



Section 504

Notice of Parent/Guardian Rights and Procedural Safeguards

KERN HIGH SCHOOL DISTRICT

Section 504 Notice of Parent/Guardian Rights and Procedural Safeguards

This is a notice of your rights under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as well as the District’s procedures, with respect to actions regarding the identification, evaluation or educational placement for students who, because of a disability, need or are believed to need special instruction or related services. This document is not intended to create parent/guardian rights and/or District obligations greater than is provided by applicable laws.

PURPOSE

It is the intent of the Kern High School District (“District”) to locate, identify, evaluate and provide a free appropriate public education (“FAPE”) under Section 504 to each student with a disability within its jurisdiction regardless of the nature or severity of the disability. Further, the District will provide regular or special education and related aids and services that are designed to meet the needs of each disabled student as adequately as the needs of non-disabled students are met. In addition to providing a FAPE to students with disabilities under Section 504, the District will not discriminate against students with a physical or mental impairment which substantially limits one or more major life activities, have a record of such an impairment, or those being regarded as having an impairment.

Students who, because of a Section 504 disability which substantially limits one or more major life activities, who need or are believed to need, general or special education and related aides and services and/or accommodations are addressed in this document.

DEFINITIONS AND ELIGIBILITY

Student with a disability under Section 504 means a student who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record or history of such impairment, or (3) is regarded as having such an impairment because he or she has:

- a. Has a physical or mental impairment that does not substantially limit a major life activity but is treated by the district as having a limitation (e.g. a student who has scarring, a student who walks with a limp)
- b. Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment (e.g. a student who has scarring or disfigurement)
- c. Has no physical or mental impairment but is treated by the district as having such an impairment (e.g. a student who tests positive for the HIV virus but has no physical effects from it, a student who had bone cancer but is currently in remission)

An impairment that is “episodic or in remission” is a disability if it would substantially limit a major life activity when active. (42 USC 12102(4) (D); Americans with Disabilities Amendment Act (ADAAA) of 2008)

Section 504 requires the district to provide a FAPE to qualified students if they currently have a physical or mental impairment that substantially limits one or more major life activities. If a student “has a record of” or “is regarded as having an impairment,” they are entitled to protection from disability discrimination, but not 504 accommodations.

Physical impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems, such as neurological; musculoskeletal, special sense organs; respiratory (including speech organs), cardiovascular; reproductive, digestive, genito-urinary; immune, hemic, lymphatic, skin, and endocrine. (28 CFR 35.108)

Mental impairment means any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability. (28 CFR 35.108)

Substantially limits major life activity 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 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 activity shall be made without to the ameliorative effects of *mitigating measures*, other than ordinary eyeglasses and 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. (42 USC 12102; 28 CFR 35.108)

Referral, Identification, and Evaluation

The district shall conduct an evaluation of any student who needs or is believed to need special education or related services under Section 504. (34 CFR 104.35)

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:

A parent/guardian, teacher, other school employee, student success team, or community agency may refer a student to the principal or Section 504 Coordinator for identification as a student with a disability under Section 504. The request for a Section 504 evaluation for a student must be in writing and submitted to the school principal or Section 504 coordinator. If the request is made orally by an individual who is unable to submit a written request, the school principal or Section 504 coordinator shall assist in completion of the request for evaluation form or in preparation of another written request.

Upon receipt of any such referral, the principal, or Section 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.

If it is determined that an evaluation is unnecessary, the principal or Section 504 Coordinator shall inform the parents/guardian in writing of this decision and the reasons for the decision along with the procedural safeguards available, as described in the "Procedural Safeguards" section below.

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. (34 CFR 104.35)

Prior to conducting an initial evaluation of a student for eligibility under Section 504, the district shall obtain written parent/guardian consent.

The district's evaluation procedures shall ensure that the tests and other evaluation materials meet all of the following criteria: (34 CFR 104.35)

- a. Have been validated and are administered by trained personnel in conformance with the instruction provided by the test publishers.
- b. Are tailored to assess specific areas of educational need and are not merely designed to provide a single general intelligence score
- 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 the test purports to measure.

Section 504 Services Plan and Placement

Services and placement decisions for students with disabilities shall be determined as follows:

1. A multi-disciplinary Section 504 team meeting shall be convened to review the evaluation data in order to determine eligibility and make placement decisions.
2. The Section 504 team shall consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, eligibility criteria, accommodations, services, and placement options. (34 CFR 104.35)
 - a. The *parents/guardians shall be invited to participate in the meeting* and shall be given an opportunity to examine all relevant records.
 - b. 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. (34 CFR 104.35)
3. If, upon evaluation, a student is determined to be eligible for services under Section 504 the team shall meet to develop a written Section 504 services plan which shall specify the types of regular or special education services, accommodations, supplementary aids and/or services necessary to ensure that the student receives a FAPE.
4. The Section 504 team shall determine if a student has a disability as defined under Section 504. If the Section 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.

5. 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. In providing for nonacademic and extracurricular activities, including meals, recess periods, and nonacademic services, the district shall ensure the student participates with nondisabled students to the maximum extent appropriate to the needs of the disabled student. (34 CFR 104.34)
6. The district shall complete the identification, evaluation, and placement process within a reasonable time. The district defines "reasonable time" as within 60 days of receipt of the parents signed consent to the assessment plan, not counting days of summer vacation or other school vacation/holidays/breaks in excess of five (5) school days. If signed consent is received less than 15 days prior to the end of the school year the District shall have 60 days to complete the assessments at the beginning of the new school year.
7. 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 and given a copy of the plan.
8. 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 Section 504 plan prior to the student's enrollment in the new school.

Review and Reevaluation

The 504 team shall monitor the progress of the student and at least annually shall convene a Section 504 meeting to 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 nondisabled students. In addition, each student with a disability under Section 504 shall be reevaluated at least once every three years. Parent consent is not needed for reevaluations under Section 504.

Parent may request a Section 504 team meeting by sending a written request to the school principal or Section 504 coordinator. The district will convene a Section 504 team meeting within 30 days of receipt of the written request, excluding days of vacation in excess of five school days.

A reevaluation of student's needs shall be conducted before any subsequent significant change in placement. (34 CFR 104.35) 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.

Discipline of Students Identified as Disabled under Section 504

A student identified as an individual with a disability under Section 504 of the Rehabilitation Act of 1973 ("Section 504") are general education students who are subject to the same grounds and procedures for suspension and expulsion which apply to students without disabilities, except as otherwise specified in this administrative regulation.

(cf. 5144.1 - Suspension and Expulsion/Due Process)

The Superintendent or designee may suspend a student identified with a disability pursuant to Section 504 who violates a code of conduct, for up to 10 consecutive school days for a single incident of misconduct, in accordance with the procedures in Education Code section 48911(g). The Superintendent or designee may suspend a student for up to 20 cumulative school days in a school year, as long as the suspensions do not constitute a change in placement pursuant to 34 CFR 300.536. (Education Code 48903; Education Code 48911; 34 CFR 300.530)

Bus Suspension or In-School Suspensions

A bus suspension may count toward the cumulative days of suspension if bus transportation is a required part of student's Section 504 Plan and if it is a change in placement. If the Section 504 Plan of a student with a disability requires the district to provide the student with transportation, the district shall provide the student with an alternative form of transportation at no cost to him/her or to his/her parent/guardian when he/she is to be excluded from school bus transportation. (Education Code 48915.5)

An "in-school suspension" or "supervised suspension classroom" as authorized by Education Code 48911.1 would not count towards the 20-day limit as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, receive services specified in his/her Section 504 Plan, and participate with non-disabled students to the extent he/she would have in the current placement. (71 Fed. Reg. 156, p. 46715; Education Code 48911.1)

The principal or designee shall monitor the number of days, including portions of days, in which a student with a valid Section 504 Plan has been suspended during the school year.

Change in Placement

The Superintendent or designee shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under either of the following circumstances: (34 CFR 300.536)

1. The removal is for more than 10 consecutive school days.
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
 - a. The series of removals total more than 10 school days in a school year.
 - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals.
 - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

Manifestation Determination

The following procedural safeguards shall apply when a student with a disability is suspended for more than 10 consecutive school days, when a series of removals of a student constitutes a pattern, or when a disciplinary change of placement of a student is contemplated due to a violation of the district's code of conduct:

1. Notice: On the date the decision is made to impose disciplinary action that would result in a change in placement, the student's parent/guardian shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504. (20 USC 1415(k)(1)(H); 34 CFR 300.530)
2. Manifestation Determination Review: Immediately if possible, but in no case later than 10 school days after the date the decision is made to impose disciplinary action that would result in a change in placement, a manifestation determination review shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action. (20 USC 1415(k) (1) (E); 34 CFR 300.530)

At the manifestation determination review, the district, the student's parent/guardian, and relevant members of the Section 504 team (as determined by the district and parent/guardian) shall review all relevant information in the student's file, including the student's Section 504 Plan, any teacher observations, and any relevant information provided by the parents/guardians, to determine whether the conduct in question was either of the following: (20 USC 1415(k)(1)(E); 34 CFR 300.530)

- a. Caused by or had a direct and substantial relationship to the student's disability.
- b. Direct result of the district's failure to implement the student's Section 504 Plan.

If the manifestation review team determines that either of the above conditions applies, the student's conduct shall then be determined to be a manifestation of his/her disability. (20 USC 1415(k) (1) (E); 34 CFR 300.530)

Determination that Behavior is a Manifestation of the Student's Disability: When the student's conduct has been determined to be a manifestation of his/her disability, the student shall be returned to the placement from which he/she was removed, unless the parent/guardian and Superintendent or designee agree to a change of placement.

Determination that Behavior is Not a Manifestation of the Student's Disability: When it has been determined that the student's conduct was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities.

****Exception—***A student with disability under Section 504 who is currently using illegal drugs or alcohol and is to be disciplined for use or possession of illegal drugs or alcohol does not have the procedural protections provided by Section 504, including the right to a Manifestation Determination Review prior to disciplinary change in placement, even if student has been identified as having a disability under Section 504.*

Impartial Due Process Hearing

The District's procedural safeguards for Section 504 include an impartial due process hearing to resolve disagreements about the provision of FAPE and/or manifestation determination reviews.

This Section 504 due process hearing is separate from the due process hearing procedures under the IDEA, which are heard by the Office of Administrative Hearings, and from the districts uniform complaint procedures, which are used to resolve complaints regarding discriminatory treatment (e.g., harassment or accessibility issues).

If a parent/guardian disagrees with any District action or decision regarding the identification, evaluation, educational placement of his/her child under Section 504, or the results of manifestation determination review, he/she may request a Section 504 due process hearing within 30 days of that action or decision by filing a written complaint.

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 actions or decisions, file a written complaint to request an administrative review of the action or decision. The Coordinator shall designate an appropriate administrator to meet with 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. However, parent/guardian is not required to utilize the administrative review procedures before requesting a due process hearing.

A Section 504 due process hearing shall be conducted in accordance with the following procedures:

1. The parent/guardian shall submit a written request to the Coordinator within 30 days of receiving the district's decision or, if an administrative review is held, within 14 days of the completion of the review. The request for the due process hearing shall include the following:
 - a. A statement requesting an administrative review or due process hearing;
 - b. The specific nature of the decision(s) made by the District and/or the Section 504 Service plan team with which the parent/guardian disagrees;
 - c. The specific relief the parent/guardian seeks; and

Any other information the parent/guardian believes is pertinent to resolving the disagreement. The written request for a due process hearing shall be sent to the District's Section 504 Coordinator:

District Section 504 Coordinator
5801 Sundale Avenue
Bakersfield, CA 93309
(661) 827-3100

2. Within 30 days of receiving the parent/guardian's request for a due process hearing, the Superintendent or designee and Section 504 Coordinator shall select an impartial hearing officer. This 30-day deadline may be extended for good cause or by mutual agreement of the parties.

3. Within 45 days of the selection of the impartial 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.

A written hearing notification shall be sent to the parent/guardian at least fourteen (14) calendar days prior to the date set for the hearing. The notice shall contain a statement regarding the location, date and time of the hearing as well as the name of the hearing officer. This notice shall be accompanied by a copy of the District's notice of parent/guardian rights and procedural safeguards pursuant to Section 504.

4. The parties to the hearing shall be afforded the right to:
 - a. Be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of students who have a disability within the meaning of Section 504;
 - b. Present evidence, written and oral;
 - c. Question and cross-examine witnesses; and
 - d. Receive written findings by the hearing officer stating the decision and explaining the reasons for the decision.

In cases where foreign language translation is necessary, a translator shall be provided by the District. This translator may be a current District employee.

If desired, either party may seek review of the hearing officer's decision by a federal court of competent jurisdiction.

All written correspondence shall be provided in English unless parent/guardian requests in writing that correspondence be translated into their primary language. The translation of written correspondence shall be provided within a reasonable time period of the receipt of parent/guardian's request.

Readmission

Readmission procedures for expelled students with disabilities under Section 504 shall be the same as those adopted for students without disabilities. Upon readmission of a student with disabilities, a Section 504 meeting shall be convened to review and, as necessary, to modify the student's Section 504 plan.