

6000 INSTRUCTION**6800 SECTION 504 OF THE REHABILITATION ACT**

It is the intent of the Superintendent/Governing Board to promote the provisions of Section 504 of the Rehabilitation Act of 1973. Therefore, it is the policy of the Superintendent/Governing Board that no otherwise qualified individual with handicaps as defined in Section 504 shall solely by reason of his/her handicaps be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity offered by the Marin County Office of Education.

In furtherance of this policy, the Superintendent/Governing Board acknowledges its duty in the following areas:

- a. identification of qualified students, and
- b. assessment of the educational and related service needs of referred or qualified students, and
- c. provision of a free, appropriate public education for all qualified students, and
- d. provision of a system of procedural safeguards which includes notice and an impartial hearing on the issues of identification, evaluation and educational placement, and
- e. provision of appropriate procedural safeguards with regard to discipline of qualified students.

In furtherance of this policy and federal law, the Superintendent/Governing Board shall include a statement in its annual notice to all pupils and parents which describes the provisions of Section 504 of the Rehabilitation Act and identifies where additional information may be obtained. In addition, the Superintendent/Governing Board shall provide training for appropriate staff on the issues related to this policy enforcement and the requirements of Section 504 of the Rehabilitation Act.

The Superintendent is authorized to develop and revise, as necessary, the regulations and procedures necessary to implement the requirements of Section 504 and this policy.

For further information on this policy and the legal requirements, staff, parents and other interested members of the public may contact the Assistant Superintendent/Student Services, who is the designated Section 504 Compliance Officer for the Marin County Office of Education.

(continued)

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6800 SECTION 504 OF THE REHABILITATION ACT (concluded)

The provisions of this policy and all related regulations and procedures of the Superintendent/Governing Board are intended to supplement, and not replace any applicable federal and state laws and regulations. Individuals with complaints regarding the Marin County Office of Education's compliance with the applicable federal and state laws are encouraged to bring such complaints/concerns forward to the above assigned compliance office or to the Superintendent. In addition, such complaints may be forwarded to the appropriate governmental agency such as the Office for Civil Rights.

References: 29 U.S.C. 706(8) et seq.
34 Code of Federal Regulations Part 104

Approved as to form:



Deputy County Counsel

Approved by
Marin County Board of Education - 1/11/94

MARIN COUNTY OFFICE OF EDUCATION
ADMINISTRATIVE RULES AND REGULATIONS

SECTION 504 OF THE REHABILITATION ACT OF 1973
(Board Policy 6800)

SECTION 504 OF THE REHABILITATION ACT OF 1973

The following regulations and procedure are intended to implement the legal requirements of the Marin County Office of Education under Section 504 of the Rehabilitation Act of 1973. Such regulations and procedures shall be applied to those students who are handicapped 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. Definition

Pursuant to federal law an individual is entitled to the provisions of Section 504 of the Rehabilitation Act of 1973 if they are a qualified handicapped person.

- A. "Handicapped person" means any person who has a physical or mental impairment, which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
- B. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- C. "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.
- D. "Is regarded as having an impairment" means has a physical or mental impairment that does not substantially limit major life activities but that is treated by the Marin County Office of Education as constituting such a limitation, 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 has none of the impairments defined above, but is treated by the Marin County Office of Education as having such an impairment.

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II. Identification and Referral Procedures

A. Team

Students who qualify as a "handicapped 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 Ed IEP Team or community agency to the Section 504 Team for identification and evaluation of the student's individual education needs.

The referral shall be made in writing and given to the Program Manager who shall be responsible for convening the Section 504 Team.

The Section 504 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 Program Manager will monitor the composition of the Section 504 Team to ensure that qualified personnel participate in the evaluation process.

The Section 504 Team will evaluate the nature of the student's handicap 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 Section 504 Team without first inviting the parent or guardian of the student to participate in a meeting concerning the recommendation that the student be identified as a handicapped 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 Student Study Team is recognized as a collaborative team of certificated staff which has purposes other than identification of qualified handicapped students under Section 504. However, this team of individuals may convene as the Section 504 Team provided such Notice has been provided to the parent/guardian.

B. Evaluation and Service Plan Procedures

The Section 504 Team shall have the following responsibilities:

1. The Section 504 Team shall consider all relevant information and assessments in order to determine eligibility and program need. Assessments necessary to understand educational needs of student shall be conducted by the professional staff of the district and/or county office pursuant to 34 C.F.R. Section 104.35(b).

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2. Identification of students who are handicapped as defined under Section 504 of the Rehabilitation Act of 1973 and the regulations implementing that Act. (Students may be so identified even though they do not require special education services pursuant to the Education of the Handicapped Act.)
3. When the team determines eligibility, the Section 504 Team will develop a written plan describing the handicap and the education, 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 in order for the student to have a free, appropriate public education.
4. The Section 504 Team may also refer the students 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 Section 504 Team may develop an interim program/placement for the student.
5. The designated Marin County Office of Education representative shall write a brief report of the Team meeting and complete necessary forms.

C. Team Guidelines

1. It is anticipated that a handicapped student under Section 504 of the Rehabilitation Act who requires an educational program or services other than, or in addition to, that provided to non handicapped students shall be placed in the regular educational environment with the use of the supplementary aids and services. However, if the Team determines that the education of the pupil 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 handicapped 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.

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2. The parent or guardian of the student shall be provided an opportunity to participate in Section 504 Team meeting to discuss the tentative conclusion of the team. The parent or guardian will be given the opportunity to examine relevant records.
3. The decision of the Section 504 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 Section 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 the handicapped student's needs are met as adequately as the needs of non handicapped students.
2. Prior to any subsequent significant change in placement, an evaluation of the student's needs will be conducted as necessary, and to assure that the Section 504 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 handicap, and
 - b. Appropriateness of current program and placement.

III. Assessments

The Marin County Office of Education 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 Marin County Office of

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Education. Consent by the parent/guardian shall be required in advance of any such formal assessment. In the event that the parent does not consent to the testing, the parent/guardian shall be advised of their due process rights. Failure of the parent/guardian to consent to assessment or to access their due process rights shall waive any claim they may have for the provision of Section 504 identification and services for the named student.

Assessments initiated by a parent to be conducted outside the Marin County Office of Education shall be at parent expense, unless authorized in writing by the Superintendent in advance.

Assessment needs may be determined either by the Section 504 Team or by an Administrative/Support Staff person.

IV. Due Process

Upon referral or at the meeting of the Section 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 Team decision re 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. right to examine all relevant records and to receive copies of such records at cost,
3. right to be represented or accompanied and advised by an individual with special knowledge or training, and
4. 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.

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In addition to the procedures set forth above, and at the sole discretion of the Marin County Office of Education, an offer of 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 Marin County Office of Education. Each party shall pay for their own costs related to representation and presentation of their case.

When a parent/guardian decides to access their procedural rights under this policy, they 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 Marin County Office of Education. The notice must be received within the 14 calendar days period either by the site administrator or the Superintendent's Office.

The 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 Marin County Office of Education shall be responsible for notifying the parent/guardian of the date, time and location of the hearing. Both the Marin County Office of Education 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.

Upon submission of the matter to the hearing officer, a written decision shall be filed, including findings of fact and conclusions of law within 15 calendar days that the matter was 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 upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

V. Discipline of Handicapped Students

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

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In general, upon a recommendation for expulsion of a qualified handicapped student under Section 504, a Section 504 Team shall be convened to determine if the conduct is related to the student's handicapping condition and if the student is appropriately placed. If the behavior leading to a recommendation for expulsion is determined to be unrelated to the handicap and if the student is determined to be appropriately placed, the expulsion may proceed. If the behavior is related to the handicap or if the placement is determined not 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, and at the discretion of the Marin County Office of Education, the expulsion may proceed after a determination by the Section 504 Team, but prior to the determination of the hearing officer.

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