

Board Policy 5201

5000 STUDENTS

5200 STUDENT WELFARE

5201 **SECTION 504 OF THE REHABILITATION ACT**

Because it is the intent of the Marin County Superintendent/Governing Board to promote the provisions of Section 504 of the Rehabilitation Act of 1973, it is therefore the policy of the Marin County Superintendent/Governing Board that no otherwise qualified individual with disabilities as defined in Section 504 shall solely by reason of her/his disability be excluded from 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 Marin County 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 Marin County Office of Education shall include in its annual notice to all students a notice of rights set forth in this policy. In addition, the Marin County Office of Education shall provide training for appropriate staff on issues related to the enforcement of this policy 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 its legal requirements, staff, parents and other interested members of the public may contact the Assistant Superintendent or his/her designee, who is the assigned Section 504 Compliance Officer for the Marin County Office of Education.

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5201 **SECTION 504 OF THE REHABILITATION ACT** (concluded)

The provisions of this policy and all related regulations and procedures of the Marin County Office of Education 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 designated compliance officer or to the Superintendent. Upon receiving information of the complaint/concern, the individual will be provided information about the appropriate complaint process including the Uniform Complaint Process. In addition, such complaints may be forwarded to the appropriate governmental agency such as the Office for Civil Rights.

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

References: Section 504 of the Rehabilitation Act of 1973

Approved as to form:

Approved by:

Marin County Board of Education -

MARIN COUNTY OFFICE OF EDUCATION
ADMINISTRATIVE REGULATIONS AND PROCEDURES

SECTION 504 OF THE REHABILITATION ACT OF 1973

(Board Policy 5201)

The following regulations and procedures 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 disabled as defined under Section 504 but do not qualify for services under the Individuals with Disabilities Education Act (IDEA) (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 he/she is a qualified disabled person.

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

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

“Has a record of such an impairment” means has a history of a mental or physical impairment that substantially limited one or more major life activities and there has been negative action taken based on that record.

“Is regarded as having an impairment” means a physical or mental impairment that substantially limited major life activities and there has been negative action taken based on the perception that the impairment did exist.

II. Identification and Referral Procedures

A. Team

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

The referral shall be made in writing and given to the site administrator who shall be responsible for convening the Section 504 Committee.

The Section 504 Committee will be composed of persons knowledgeable about the student, the student's individual needs, the meaning of assessment data, and the placement options. The program administrator will monitor the composition of the Section 504 Committee to ensure that qualified personnel participate in the Committee process. The parent/guardian or adult student will be invited to participate on the Committee.

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

B. Evaluation and Service Plan Procedures

1. The Section 504 Committee shall consider all relevant information and assessments in order to determine eligibility and program needs. Assessments necessary to understand educational needs of a student shall be conducted by the professional staff of the County Office pursuant to 34 C.F.R. Section 104.35(b).
2. The Section 504 Committee shall identify students who are disabled as defined under Section 504 of the Rehabilitation Act of 1973 and the regulations implementing that Act.
3. When the team determines eligibility, the Section 504 Committee will develop a written plan describing the disability and the education, placement or related services as appropriate. The plan will specify how regular or modified education and related aids and services will be provided, and by whom.
4. The Section 504 Committee may also refer the student to an IEP team for determination of eligibility. Special education services will be determined and provided in accordance with an IEP prepared under IDEA. In the event of such referral, the Section 504 Committee 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 Section 504 Committee meeting and complete necessary forms.

C. Team Guidelines

1. It is anticipated that a disabled 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-disabled students shall be placed in a regular educational environment with the use of supplementary aids and services. However, if the Section 504 Committee 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 disabled student who does not qualify for special education under the criteria of IDEA but is qualified under Section 504 may require special education or related aids and services outside of the regular classroom in order to receive an appropriate education. All placements shall be in the least restrictive environment appropriate.
2. The decision of the Section 504 Committee shall be in writing with a copy provided to the parent/guardian or the adult student. If the parent/guardian or adult student does not agree with the recommendation of the public agency staff members, the parent/guardian or adult student may access the due process provisions and have a hearing on the disputed issues.
3. 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 Committee 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 disabled student's needs are met as adequately as the needs of the non-disabled students.
2. Prior to any subsequent significant change in placement, an evaluation of the student's needs will be conducted as necessary, and the Section 504 Committee shall set forth in writing any appropriate changes. When change is proposed as the result of recommended disciplinary action, the Section 504 Committee shall meet to determine the following:
 - a. Relationship of behavior (subject of discipline) to the disability, 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 may be used. In addition, informal assessments by certificated staff and observations may also be used.

Informal observation and assessment by certificated staff shall not require written consent of the parent/guardian or the adult student. Notice to the parent/guardian or the adult student shall be provided in advance of all formal testing to be conducted by the Marin County Office of Education. Consent by the parent/guardian or the adult student shall be required in advance of any such assessment. In the event that the parent/guardian or adult student does not consent to the testing, the parent/guardian or the adult student shall be advised of their due process rights. Failure of the parent/guardian or the adult student 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.

IV. Due Process

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

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

1. Disagreement about eligibility
2. Disagreement about assessment
3. Disagreement about program and/or placement including related services
4. Disagreement with the Section 504 Committee decision re discipline (relation of behavior/disability and/or appropriateness of placement)

As part of these procedural safeguards, the parent/guardian or adult student 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 at the expense of the parent/guardian or adult student
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 for mediation may be made. As part of an offer for mediation, a timeline will be set for resolution of any disputed issues. If the timeline is not met or mediation does not resolve the issue, a hearing will be scheduled.

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 its own costs related to representation and presentation of its case.

When a parent/guardian or adult student decides to access his/her procedural rights under this policy, he/she must file a written request for due process within 14 calendar days of the date of the action or the date of the written notice of the meeting to consider 504 issues. A form shall be available from the Marin County Office of Education. The notice must be received within the 14 calendar day 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 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 or the adult student of the date, time and location of the hearing. Both the Marin County Office of Education and the parent/guardian or the adult student 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 by the Marin County Office of Education. 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 by the hearing officer shall be sent to each party, within 15 calendar days including findings of fact and conclusions of law. 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 Disabled Students

The provisions of the Marin County Office of Education policy which relate to discipline of students with exceptional needs shall apply to students determined to be disabled 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 disabled student under Section 504, a Section 504 Committee shall be convened to determine if the conduct is related to the student's disabling condition and if the student is appropriately placed. If the behavior is related to the disability or if the placement is determined not to be appropriate, the expulsion shall not proceed. If the parent/guardian or adult student disagrees with the determination of the Section 504 Committee, 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 as to the relationship of the behavior to the disability and/or the appropriateness of the placement by the Section 504 Committee but prior to the determination of the hearing officer.

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

References: Section 504 of the Rehabilitation Act of 1973