

G. **BOARD BUSINESS**

4. **TITLE:** Receive for Board review **REVISED** Administrative Regulation 3460, Financial Reports and Accountability

**BACKGROUND:** This revision incorporates non-material changes from the Government Accounting Standards Board (GASB) Statement 54 and Education Code 42100, 42132 and 42130.

**ACTION RECOMMENDED:** Receive for Board review **REVISED** Administrative Regulation 3460, Financial Reports and Accountability

**PREPARED BY:** Dr. Steve Romines, Assistant Superintendent

**DATE OF MEETING:** November 3, 2010

AGENDA NOTE AGENDA NOTE AGENDA NOTE

# REVISED ADMINISTRATIVE REGULATION MBUSD

AR 3460(a)

## Business and Noninstructional Operations

### FINANCIAL REPORTS AND ACCOUNTABILITY

#### Unaudited Actual Receipts and Expenditures

The Superintendent or designee shall prepare a statement of all unaudited actual receipts, expenditures, and required reports of the district for the preceding fiscal year, using the state's standardized account code structure (SACS) as prescribed by the Superintendent of Public Instruction (SPI). On or before September 15, the Governing Board shall approve this statement and file it with the County Superintendent of Schools. (Education Code 42100 & 42132, Government Code 7900-7914).

#### Gann Appropriations Limit Resolution

The Board shall adopt a resolution by *on or before* September 15 of each year to identify, *pursuant to Government Code 7900-7914*, the estimated appropriations limit for the district for the current fiscal year and the actual appropriations limit of the district during the preceding year, as determined pursuant to Government Code 7900-7914. Documentation used to identify these limits shall be made available to the public on the day of the Board meeting. (Education Code 42132; Government Code 7910)

#### Interim Reports

The Superintendent or designee shall submit two interim fiscal reports to the Board, the first report covering the district's financial and budgetary status for the period ending October 31 and the second report covering the period ending January 31. The reports and supporting data shall also be made available by the district for public review. (Education Code 42130)

(cf. 1340 - Access to District Records)

The interim report shall include an assessment of the district budget as revised to reflect current information regarding the adopted state budget, district property tax revenues, if any, and ending balances for the preceding *fiscal* year. The *review report* shall be based on criteria and standards adopted by the State Board of Education (SBE) which address fund and cash balances, reserves, deficit spending, estimation of average daily attendance (ADA), projected enrollment, ratio of ADA to enrollment, projected revenue limit, salaries and benefits, other revenues and expenditures, and facilities maintenance. The *review report* shall also ~~consider~~ *provide* supplemental information regarding contingent liabilities, use of one-time revenues for ongoing expenditures, contingent revenues, contributions, long-term commitments, unfunded liabilities, temporary interfund borrowings, the status of labor agreements, and the status of other funds. (Education Code 33128.3, 42130, 42131; 5 CCR 15453-1546~~6~~)

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Within 45 days after the close of the period reported, the Board shall approve the interim fiscal report and certify, on the basis of the interim report and any additional financial information known by the Board to exist at the time of certification, whether the district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. The certification shall be classified as one of the following: (Education Code 42130, 42131)

1. "Positive certification" indicating that the district will meet its financial obligations for the current fiscal year and two subsequent fiscal years
2. "Qualified certification" indicating that the district may not meet its financial obligations for the current fiscal year or two subsequent fiscal years
3. "Negative certification" indicating that the district will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year

The Superintendent or designee shall submit a copy of the interim report and certification to the County Superintendent using the state's SACS software, as prescribed by the SPI. (Education Code 42130, 42131)

If the district submits a positive certification that is subsequently changed by the County Superintendent to a qualified or negative certification, the district may appeal the decision to the SPI within five days of receiving the notice of change. (Education Code 42131)

Whenever the district receives a qualified or negative certification as determined by the Board or the County Superintendent, ~~it~~ **the Superintendent or designee** shall cooperate in the implementation of any remedial actions taken by the County Superintendent under the authority granted to him/her pursuant to Education Code 42131.

Whenever the County Superintendent conducts a comprehensive review of the district's financial and budgetary conditions after determining that the district's budget does not comply with SBE-adopted **criteria and** standards ~~and criteria~~ for fiscal stability, the Board shall review the County Superintendent's recommendations at a public Board meeting. Within 15 days of receiving the report, the district shall notify the County Superintendent and the SPI of its proposed actions on the recommendations. (Education Code 42637)

If the second interim report of the fiscal year is accompanied by a qualified or negative certification as determined by the Board or the County Superintendent, the Superintendent or designee shall, no later than June 1, provide to the County Superintendent, the State Controller,

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and the SPI a financial statement that reports data for the period ending April 30 and projects the district's fund and cash balances as of June 30. (Education Code 42131)

**Audit Report**

By April 1 of each year, the Board shall provide for an audit of the district's books and accounts or the County Superintendent shall make arrangements to provide for that audit. (Education Code 41020)

~~The Superintendent or designee shall establish a timetable for the completion and review of the audit within the deadlines established by law.~~

To conduct the audit, the Board shall select a certified public accountant or public accountant licensed by the State Board of Accountancy from among those deemed qualified by the State Controller. (Education Code 41020, 41020.5)

The Board shall not select any public accounting firm to provide audit services if the lead or coordinating audit partner having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for the district in each of the six previous fiscal years. (Education Code 41020)

While a *public accounting* firm is performing the audit of the district, it shall not provide any nonauditing, management, or other consulting services for the district except as provided in Government Accounting Standards, Amendment #3, published by the U.S. Government Accounting Office. (Education Code 41020)

The audit shall include an audit of income and expenditures by source of funds for all funds of the district, including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district, as well as an audit of student attendance procedures. (Education Code 41020)

(cf. 3430 - Investing)

(cf. 3451 - Petty Cash Funds)

(cf. 3452 - Student Activity Funds)

(cf. 3551 - Food Service Operations/Cafeteria Fund)

~~The district's audited financial reports shall include:~~

~~1. Management's discussion and analysis, which shall introduce the basic financial~~

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~~statements and provide an analytical overview of the district's financial activities, including:~~

- ~~a. — An objective and easily readable analysis of the district's financial activities based on currently known facts, decisions, and conditions~~
- ~~b. — Comparisons of the current year to the prior year~~
- ~~c. — An analysis of the district's overall financial position, enabling a determination as to whether that position has improved or deteriorated as a result of the year's activities~~
- ~~d. — An analysis of significant changes that occur in funds and significant budget variances~~
- ~~e. — A description of capital asset and long term debt activity during the year~~
- ~~f. — A description of currently known facts, decisions, and conditions that are expected to have a significant effect on the district's financial position~~
- ~~2. — Basic financial statements, including:~~
  - ~~a. — Districtwide financial statements, consisting of a statement of net assets and a statement of activities which report all of the assets, liabilities, revenues, expenses, and gains and losses of the district~~
  - ~~b. — Fund financial statements, consisting of a series of statements that focus on information about the district's major governmental and enterprise funds, including its blended component units~~
  - ~~c. — Notes to the financial statements that are essential to a user's understanding of the basic financial statements~~
- ~~3. — Supplementary information required by the Governmental Standards Accounting Board, including but not limited to budgetary comparison schedules~~

*If the district participates in the school district of choice program to accept interdistrict transfers, the Superintendent or designee shall notify the auditor, prior to the commencement of the audit, that the audit must include a review of the district's compliance with specified program requirements. (Education Code 48301)*

*(cf. 5117 - Interdistrict Attendance)*

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~~*The Superintendent or designee shall cooperate with the auditor to provide the necessary financial records and to ensure that the audit report contains all information required by law and the Governmental Accounting Standards Board (GASB).*~~

By January 31 of each year, the Board shall review, at an open meeting, the annual district audit for the prior year, any audit exceptions identified in that audit, the recommendations or findings of any management letter issued by the auditor, and any description of correction or plans to correct any exceptions or any issue raised in a management letter. (Education Code 41020.3)

(cf. 9322 - Agenda/Meeting Materials)

To the extent possible, the Board's review shall occur prior to December 15 to provide the Board and the community an opportunity to review the audit before it is submitted to local and state agencies.

No later than December 15, the Superintendent or designee shall file the report of the audit for the preceding fiscal year with the County Superintendent, the California Department of Education, and the State Controller. (Education Code 41020)

If an audit finding results in the district being required to repay an apportionment or pay a penalty, the district may appeal the finding to the Education Audit Appeals Panel by making an informal, summary appeal within 30 days of receiving the final audit report or initiating a formal appeal within 60 days of receiving the report. (Education Code 41344, 41344.1)

~~***Fund Balance***~~

~~*In accordance with GASB Statement 54, external financial reports shall report fund balances in the general fund within the following classifications based on the relative strength of constraints placed on the purposes for which resources can be used:*~~

~~*1. Nonspendable fund balance, including amounts that are not expected to be converted to cash, such as resources that are not in a spendable form or are legally or contractually required to be maintained intact*~~

~~*2. Restricted fund balance, including amounts constrained to specific purposes by their providers or by law*~~

~~*3. Committed fund balance, including amounts constrained to specific purposes by the Board*~~

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~~4. Assigned fund balance, including amounts which the Board or its designee intends to use for a specific purpose~~

~~5. Unassigned fund balance, including amounts that are available for any purpose~~

**Negative Balance Report**

Whenever the district reports a negative unrestricted fund balance or a negative cash balance in its annual budget or annual audit report, it shall include in the budget a statement that identifies the reasons for the negative unrestricted fund balance or negative cash balance and the steps that have been taken to ensure that the negative balance will not occur at the end of the current fiscal year. (Education Code 42127.5)

**Non-Voter-Approved Debt Report**

Upon approval by the Board to proceed with the issuance of revenue bonds or any agreement for financing school construction pursuant to Education Code 17170-17199.5, the Superintendent or designee shall notify the County Superintendent and the county auditor. The Superintendent or designee shall provide the Board, the county auditor, the County Superintendent, and the public with related repayment schedules and evidence of the district's ability to repay the obligation. (Education Code 17150)

~~In the case~~ **When the Board is considering the issuance** of certificates of participation and other debt instruments that are secured by real property and do not require the approval of the voters of the district, ~~notice the Superintendent or designee shall be provided~~ **provide notice** to the County Superintendent and county auditor no later than 30 days before the Board's approval to proceed with issuance. The Superintendent or designee shall provide the Board, the county auditor, the County Superintendent, and the public with information necessary to assess the anticipated effect of the debt issuance, including related repayment schedules, evidence of the district's ability to repay the obligation, and the issuance costs. (Education Code 17150.1)

**Other Postemployment Benefits Report (GASB 45)**

In accordance with GASB Statement 45, the district's financial statements shall report the annual expense of nonpension other postemployment benefits (OPEBs) on an accrual basis over the retiree's active working lifetime, as determined by a qualified actuary procured by the Superintendent or designee. To the extent that these OPEBs are not prefunded, the district shall report a liability on its financial statements.

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(cf. 4154/4254/4354 - Health and Welfare Benefits)

(cf. 9250 - Remuneration, Reimbursement and Other Benefits)

The Superintendent or designee shall annually present the estimated accrued but unfunded cost of OPEBs and the actuarial report upon which those costs are based at a public meeting of the Board. (Education Code 42140)

The amount of the district's financial obligation for OPEBs shall be reevaluated every two or three years in accordance with GASB 45 depending on the number of members in the OPEB plan.

Regulation MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

approved: January 18, 2006 Manhattan Beach, California

revised: September 5, 2007

reviewed: March 17, 2010

reviewed: November 3, 2010



**G. BOARD BUSINESS**

5. **TITLE:** Receive for Board review **REVISED** Administrative Regulation 4032, Reasonable Accommodation

**BACKGROUND:** Pursuant to the federal Americans with Disabilities Act (ADA) (42 USC 12101-12213) and the state's Fair Employment and Housing Act (FEHA) (Government Code 12900-12996), the district has a duty to reasonably accommodate qualified employees and job applicants with known disabilities, except when such accommodation would cause an undue hardship to the district. This accommodation is not required for individuals who are not otherwise qualified for the job.

This **UPDATED** and reorganized regulation addresses (1) the circumstances under which the district may require a job applicant to undergo a medical examination in order to provide documentation of his/her health condition, (2) the prohibition against the use of the applicant's or employee's genetic information, and (3) the persons who should be informed of the applicant's or employee's medication conditions.

**ACTION RECOMMENDED:** Receive for Board review **REVISED** Administrative Regulation 4032, Reasonable Accommodation

**PREPARED BY:** Kathy Hall, Director, Human Resources

**DATE OF MEETING:** November 3, 2010

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# REVISED ADMINISTRATIVE REGULATION MBUSD

AR 4032(a)

## Personnel

### REASONABLE ACCOMMODATION

*Except when undue hardship would result to the district, the Superintendent or designee shall provide reasonable accommodation:*

- 1. In the job application process, to any qualified job applicant with a disability*
- 2. To enable any qualified employee with a disability to perform the essential functions of the position he/she holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities*

*The district designates the position specified in BP 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.*

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

#### Definitions

Disability, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such an impairment
3. Being regarded as having such an impairment

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

Essential functions are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (*Government Code 12926; 29 CFR 1630.2*)

*(cf. 4119.3/4219.3/4319.3—Duties of Personnel)*

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~~Reasonable accommodations that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to: (29 CFR 1630.2)~~

- ~~1. Making existing facilities accessible and usable~~
- ~~2. Restructuring the job duties~~
- ~~3. Offering part-time or modified work schedules~~
- ~~4. Acquiring or modifying equipment or devices~~
- ~~5. Changing tests, training materials or policies~~
- ~~6. Providing qualified readers or interpreters~~
- ~~7. Reassigning the employee to a vacant position~~

*Reasonable accommodation means: (Government Code 12926; 29 CFR 1630.2)*

- 1. For a qualified job applicant with a disability, modifications or adjustments to the job application process that enable him/her to be considered for the position he/she desires*
- 2. For a qualified employee with a disability, modifications or adjustments to the work environment, or to the manner or circumstances under which the position the employee holds or desires is customarily performed, that enable him/her to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the district's other similarly situated employees without disabilities*

~~Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. (29 CFR 1630.2)~~

*Qualified individual with a disability means a job applicant or employee with a disability who: (29 CFR 1630.15, 1630.2)*

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- 1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he/she holds or desires*
- 2. Can perform the essential functions of the position with or without reasonable accommodation*
- 3. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to himself/herself or others in the job he/she holds or desires*

Undue hardship is a determination based on an individualized assessment of current circumstances that shows that *the provision of a specific accommodation would cause significant difficulty or expense to the district.* ~~a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)~~

- ~~1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding~~
- ~~2. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at this facility, the effect on expenses and resources of the facility, or the impact on the operations of the facility~~
- ~~3. The overall financial resources, size, number of employees, and the number, type and location of facilities of the district~~
- ~~4. The type of operation of the district, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation~~
- ~~5. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.~~

**Request for Reasonable Accommodation**

~~The district designates the position specified in BP 4030 – Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.~~

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**REASONABLE ACCOMMODATION**

~~(cf. 4030—Nondiscrimination in Employment)~~

~~(cf. 4031—Complaints Concerning Discrimination in Employment)~~

When requesting reasonable accommodation, the *an* employee or employee's *his/her* representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition. *The supervisor shall inform the coordinator of the employee's request as soon as practicable.*

When requesting reasonable accommodation during the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation ~~for~~ *during* the process.

~~Employees' requests for reasonable accommodation may first be considered informally by the site administrator. The site administrator shall consult with the coordinator before any decision as to accommodation is made.~~

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the district *coordinator* to submit a list of specific questions to the *his/her* health care or vocational professional.

If the documentation submitted by the employee does not ~~specify~~ *indicate* the existence of a qualifying disability ~~and~~ *or* explain the need for reasonable accommodation, the district ~~may require the~~ *coordinator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the coordinator may require him/her* employee to submit to an examination by a health care professional selected and paid for by the district.

*The district may make a medical or psychological inquiry of a job applicant or require him/her to submit to a medical or psychological examination after he/she has been given a conditional offer of employment but before the commencement of his/her job duties, provided the inquiry or examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification. (Government Code 12940)*

*The coordinator shall not request any job applicant's or employee's genetic information except as authorized by law. (42 USC 2000ff-1, 2000ff-5)*

## **REASONABLE ACCOMMODATION**

*(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)*

*In accordance with law, the coordinator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, he/she shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment. (42 USC 12112)*

*(cf. 4112.6/4212.6/4312.6 - Personnel Records)*

### ***Granting Reasonable Accommodation***

Upon receiving a request to reasonably accommodate *from* a qualified employee with a disability, the coordinator shall:

1. Determine the essential functions of the job *involved*
2. Engage in an informal, interactive process with the employee *individual* to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodations, and assess their effectiveness

~~According to the EEOC Guidance, the district is not required to provide the reasonable accommodation preferred by the individual. Rather, the district must only provide an accommodation that is "effective." Pursuant to 29 CFR 1630.2, an "effective accommodation" is one which allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment. According to the EEOC's Enforcement Guidance, the district is not required to provide the reasonable accommodation preferred by the individual. Rather, the district must provide an accommodation that is "effective." An "effective accommodation" is one which enables the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment.~~

3. Develop a plan for reasonable accommodation which is effective and allows *will enable* the employee *individual* to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment ~~and does not~~ *without* imposing undue hardship on the district

~~To qualify for a job, an individual shall not pose a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation. (29 CFR 1630.2)~~

~~The determination of whether an individual poses a significant risk of substantial harm to~~

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~~himself/herself or others shall be made on a case-by-case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risks, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of potential harm. (29 CFR 1630.2)~~

~~The coordinator may confer with the site administrator, the district medical advisor and/or other district staff before making a final decision as to the accommodation.~~

*A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)*

- a. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding*
- b. The overall financial resources of the facility making the accommodation, the number of persons employed at this facility, and the effect on expenses and resources of the facility*
- c. The overall financial resources, number of employees, and the number, type, and location of facilities of the district*
- d. The type of operation of the district, including the composition, structure, and functions of the workforce and the geographic separateness and administrative or fiscal relationship of the facility making the accommodation to other district facilities*
- e. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business*

*The coordinator may confer with the site administrator, any medical advisor chosen by the district, and/or other district staff before making a final decision as to the accommodation.*

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Appeal Process

~~If the employee or applicant~~ *Any qualified individual with a disability who* is not satisfied with the decision of the coordinator, ~~he/she~~ may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The Superintendent or designee shall give the ~~employee or applicant~~ *individual* his/her decision within 15 working days of receiving the appeal.

Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Governing Board in accordance with the district's procedure for such complaints.



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Legal Reference:

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

UNITED STATES CODE, TITLE 29

701-794e Vocational Rehabilitation Act

UNITED STATES CODE, TITLE 42

*2000ff-1-2000ff-11 Genetic Information Nondiscrimination Act of 2008*

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act, especially:

35.107 Designation of employee

36.101-36.608 Nondiscrimination on the basis of disability by public facilities

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 Direct threat

COURT DECISIONS

*A.M. v. Albertsons, LLC, (2009) Cal.App.4th 455*

Colmenares v. Braemar Country Club, Inc., 2003 Cal.LEXIS 1131

Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045

US Airways, Inc. v. Barnett, (2002) 535 U.S., 122 S.Ct. 1516

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

WEB SITES

EEOC: <http://www.eeoc.gov>

Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

*Equal Employment Opportunity Commission: <http://www.eeoc.gov>*

*U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>*

Regulation MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

approved: September 5, 2007 Manhattan Beach, California

reviewed:

**G. BOARD BUSINESS**

6. **TITLE:** Receive for Board review **REVISED** Administrative Regulation 4161.1/4361.1, Personal Illness/Injury Leave

**BACKGROUND:** This **MANDATED** Administrative Regulation is revised to more directly reflect the law in reference to the amount of sick leave an employee may use to attend to the illness of his/her child, parent, spouse, registered domestic partner, or domestic partner's child. The section on "Continued Absence After Available Leave is Exhausted" has been retitled and revised to reflect a **NEW COURT DECISION** which addresses the period of differential pay being limited to a total of five months per accident or illness, even if the employee works for a period of time between sick leave increments related to the same medical condition. The section on "Verification Requirements" adds information on the Genetic Information Nondiscrimination Act.

Important to the Mandated regulation is an Opinion Letter issued by the U.S. Department of Labor on June 22 in clarifying the definition of "son or daughter" under the Family and Medical Leave Act to ensure that an employee who has day-to-day responsibilities to care for or financially support a child qualifies for family leave, even if the employee has no biological or legal relationship with the child.

FMLA entitles an eligible employee to take up to 12 work weeks of leave within a 12-month period because of the birth, adoption, or placement in his/her foster care of a child or to care for a child with a serious health condition (see AR 4161.8/4261.8/4361.8 – Family Care and Medical Leave). For this purpose, a child is defined as a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis as long as the child is under age 18 years of age or is an adult dependent child. FMLA 4 *Policy News* regulations (29 CFR 825.122) define "in loco parentis" to include persons with day-to-day responsibilities to care for and financially support a child and specify that a biological or legal relationship is not necessary.

**ACTION RECOMMENDED:** Receive for Board review **REVISED** Administrative Regulation 4161.1/4361.1, Personal Illness/Injury Leave

**PREPARED BY:** Kathy Hall, Director, Human Resources

**DATE OF MEETING:** November 3, 2010

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**REVISED ADMINISTRATIVE REGULATION  
MBUSD**

AR 4161.1(a)  
4361.1

**Personnel**

**Personal Illness/Injury Leave**

Full-time certificated employees are entitled to 10 days leave of absence for personal illness or injury (sick leave) per school year, with full pay. Employees working fewer than five days per week shall be granted comparable sick leave in proportion to the time they work. (Education Code 44978)

(cf. 4161/4261 - Leaves)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

(cf. ~~4361~~ - Leaves)

An employee may take sick leave at any time during the school year, even if credit for sick leave has not yet been accrued. (Education Code 44978)

An employee who does not complete a given year of service shall be charged for any unearned sick leave used as of the date of termination.

Unused days of sick leave shall be accumulated from year to year without limitation. (Education Code 44978)

At the beginning of each school year, employees shall be notified of the amount of sick leave they have accumulated.

Any certificated employee who leaves the district after at least one year of employment and accepts a certificated position in another district, county office of education, or community college district within one year shall have transferred with him/her the total amount of accumulated sick leave. The district shall not require new employees to waive their leave accumulated in a previous district. (Education Code 44979, 44980)

Sick leave may be used by a certificated employee ~~for~~ *due to*:

1. ~~Cases of~~ Temporary inability to perform duties because of illness, accident, or quarantine, whether or not the cause of absence arises out of and in the course of employment (Education Code 44964)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

2. ~~Absences due to~~ Pregnancy, miscarriage, childbirth, and recovery (Education Code 44965,

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44978)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

3. ~~Cases of~~ Personal necessity (Education Code 44981)

(cf. 4161.2/4261.2/4361.2 - Personal Leaves)

4. ~~Cases of~~ Industrial accidents or illnesses when leave granted specifically for that purpose has expired *been exhausted* (Education Code 44984)

(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)

5. Illness of the employee's child, parent, spouse, registered domestic partner or domestic partner's child up to the *in an* amount of *not less than the sick* leave that would be accrued *by the employee* during six months *at his/her ten current rate of entitlement* (Labor Code 233)

An employee shall notify the district of his/her need to be absent as soon as such need is known, so that substitute services may be secured. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district not later than 3 p.m. of the day preceding the day on which he/she intends to return to work. If failure to so notify the district results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

(cf. 4121 - Temporary/Substitute Personnel)

~~Sick Leave Beyond 10 Days - Continued Absence After Available Sick Leave Is Exhausted~~

*During each school year*, when a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, *due to illness or injury*, continues to be absent from his/her duties due to illness or accident for an additional period up to five school months, the employee shall receive his/her regular salary minus the actual cost of a substitute to fill the position. If the district has made every reasonable effort to secure the services of a substitute and has been unable to do so, the amount that ~~might~~ *would* have been paid to a substitute shall be deducted from the employee's salary. (Education Code 44977)

~~The sick leave, including accumulated sick leave, and the five-month period shall run consecutively. (Education Code 44977)~~

**Personnel**

**Personal Illness/Injury Leave**

~~An employee shall not be provided more than one five-month period per illness or accident. However, if the school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code 44977)~~

*An employee shall not be provided more than one five-month period per illness or injury. However, if the school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code 44977)*

*If a certificated employee is not medically able to resume his/her duties after the five-month period provided pursuant to Education Code 44977, the employee shall be placed either in another position or on a reemployment list. Placement on the reemployment list shall be for 24 months for probationary employees or 39 months for permanent employees and shall begin at the expiration of the five-month period. If during this time the employee becomes medically able, he/she shall be returned to employment in a position for which he/she is credentialed and qualified. (Education Code 44978.1)*

*(cf. 4116 - Probationary/Permanent Status)*

Verification Requirements

After any absence due to illness or injury, the employee shall verify the absence by submitting a completed and signed district absence form to his/her immediate supervisor.

The Superintendent or designee may, at any time, require additional written verification by the employee's physician or ~~practitioner~~ *other authorized health care provider*. Such verification shall be required whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever clear evidence indicates that an absence is not related to illness or injury.

The Superintendent or designee may require an employee to visit a physician selected by the district, and at district expense, in order to receive a report on the medical condition of the employee. The report shall include a statement as to the employee's need for further leave of absence and a prognosis as to when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent or designee may, after giving notice to the employee, deny further leave.

Before returning to work, an employee who has been absent for surgery, hospitalization, or

**Personnel**

**Personal Illness/Injury Leave**

extended medical treatment may be asked to submit a letter from his/her physician stating that he/she is able to return *to duty* and stipulating any recommended restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

Legal Reference:

**EDUCATION CODE**

44964 Power to grant leave of absence in case of illness, accident, or quarantine

44965 Granting of leaves of absence for pregnancy and childbirth

44976 Transfer of leave rights when school is transferred to another district

44977 Salary deduction during absence from duties up to five months *after sick leave is exhausted*

44978 Provisions for sick leave of certificated employees

*44978.1 Inability to return to duty; placement in another position or on reemployment list*

44979 Transfer of accumulated sick leave to another district

44980 Transfer of accumulated sick leave to a county office of education

44981 Leave of absence for personal necessity

44983 Exception to sick leave when district adopts specific rule

*44984 Industrial accident or illness*

44986 Leave of absence for disability allowance applicant

**LABOR CODE**

*220 Sections inapplicable to public employees*

233 Illness of child, parent, spouse or domestic partner

234 Absence control policy

**CODE OF REGULATIONS, TITLE 5**

5601 Transfer of accumulated sick leave

**UNITED STATES CODE, TITLE 42**

*2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008*

**COURT DECISIONS**

*Veguez v. Governing Board of Long Beach Unified School District, (2005) 127 Cal.App.4th 406*

Regulation MANHATTAN BEACH UNIFIED SCHOOL DISTRICT  
approved: September 5, 2007 Manhattan Beach, California  
revised:

**G. BOARD BUSINESS**

7. **TITLE:** Receive for Board review **REVISED** Administrative Regulation and Exhibit 4112.62/4212.62/4312.62, Maintenance of Criminal Offender Records

**BACKGROUND:** The following revised and updated regulation reflects **NEW LAW (SB 447)** which requires the district to designate a custodian of records and to annually notify the DOJ regarding the identity of this person. The revision further includes the requirement of **SB 447**, effective July 1, 2011, that persons designated as custodians of records must themselves receive criminal record background clearances to be eligible to serve in that capacity. The section on “Interagency Agreements” adds language on communicating with other districts participating in the interagency agreement when the district receives a report of a conviction of a serious or violent felony.

The revised Exhibit is updated to reflect law in reference to civil action for invasion of privacy and to add legal citations for civil, criminal, and administrative penalties.

**ACTION RECOMMENDED:** Receive for Board review **REVISED** Administrative Regulation and Exhibit 4112.62/4212.62/4312.62, Maintenance of Criminal Offender Records

**PREPARED BY:** Kathy Hall, Director, Human Resources

**DATE OF MEETING:** November 3, 2010

**AGENDA NOTE AGENDA NOTE AGENDA NOTE**

# REVISED ADMINISTRATIVE REGULATION MBUSD

AR 4112.62(a)  
4212.62  
4312.62

## Personnel

### MAINTENANCE OF CRIMINAL OFFENDER RECORDS

All information received from the Department of Justice is confidential. (Education Code 44830.1, 45125)

~~The Superintendent shall designate an employee as record custodian of all confidential fingerprint and criminal record history who shall be responsible for the administration of the information. Any questions regarding Criminal Offender Record Information shall be resolved by the record custodian.~~ *The Superintendent or designee shall ensure that criminal record background checks on employees or prospective employees are conducted through the Department of Justice (DOJ) and that any Criminal Offender Record Information (CORI) received is maintained in accordance with law.*

(cf. 1240 - Volunteer Assistance)  
(cf. 3515.6 - Criminal Background Checks for Contractors)  
(cf. 4112.5/4312.5 - Criminal Record Check)  
(cf. 4112.6/4212.6/4312.6 - Personnel Files)  
(cf. 4212.5 - Criminal Record Check)

~~Criminal Offender Record Information~~ *To ensure its confidentiality, CORI shall be accessible only to the record custodian of records and shall be kept in a locked file separate from other files. CORI shall be used only for the purpose for which it is requested and its* The contents of these records shall not be disclosed and shall not be or reproduced. (Education Code 44830.1, 45125)

*Once a hiring determination is made, the records shall be destroyed to the extent that the identity of the individual can no longer be reasonably ascertained. (Education Code 44830.1, 45125; 11 CCR 708)*

*Any unauthorized release or reproduction of any criminal offender record or other violation of this administrative regulation may result in suspension, dismissal, and/or criminal or civil legal action.*

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)  
(cf. 9011 - Disclosure of Confidential/Privileged Information)



**MBUSD**

**AR 4112.62(b)**

4212.62

4312.62

**Personnel**

**MAINTENANCE OF CRIMINAL OFFENDER RECORDS**

*Custodian of Records*

~~The record custodian shall be fingerprinted and processed through the California Department of Justice. He/she shall sign an Employee Statement Form, acknowledging an understanding of the laws regarding Criminal Offender Record Information.~~

~~These records shall be used only for the purpose for which they were requested.~~

~~Upon a hiring determination, the records shall be destroyed to the extent that the identity of the individual can no longer be reasonably ascertained. (Education Code 44830.1, 45125; 11 CCR 708)~~

*The Superintendent shall designate an employee as custodian of records. Beginning July 1, 2011, any employee designated as custodian of records shall receive a criminal background check clearance from the DOJ prior to serving in that capacity. (Penal Code 11102.2)*

~~Violation of this administrative regulation may result in suspension, dismissal and/or criminal or civil prosecution.~~

~~(cf. 4119.23/4219.23/4319.23—Unauthorized Release of Confidential/Privileged Information)  
(cf. 9011—Disclosure of Confidential/Privileged Information)~~

~~The record custodian shall ensure that the district complies with destruction, storage, dissemination, auditing, backgrounding and training requirements as set forth in 11 CCR 700-708 and the rules regarding use and security of these records as set forth in Penal Code 11077. (Education Code 44830.1, 45125)~~

*The custodian of records shall sign and return to the DOJ the Employee Statement Form acknowledging an understanding of the laws prohibiting misuse of CORI. In addition, the custodian of records shall ensure that any individual with access to CORI has on file a signed Employee Statement Form.*

*The custodian of records shall be responsible for the security, storage, dissemination, and destruction of all CORI furnished to the district. He/she also shall serve as the primary contact for the DOJ for any related issues. (Penal Code 11102.2)*

*By March 1, 2012, and by March 1 of every year thereafter, the Superintendent or designee shall notify the DOJ of the district's designated custodian of records. In addition, the*

**MBUSD**

**AR 4112.62(c)**

**4212.62**

**4312.62**

**Personnel**

## **MAINTENANCE OF CRIMINAL OFFENDER RECORDS**

*Superintendent or designee shall immediately notify the DOJ whenever a designated custodian of records ceases to serve in that capacity. (Penal Code 11102.2)*

### *Interagency Agreements*

*Education Code 44830.2 and 45125.01 allow districts to enter into an agreement with other school districts within the same county, or in contiguous counties, to share the criminal record information of applicants or temporary/substitute employees in those school districts.*

*If the district enters into an agreement with another or other school districts, the district shall submit an interagency agreement to the DOJ to establish authorization to submit and receive CORI on behalf of all participating districts. (Education Code 44830.2, 45125.01)*

*Upon receipt from the DOJ of a report of conviction of a serious or violent felony, the district shall communicate that fact to participating districts and shall remove the affected employee from the common list of persons eligible for employment. (Education Code 44830.2, 45125.01)*

*In addition, upon receipt from the DOJ of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the district shall give notice to the superintendent of any participating district, or the person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or the authorized designee. The report shall be made available at the district office for 30 days following the receipt of the notice. (Education Code 44830.2, 45125.01)*

*The district shall not release a copy of that information to any participating district or any other person. In addition, the district shall retain or dispose of the information in the manner specified in law and in this administrative regulation after all participating districts have had an opportunity to inspect it in accordance with law. (Education Code 44830.2, 45125.01)*

*The district shall maintain a record of all persons to whom the information has been shown. This record shall be available to the DOJ. (Education Code 44830.2, 45125.01)*

Legal Reference:

EDUCATION CODE

44332 Temporary certificate

44332.6 Criminal record check, county board of education

44346.1 Applicants for credential, conviction of a violent or serious felony

**MBUSD**

AR 4112.62(d)

4212.62

4312.62

**Personnel**

**MAINTENANCE OF CRIMINAL OFFENDER RECORDS**

44830.1 Certificated employees, conviction of a violent or serious felony

44830.2 Interagency agreements

45122.1 Classified employees, conviction of a violent or serious felony

45125 Use of personal identification cards to ascertain conviction of crime

45125.01 Interagency agreements

45125.5 Automated records check

45126 Duty of Department of Justice to furnish information

*49024 Activity Supervisor Clearance Certificates*

PENAL CODE

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

11075-11081 Criminal record dissemination

*11102.2 Criminal records: custodian*

11105 State criminal history information; furnishing to authorized persons

11105.3 Record of conviction involving sex crimes, drug crimes or crimes of violence; availability to employer for applicants for positions with supervisory or disciplinary power over minors

11140-11144 Furnishing of state criminal history information

13300-13305 Local summary criminal history information

CODE OF REGULATIONS, TITLE 11

701-708 Criminal offender record information

*Management Resources:*

**WEB SITES**

*Office of the Attorney General, Department of Justice, Background Checks:*

*<http://www.ag.ca.gov/fingerprints>*

Regulation MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

approved: September 5, 2007 Manhattan Beach, California

reviewed:

**REVISED EXHIBIT  
MBUSD**

E 4112.62(a)  
4212.62  
4312.62

**Personnel**

**MAINTENANCE OF CRIMINAL OFFENDER RECORDS**

**SAMPLE EMPLOYEE STATEMENT FORM USE OF CRIMINAL JUSTICE INFORMATION**

As an employee of Manhattan Beach Unified School District, you may have access to confidential criminal record information, which is controlled by *state and federal* statute. Misuse of such information may adversely affect the individual's civil rights and violates the law *constitutional rights of privacy*. Penal Code 502 prescribes the penalties related to computer crimes. Penal Code 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be ~~released disseminated~~. Penal Code 11140-11144 and 13301-13305 prescribe penalties for misuse of criminal history information. Government Code 6200 prescribes the felony penalties for misuse of public record, and ~~CLETS (California Law Enforcement Telecommunication System) information~~. *Government Code 6200 prescribes felony penalties for misuse of public records.*

Penal Code 11142 and 13303 state:

“Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information, is guilty of a misdemeanor.”

*Civil Code 1798.53, Invasion of Privacy, states:*

*"Any person who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal or confidential information maintained by a state agency or from records within a system of records maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual. "*

**CIVIL, CRIMINAL, AND ADMINISTRATIVE PENALTIES:**

- \*Penal Code *11141*: DOJ furnishing to unauthorized person (misdemeanor)
- \*Penal Code *11142*: Authorized person furnishing to other (misdemeanor)
- \*Penal Code *11143*: Unauthorized person in possession (misdemeanor)
- \*California Constitution, Article I, Section 1 (Right to Privacy)
- \* Civil Code *1798.53*, Invasion of Privacy
- \*Title 18 USC 641, 1030, 1951, and 1952

Any employee who is responsible for such misuse may be subject to immediate dismissal. Violations of this law may also result in criminal and/or civil action.

I HAVE READ THE ABOVE AND UNDERSTAND THE POLICY REGARDING MISUSE OF CRIMINAL RECORD INFORMATION.

Signature:

Date:

Exhibit MANHATTAN BEACH UNIFIED SCHOOL DISTRICT  
version: September 5, 2007 Manhattan Beach, California

**G. BOARD BUSINESS**

8. **TITLE:** Receive for review **REVISED** Administrative Regulation 6164.6, Identification and Education Under Section 504

**BACKGROUND:** This regulation is revised to focus on procedures for identifying and evaluating students who are eligible to receive a free appropriate public education under Section 504. The regulation includes: (1) revised definitions of FAPE and eligibility, (2) clarification that the principal or 504 coordinator makes the determination whether to evaluate a student for services, and (3) revised grievance procedure including a process for administrative review of the district's decision and for a parent/guardian's request for a due process hearing. These revisions are required as a result of the reauthorization revision of the federal legislation.

**ACTION RECOMMENDED:** Receive for review **REVISED** Administrative Regulation 6164.6, Identification and Education Under Section 504

**PREPARED BY:** Ellyn Schneider, Executive Director, Student Services

**DATE OF MEETING:** November 3, 2010

**AGENDA NOTE AGENDA NOTE AGENDA NOTE**

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

Definitions

~~Eligibility for services under Section 504 of the federal Rehabilitation Act of 1973 means a student has any of the following conditions: (34 CFR 104.3)~~

~~1. A physical or mental impairment which substantially limits one or more major life activities~~

~~2. Has a record or history of such impairment~~

~~3. Is regarded as having such impairment because he/she:~~

~~a. Has a physical or mental impairment that does not substantially limit a major life activity but is treated by the district as having such 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 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 with the HIV virus but has no physical effects from it)~~

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

~~Physical or mental impairment means any of the following: (34 CFR 104.3)~~

~~1. 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; genito-urinary; hemic and lymphatic; skin; and endocrine~~

~~2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities~~

~~District Coordinator for Implementation of Section 504~~

~~The district has designated the following individual to coordinate its efforts to comply with the requirements of law, Board policy, and administrative regulation pertaining to the implementation of Section 504: (34 CFR 104.7)~~

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

~~Executive Director, Student Services~~

~~Manhattan Beach Unified School District  
325 Peck Avenue  
Manhattan Beach, CA 90266~~

~~(310) 318-7345~~

~~(cf. 1312.3 Uniform Complaint Procedures)~~

~~(cf. 5145.3 Nondiscrimination/Harassment)~~

~~Referral, Identification, and Evaluation~~

~~1. Any student may be referred by a parent/guardian, teacher, other school employee, student success team, or community agency for consideration of eligibility as a disabled student under Section 504. This referral should be made to the school site principal or 504 Coordinator.~~

~~(cf. 6164.5 Student Success Teams)~~

~~2. Upon receipt of a referral for eligibility, the principal shall promptly convene a meeting of a multi-disciplinary 504 team to consider the referral and determine whether an evaluation under this procedure is appropriate.~~

~~The 504 team shall consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. (34 CFR 104.35)~~

~~The team's determination shall be based on a review of the student's school records, including 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.~~

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

~~If the 504 team determines that an evaluation is unnecessary, it shall inform the parents/guardians of this decision and of the procedural safeguards as described below.~~

~~3. If the team believes that a 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 initial placement and before any significant change in placement. (34 CFR 104.35)~~

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

~~The district's evaluation procedures shall ensure that tests and other evaluation materials: (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 based solely on a single IQ score, and~~

~~c. Reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills unless the test is designed to measure these particular deficits~~

~~4. 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)~~

**Accommodation Plan and Placement**

~~1. If, upon evaluation, a student is determined to be eligible for services under Section 504, the 504 team shall meet to develop a written accommodation plan which shall specify placement, accommodations, and supplementary aids and services necessary to ensure that the student receives a free appropriate public education.~~

~~The parents/guardians shall be invited to participate in the meeting and shall be given an opportunity to examine all relevant records.~~

~~2. If the 504 team determines that no services are necessary for the student, the record of the committee's meeting shall reflect the identification of the student as a disabled person under Section 504 and shall state the basis for the decision that no special services are presently needed.~~

~~3. The eligible 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. (34 CFR 104.34)~~

~~4. The district shall complete the identification, evaluation, and placement process within a reasonable time frame.~~



**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

~~5. A copy of the student's accommodation plan shall be kept in his/her student record. The student's teachers, and any other staff who provide services to the student, shall be informed of the plan's requirements.~~

~~(cf. 5125—Student Records)~~

~~(cf. 5141.21—Administering Medication and Monitoring Health Conditions)~~

**Review and Reevaluation**

~~1. The 504 team shall monitor the progress of the disabled student and the effectiveness of the student's 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. The team shall review the student's accommodation plan annually. In addition, the student's eligibility under Section 504 shall be reevaluated at least once every three years.~~

~~2. A reevaluation of the student's needs will be conducted before any subsequent significant change in placement. (34 CFR 104.35)~~

~~(cf. 5144.1—Suspension and Expulsion/Due Process)~~

~~(cf. 5144.2—Suspension and Expulsion/Due Process (Students with Disabilities))~~

**Procedural Safeguards**

~~Parents/guardians shall be notified in writing of all district decisions regarding the identification, evaluation or educational placement of students with disabilities or suspected disabilities. Notifications shall include a statement of their rights to: (34 CFR 104.36)~~

~~1. Examine relevant records~~

~~2. Have an impartial hearing with an opportunity for participation by the parents/guardians and their counsel~~

~~3. Have a review procedure~~

~~(cf. 5145.6—Parental Notifications)~~

~~Notifications shall also detail the parent/guardian's right to file a grievance with the school district over an alleged violation of Section 504 regulation; 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 receive all information in the parent/guardian's native language and primary mode of communication; right to periodic reevaluations and an evaluation~~

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

~~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; and right to appeal the impartial hearing officer's decision.~~

~~If a parent/guardian disagrees with the identification, evaluation or educational placement of a student with disabilities under Section 504, he/she may initiate the following procedures:~~

~~1. Within 30 days of receiving the student's accommodation plan, file a written complaint with the 504 Coordinator detailing his/her disagreement and request that the 504 team review the plan in an attempt to resolve the disagreement. This review shall be held within 14 days of receiving the parent/guardian's request, and the parent/guardian shall be invited to attend the meeting at which the review is conducted.~~

~~2. If disagreement continues, request in writing that the Superintendent or designee review the plan. This review shall be held within 14 days of receiving the parent/guardian's request, and the parent/guardian shall be invited to meet with the Superintendent or designee to discuss the review.~~

~~3. If disagreement continues, request in writing a Section 504 due process 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~~

~~c. Any other information the parent/guardian believes pertinent~~

~~Within 30 days of receiving the parent/guardian's request, the Superintendent or designee and 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.~~

~~The 504 Coordinator shall maintain a list of impartial hearing officers who are qualified and willing to conduct Section 504 hearings. To ensure impartiality, such officers shall not be employed by or under contract with the district in any capacity other than that of hearing officer and shall not have any professional or personal involvement that would affect their impartiality or objectivity in the matter.~~

~~Within 45 days of the selection of the 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. Any party to the hearing shall be afforded the right to:~~

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

- ~~1. Be accompanied and advised by counsel and by individuals with special knowledge or training related to the problems of students who are qualified as disabled under Section 504~~
- ~~2. Present written and oral evidence~~
- ~~3. Question and cross-examine witnesses~~
- ~~4. Receive written findings by the hearing officer~~

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

Notifications

~~The Superintendent or designee shall ensure that the district has taken appropriate steps to notify students and parents/guardians of the district's duty under Section 504. (34 CFR 104.32)~~

*Students who, because of a Section 504 disability, need or are believed to need regular or special education and services are addressed in this policy.*

*Students who are identified as eligible for special education and related services under the criteria set forth in the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") are not addressed under this policy, as the needs of such students are provided for elsewhere under District Board Policies and Regulations, state and federal law, and Special Education Local Plan Area ("SELPA") procedures.*

**DEFINITIONS AND ELIGIBILITY**

1. *A student with a disability 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 an impairment; or*
  - c. *Is regarded as having such an impairment.*

*However, only students qualifying under subdivision (a) (i.e., those with an actual physical or mental impairment that substantially limits one or more major life activities) are entitled to a FAPE and a Section 504 Service Plan under Section 504.*

2. *A physical or mental impairment means: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following*

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

*body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional, and specific learning disabilities. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The law does not limit eligibility to specific diseases or categories of medical conditions.*

- 3. The term "substantially limits" shall be interpreted consistently with the findings and purpose of the Amendments to the Americans with Disabilities Act ("ADA") that went into effect on January 1, 2009. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.*

*Whether an impairment substantially limits a major life activity shall be determined without regard to the ameliorative effects of mitigating measures such as: medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. Thus, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.*

- 4. Major life activities include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Learning, reading, concentration, thinking, and communication are typically, but not always, the major life activities utilized to determine Section 504 eligibility in the schools.*

**LOCATION AND NOTIFICATION PROCEDURES**

- 5. The District shall annually undertake reasonable measures to locate and identify every qualified disabled student residing within the District's jurisdiction who is not receiving a public education, and to notify those students and their parent/guardian of the right to a FAPE under Section 504.*

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

6. *Location and notification procedures may include the District's annual notice, personal contacts, posting of notices, newspaper advertisements, press releases, and communications with public and private community agencies.*
7. *When a student is identified, he or she should be referred to the school's Section 504 Site Chairperson, following the procedures set forth below.*

**IDENTIFICATION AND REFERRAL PROCEDURES**

8. *Any student may be referred, in writing, by parent, guardian, teacher, counselor, related service provider, other school staff, and/or community agency to the school's Section 504 Site Chairperson.*
9. *Based upon a review of relevant and available information regarding the student referred or based upon a meeting of the school site's Student Study Team or Section 504 Service Plan team, the District shall determine whether an evaluation under Section 504 is appropriate. The District shall evaluate any student who, because of disability, needs, or is believed to need, regular or special education or related aids and services.*
10. *If the request for evaluation is denied, the District or the school site's Student Study Team or Section 504 Service Plan team will inform the parent/guardian of the decision through prior written notice in writing and provide him/her with a copy of his/her parent/guardian rights and procedural safeguards under Section 504.*
11. *If the District or the school site's Section 504 Service Plan team determines an evaluation under Section 504 is appropriate, the District will forward a letter and/or an assessment plan requesting consent for evaluation of the student to the parent/guardian, along with a copy of the District's notice of parent/guardian rights and procedural safeguards under Section 504.*

**EVALUATION, ELIGIBILITY AND PLACEMENT DETERMINATIONS**

12. *The evaluation of students suspected of having a disability under Section 504 will be carried out by qualified evaluators selected by the District.*
13. *When selecting tests and other evaluation materials, the District will ensure that they are: validated for the specific purpose for which they are used; administered by trained personnel in conformance with the instructions provided by their producer; tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the*

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

*student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).*

- 14. The District may administer and use formal and informal measures as deemed necessary. If the team is going to conduct formal assessment and/or observations in order to determine eligibility, then the team must obtain informed and written consent from the parent/guardian before the student is evaluated.*
- 15. Additionally, if the student's Section 504 Service Plan team determines that a medical examination is necessary for a Section 504 determination, the District will be responsible for the costs of the examination.*
- 16. Once the evaluations are completed, the District will schedule a Section 504 meeting to consider the results of the evaluations; and, the student's Section 504 Service Plan team will determine whether the student is eligible under Section 504 by deciding whether the student has a physical or mental impairment that substantially limits one or more major life activities. A Section 504 Service Plan team meeting shall be convened within a reasonable time period of receiving the parent/guardian's consent to assess.*
- 17. The Section 504 Service Plan team is made up of a group of individuals, including persons knowledgeable about the student, the meaning of the evaluation data being considered, and placement options. The team will generally include student's parent/guardian and at least one of the student's general education teachers; and, may include: other teachers, individuals who can interpret the instructional implications of the assessment results, SST members, counselors, related service providers, the student, other school staff and administrators, and individuals who have knowledge or special expertise regarding the student. The determination of whether an individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the Section 504 Service Plan team.*
- 18. The Section 504 Service Plan team, in deciding whether a student is eligible for a Section 504 Service Plan, will collect and carefully interpret evaluation data and in making a placement decision, the team will draw upon information from a variety of sources, including, but not limited to, observations, testing, reports, District evaluations, medical records, letters from doctors, health care plans, school records, school administration, school counselors, teachers and paraprofessionals that work with the student, the parent/guardian, and when appropriate, the student.*
- 19. No final determination of whether the student will or will not be identified as a disabled student within the meaning of Section 504 will be made without first inviting the parent/guardian of the student to participate in a Section 504 Service Plan team meeting concerning such determination. The parent/guardian will receive reasonable notice of all Section 504 Service Plan team meetings.*

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20. *If the Section 504 Service Plan team finds the student ineligible under Section 504, this decision shall be documented in writing, at which time the parent/guardian shall be notified of his/her parent/guardian rights and procedural safeguards under Section 504, including the right to an impartial hearing.*
21. *For students who are determined, through the evaluation process, to be eligible under Section 504, the Section 504 Service Plan team shall develop a Section 504 Service Plan.*
22. *The Section 504 Service Plan will describe the student's disability; regular or special education; related aids and services; and, accommodations and/or modifications that are needed in order to provide the student with a FAPE, and how the placement, services, and accommodations and/or modifications will be provided to the student and by whom.*
23. *A copy of the plan shall be maintained in the student's cumulative file and in the District's Section 504 file. All school staff who work with the student shall be informed of the elements of the student's Section 504 Service Plan.*
24. *The parent/guardian must consent to the student's Section 504 Service Plan prior to the implementation of the plan; however, they do not need to consent to future changes in services in order for those changes to take place. Students who are eligible under Section 504 do not have a right to stay put in cases when a dispute arises.*
25. *A student with a disability shall be placed in a regular education environment of the District, unless the Section 504 Service Plan team determines that his/her education in such a placement cannot be achieved satisfactorily with the use of supplementary aides and services. The student with a disability shall be educated with non-disabled students to the maximum extent appropriate.*
26. *The parent/guardian shall be notified in writing of the final decision concerning the placement, services, and accommodations and/or modifications to be provided, if any, and of his/her parent/guardian rights and procedural safeguards pursuant to Section 504, including the right to an impartial hearing.*

**REVIEW OF STUDENT PROGRESS**

27. *The Section 504 Service Plan team will meet annually to review the progress of students with disabilities and the effectiveness of the student's Section 504 Service Plan to determine whether services are appropriate, and that the needs of students with disabilities are being met as adequately as the needs of nondisabled students.*
28. *Should a parent/guardian request a Section 504 meeting, the District will convene one within a reasonable time period of the receipt of the request.*

**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

29. *Prior to any subsequent significant change in placement, a reevaluation of the student's needs will be conducted. The parent/guardian will receive reasonable prior written notice of any meeting convened to propose a significant change in placement.*
30. *The Section 504 Service Plan team may also determine that the student no longer has a mental or physical impairment that substantially limits a major life activity. If the Section 504 Service Plan team so determines, the record of the Section 504 Service Plan team meeting will state the basis for the team's decision.*

**DISCIPLINE**

*In disciplinary situations, students who have a Section 504 Service Plan may be suspended or placed in an alternative interim setting to the same extent these options would be used for children without disabilities. School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days. Additionally, removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct may be made.*

*After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal, child is entitled to a manifestation determination meeting within ten (10) school days of the District's decision to change the student's placement. The child's parent/guardian must be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine (based upon a review of all relevant information in the student's cumulative and Section 504 Service Plan files, the Student's Section 504 Service Plan, any teacher observations, and any relevant information provided by the parent/guardian) whether the student's alleged behavior was a manifestation of his/her disability by answering the inquiry required by the IDEA. The questions that the Student's Section 504 Service Plan team must ask are:*

- *Whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or,*
- *Whether the conduct in question was the direct result of District's failure to implement the student's current Section 504 Service Plan.*

*If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of the student's disability. However, if the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of the student's disability and the District may take disciplinary action against the student, such as expulsion, in the*



**IDENTIFICATION AND EDUCATION UNDER SECTION 504**

*same manner as it would with a child without disabilities. If the student's behavior is determined to be a manifestation of his or her disability, the District must conduct a functional behavior assessment, and implement a behavioral support plan for the student. In this situation, if a behavioral support plan has already been developed, the District will review the plan and modify it as necessary to address the behavior in question. However, regardless of whether a student's behavior was a manifestation of the student's disability, the District may determine, following assessment, that a change of placement is appropriate for the student. The District may proceed with this change of placement following notice to the parents; consent is not required for a change of placement pursuant to Section 504.*

**PROCEDURAL SAFEGUARDS**

31. *The parent/guardian shall be notified in writing of all actions regarding the identification, evaluation, and educational placement of a student who, because of a disability, needs, or is believed to need, special instruction or related services pursuant to Section 504. Notifications will include a statement of parent/guardian rights to:*
  - a. *Examine relevant records. Upon parent/guardian request, records may be reviewed at the school site or at the District Office. Copies of student records may be obtained within five (5) business days of the request pursuant to District policies.*
  - b. *Have an impartial hearing with opportunity for participation by the parent/guardian and his/her counsel.*
  - c. *Seek review in federal court if the parent/guardian disagrees with the hearing decision.*
32. *Notifications shall also set forth the procedure for requesting an impartial hearing. Requests shall be made to: District Executive Director, Student Services.*
33. *If a parent/guardian disagrees with the identification, evaluation or placement of a student with disabilities under Section 504, he/she may initiate the following procedures. The parent/guardian is encouraged to utilize Levels One and Two, but he/she may proceed directly to Level Three if he/she so chooses.*

**LEVEL ONE:** *In writing, the parent/guardian may request a meeting with the Section 504 Service Plan team in an attempt to resolve the disagreement. This meeting shall be held within a reasonable time frame following the receipt of the parent/guardian's request.*

**LEVEL TWO:** *If disagreement continues, the parent/guardian may request, in writing, a meeting with the Executive Director, Student Services.*

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*Ellyn Schneider  
Executive Director, Student Services  
325 S. Peck Ave.  
Manhattan Beach, CA 90266*

*This meeting shall be held within a reasonable period of time after receiving the parent/guardian's request.*

*LEVEL THREE: If the disagreement is not resolved, or upon initial request, a due process hearing may be requested by the student's parent/guardian ("Section 504 due process hearing"). The proceedings will be presided over and decided by an impartial hearing officer.*

*Impartial hearing officer means a person selected by the District to preside at a due process hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties. To ensure impartiality of the hearing officer, the hearing officer shall not be employed by or under contract with the District in any capacity at the time of the due process hearing, nor shall the hearing officer have any professional or personal involvement that would affect his or her objectivity or impartiality.*

*The steps involved in initiating and implementing a Section 504 impartial hearing are as follows:*

- a. The parent/guardian shall have the right to an impartial hearing with an opportunity for participation by the parent/guardian and representation by counsel.*
- b. A request in writing for a Section 504 due process hearing must be filed in the office of the Executive Director, Student Services:*

*Ellyn Schneider  
Executive Director, Student Services  
325 S. Peck Ave.  
Manhattan Beach, CA 90266*

- c. A request for a Section 504 due process hearing must be in writing and received by the District within ninety (90) days from the time the parent/guardian received written notice of the decision leading to the request for such hearing. Upon receipt of such a request from the parent/guardian, the District may schedule a Section 504 Service Plan team meeting, and make relevant personnel*

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*available within a reasonable time period. A parent/guardian or student making an oral request may be assisted by the District in making a written request.*

- d. A request for a Section 504 due process hearing shall contain the following:
  - i. A statement requesting a hearing.*
  - ii. The specific nature of the decision(s) made by the District the Section 504 Service Plan team with which the parent/guardian disagrees.*
  - iii. The specific relief the parent/guardian seeks.*
  - iv. Any other information the parent/guardian believes will assist in understanding the request.**
- e. Within a reasonable time following receipt of a written request for hearing, the Executive Director will select an impartial hearing officer.*
- f. A hearing officer selected by the District must satisfy the following requirements:
  - i. Be qualified to review District decisions relating to Section 504.*
  - ii. Not be an employee of, or under contract with, the District in any capacity other than that of a hearing officer at the time of the due process hearing.*
  - iii. Not have any professional or personal involvement that would affect his or her impartiality or objectivity in the matter.**
- g. Hearing notifications shall be given to the parent/guardian at least twenty (20) calendar days prior to the date set for the hearing. The notice shall contain a statement regarding the time and place for 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.*
- h. Within sixty (60) calendar days of receipt of the parent/guardian's request for a Section 504 due process hearing, the hearing shall be conducted. Within ninety (90) calendar days of the receipt of the parent/guardian's request, a written decision shall be mailed to all parties. This time frame may be extended by mutual agreement of the parties.*
- i. A party to the hearing shall be afforded the following rights:*

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- i. The right to 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.*
- ii. Receipt of notice from the other party or parties, at least ten (10) calendar days prior to the hearing, that they will utilize the services of an attorney, except for good cause shown.*
- iii. The right to prohibit the introduction of evidence at the hearing that has not been disclosed to the other party or parties at least five (5) calendar days prior to hearing except for good cause shown.*
- iv. The right to present evidence, written and oral.*
- v. The right to produce outside expert testimony.*
- vi. The right to written findings of fact, conclusions of law, and a decision prepared by the hearing officer.*
- vii. The right to a written or electronic verbatim record of the hearing prepared at the expense of the individual requesting such record.*

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

- j. The parent/guardian involved in the hearing will be given the right to:
  - i. Have the student present at the hearing;*
  - ii. Open the hearing to the public, but not the press, should they so choose; and*
  - iii. Have an opportunity to participate in the impartial hearing.**
- j. The hearing officer shall render a decision pursuant to the legal standards set forth in 34 Code of Federal Regulations part 104 and related law.*
- k. Either party may seek review of the hearing officer's decision by timely filing with a court of competent jurisdiction.*
- l. The cost of the hearing officer shall be borne by the District. Reimbursement of attorneys' fees, expert witness fees, and other costs is available only as authorized by law.*

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- m. All written correspondence shall be provided in English and/or translated into the primary language of the home at the request of the parent/guardian. If translation of written correspondence is requested, the District shall be provide said translation within a reasonable time period of the receipt of parent/guardian's request for translation of written correspondence.*

Regulation MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

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