

NOTES: This procedure was updated to identify an administrative review process rather than an appeal to court from the 504 Officer. The Federal Court recently determined parents do not have a rite to judicial review of a 504 administrative hearing decision.

RECOMMENDATION: Accept italics recommendations.

The district has the responsibility to identify, evaluate, and provide appropriate educational services to eligible students attending this district's schools who have a physical or mental impairment that substantially limits one or more major life activities so that they may receive a free appropriate public education (FAPE) as required by Section 504 of the Rehabilitation Act of 1973 (Section 504).

An impartial hearing procedure is available to students and their parent/guardian to resolve differences dealing with educational services available under Section 504 when such differences cannot be resolved by means of a less formal procedure. Students and their parents/guardian are encouraged to use this school district's Civil Rights Grievance Procedure for resolution of differences whenever possible.

The hearing procedures set forth in this policy apply to the identification, evaluation, or educational placement of a student who is identified as having a disability pursuant to Section 504.

HEARING PROCEDURES

Within twenty (20) calendar days of the parents' receipt of notice of the 504 Team's decision, a Section 504 impartial hearing may be requested by the parent/guardian of the affected student on matters directly related to the school district's decisions or actions regarding the following:

1. The identification of the student as disabled or eligibility of the student for services under Section 504.
2. The evaluation procedures utilized with the student, including a decision not to evaluate a student.
3. The educational placement and/or related aids and services recommended for or provided to the student, including any change in placement as a result of disciplinary action.

In the event a hearing has been held, or is pending, pursuant to the provisions of the Individuals with Disabilities Education Act (IDEA) on any of the issues currently being alleged by the parent/guardian, no hearing officer will be appointed, and no hearing will be held on like issues pursuant to this policy. An IDEA hearing that is resolved by a decision or dismissed with prejudice shall resolve any like issues for which a 504 hearing has been requested.

All requests for a hearing under this policy must:

1. Be submitted in writing and addressed to the district's *Section 504 Compliance Officer*.
2. Describe the specific nature of the dispute.
3. State the proposed specific relief or remedy requested.
4. Any other information the parent/guardian believes is important to understanding the dispute.

If the request does not include all of the required information, it may be returned to the grievant within ten (10) school days of receipt by the Section 504 Compliance Officer with a request to provide the missing information within five (5) school days from the date of receipt. The remaining procedures will be suspended and the timelines will not run until the additional information is received.

The *Section 504 Compliance Officer* will select an impartial hearing officer within *fifteen (15) calendar days* of receipt of the request for a Section 504 hearing. The selected hearing officer will

1. Be qualified to review school district decisions relating to Section 504.
2. Be impartial and unbiased.
3. Not be an employee of the school district.

The hearing procedure will be presided over and decided by the appointed impartial hearing officer, but shall be limited as follows:

1. *The hearing is limited to facts within two (2) years of the date the parents knew or should have known about the alleged actions or facts that form the basis of their claims.*
2. *The hearing officer's procedures will conform to the standard of "fundamental fairness." The Administrative Procedures Act (APA) and the Individuals with Disabilities Education Act (IDEA) procedures shall not apply to the hearings.*
3. *The issues of the hearing will be limited to those specifically raised in the written request for hearing.*
4. *The party requesting the due process hearing shall carry the burden of proving the claims asserted.*

The selected hearing officer will notify the parties in writing of the date of the hearing. The parent/guardian and the school district will be given at least ten (10) calendar days notice of the date of the hearing. The notice from the appointed hearing officer will contain:

1. A statement of the time, place, and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is being held.
3. A statement of the availability of relevant records for examination.
4. A concise statement of the issues in dispute.
5. A statement setting forth the right of the student's parent/guardian to participate in the hearing procedure.
6. A statement of the right to be represented by counsel.

All written correspondence will be provided in English and/or in the parent/guardian's primary language.

The hearing will be conducted and a written decision will be mailed by the hearing officer to all parties within *forty-five (45) calendar days* from the date of the hearing assignment. *However, either party to the hearing may request a continuance. The continuance may be granted by the hearing officer upon a showing of good cause. Any continuance(s) granted by the hearing officer will extend the time for rendering a final hearing decision for a period equal to the length of the continuance(s).*

The appointed hearing officer will preside at the hearing and will conduct the hearing proceedings in a manner that allows all parties the following rights:

1. The right to be represented by counsel at the expense of each respective party.
2. The right to present evidence and oral arguments.
3. The right to examine witnesses.
4. The right to an electronic verbatim record of the hearing.
5. The right to written findings of fact and a decision on the matter.

The parent/guardian involved in the hearing process has the right to:

1. *Have the student present at the hearing.*
2. *A closed hearing, unless the parent elects to open the hearing to the public.*

In cases where there are language differences, an interpreter will be provided by the school district.

The appointed hearing officer will review all relevant facts presented at the hearing and will determine whether the decisions regarding the child's identification, evaluation, educational program or placement were appropriate. The hearing officer will have the authority to uphold, reverse, or modify the school district's decisions or actions with regard to:

1. The identification of the student as disabled, or eligibility of the student for services under Section 504.

2. The evaluation procedures utilized with the student, including a decision not to evaluate a student.
3. The educational placement and/or related aids and services recommended for or provided to the student.

DECISION OF THE HEARING OFFICER

A copy of the hearing officer's findings of fact and decision will be delivered to the school district and the parent/guardian within *sixty (60) calendar days* from the date of the assignment of the hearing officer, unless a continuance is granted.

The decision of the hearing officer is binding on all parties concerned and the aggrieved party has the right to request a review of the hearing officer's decision.

RECORD OF THE HEARING

An electronic verbatim recording of the Section 504 hearing will be on file at the school district's administration office and will be available for review upon request by the parent/guardian.

REVIEW PROCEDURE

An aggrieved party may petition for review of the hearing officer's decision. *A request for review must:*

1. *Be filed in writing to the Section 504 Compliance Officer, with a copy to the opposing party, if applicable.*
2. *Contain specific objections to the findings of fact and/or conclusions of law believed to be erroneous.*
3. *Be filed within fifteen (15) calendar days of receipt of the hearing officer's decision.*

The Compliance Officer shall determine whether the petition for review contains all of the required information with ten (10) calendar days from its receipt. If it is determined the petition does not contain all of the required information, the petition will be returned, and the party petitioning for review will have an additional five (5) school days in which to remedy the defect.

Upon filing of a petition to review the hearing officer's decision, the District shall appoint a Review Officer who does not have a direct interest in the outcome of the decision and is knowledgeable about Section 504 education matters. The disinterested Review Officer shall not hear additional evidence except in the case of a showing of extraordinary circumstances necessitating an additional hearing, but shall be limited to review the evidence and the record of the hearing conducted by the hearing officer and the objections of the appealing party. The

Review Officer shall render a decision within sixty (60) calendar days following the request for review as to whether the hearing officer’s decision shall stand or shall be overturned.

If a hearing and/or oral argument are determined necessary by the Review Officer in order to conduct a review of the proceedings, the Review Officer shall give reasonable notice to both parties of the date, time and location of the hearing. Whether a hearing and/or oral argument are necessary shall be left solely to the discretion of the Review Officer and neither party shall have the right to request a hearing and/or argument. The parties may be represented by counsel at any hearing requested by the Review Officer, at the expense of the respective parties. The written decision of the Review Officer shall be based solely on the evidence presented and the applicable law, and shall contain reasons for the decision. The decision of the Review Officer shall be a final decision.

In addition to requesting a hearing, a parent/guardian may file a complaint with the Office for Civil Rights, 915 2nd Avenue, Room 3310, Seattle, WA 98174-1099.

The Section 504 Compliance officer is:

_____ (Name)
_____ (Address)

Phone: 208 _____

Fax: 208 _____

Email: _____



LEGAL REFERENCE:

29 USC Chapter 16

34 CFR Part 104.36

ADOPTED: April 20, 2011

AMENDED:

**Language in text set forth in italics is optional.*

** Section 504 does not set forth any timelines for the hearing or review process. The timelines set forth in this policy are suggestions and may be modified so long as the timelines are reasonable.