _____

Meeting Date _____ Time _____

In Attendance _____

Reason for Referral _____

Physical or Mental Impairment

1. Does this student have an existing physical or mental impairment?
Yes _____ No _____ If yes, please describe _____

2. Describe how this impairment was determined/documented (attach relevant documentation) _

Limitation of Major Life Activity

1. Learning/Academic Performance (please describe and attach documentation).

2. Behavior/Social Interactions (please describe and attach documentation).

Observation Report attached _____ Yes _____ No

Summary of discussion: _____

Eligible for Section 504 Services? _____ Yes _____ No

If yes, develop and attach Section 504 Accommodation Plan.

**FONTANA UNIFIED SCHOOL DISTRICT
AUTHORIZATION TO OBTAIN OR RELEASE INFORMATION
SECTION 504**

Regarding: _____ Birthdate: _____
(Student's Name)

I authorize: _____

To release the following records: _____

To: _____

I authorize any licensed physician, medical practitioner, hospital, clinic, or medically-related facility or other agency, school, organization, institution or person that has any records of knowledge of the above-named person to release to the Fontana Unified School District copies of any educational, medical, psychological, or therapy information for inclusion in their records.

I understand that the information obtained by the FUSD will be used by school personnel to facilitate planning for appropriate educational placement.

I understand that information obtained OR released will be kept confidential and will be limited to profession use only.

I agree a copy of this form shall be as valid as the original.

I understand I may request a copy of this form.

I agree this authorization shall be valid for two years from the date shown below, unless I revoke this authorization in writing at any time before the expiration date.

Signature of Parent/Guardian

Date

**FONTANA UNIFIED SCHOOL DISTRICT
DOCUMENTATION OF SECTION 504 MEETING**

Student's Name _____ Date of Birth _____

School _____ Grade _____ Meeting Date _____

1. Describe the nature of the concern: _____

2. Describe the disability and the basis for the determination: _____

3. Describe how the disability affects a major life activity: _____

Has the parent signed a release of information form? ____ Yes ____ No

Does the student have an Individualized Health Care Plan? ____ Yes ____ No

Is medication given at school? ____ Yes ____ No At what time(s)? _____

Does the student have a medical condition that warrants that they carry the medication on their person?

(asthma inhaler) ____ Yes ____ No

The SIT team has reviewed the files of the above named student and concludes that he/she meets the classification as a qualified disabled individual under Section 504 of the Rehabilitation Act of 1973. In accordance with the Section 504 guidelines, the school has agreed to make reasonable accommodations to address the student's needs.

4. Describe the reasonable accommodations that are necessary: _____

5. Review Reassessment Date: _____

Participants: (Name and Title)

CC: Student's Cumulative File

Section 504-4 5/05

**FONTANA UNIFIED SCHOOL DISTRICT
LETTER FOR SECTION 504 MEETING
HELD WITHOUT PARENT/GUARDIAN**

Date: _____ Student: _____ DOB: _____

Dear Parents:

On _____, _____, and _____ attempts were made, by mail or by phone, to invite you to your child's Section 504 conference.

Unfortunately, you were unable to or did not attend the meeting.

Enclosed you will find a copy of your *Parents Rights*. Please keep this copy for your records. If you have any questions, please contact the school site.

Also enclosed, you will find a copy of your child's Section 504 Plan that was developed. team members.

PLEASE REVIEW THE DOCUMENT.

If you AGREE with the proposed accommodation, please sign and date the document and return the entire document to school.

Once the Section 504 Coordinator receives the signed accommodation plan, a copy – with your signature - will be made for you and sent home for your records.

Another meeting will need to be scheduled if you have any disagreements, exceptions or changes to the accommodation plan.

If you have any questions or concerns and would like to speak with the Section 504 Coordinator, please contact:

_____ at _____
(Section 504 Coordinator) (Phone Number)

Date: _____

