

Tennessee School Boards Association

Monitoring: Review: Annually, in September	Descriptor Term: Section 504 and ADA Grievance Procedures	Uescptor Code: 1.802	Issued Date:
		Rescinds:	Issued:

1 The Board is committed to maintaining equitable employment/educational practices, services, programs
2 and activities that are accessible and usable by qualified individuals with disabilities.

3 4 DEFINITION

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6 *Section 504 of the Rehabilitation Act of 1973* provides that : No otherwise qualified individual with
7 handicaps in the United States...solely by reason of his/her handicap, be excluded from the participation
8 in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving
9 federal financial assistance.¹

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11 *Title II of the Americans with Disabilities Act, 1990* provides that : No otherwise qualified individual
12 with a disability shall be discriminated against in regard to job application procedures, the hiring, ad-
13 vancement, or discharge of employees, employee compensation, job training and other terms, conditions
14 and privileges of employment.²

15 16 COORDINATOR³

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18 The Board shall designate at least one employee to coordinate its efforts to comply with and carry out
19 its responsibilities under the Americans with Disabilities Act (ADA) and Section 504, including any
20 investigation of any complaint alleging non-compliance with the Acts or alleging any actions that
21 would be prohibited by the Acts.

22 23 NOTICE⁴

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25 The Board shall make available the name, office address and telephone number of the ADA/Section
26 504 coordinator.

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28 Methods of initial and continuing notification may include the posting of notices, publication in news-
29 papers and student and employee handbooks and distribution of memoranda or other written commu-
30 nications.

31 32 COMPLAINT PROCEDURE⁵

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34 The coordinator will hear ADA/Section 504 complaints. Complaints shall be submitted in writing or
35 orally to the coordinator who will endeavor to accomplish prompt and equitable resolution of
36 complaints alleging any action that would be prohibited by the ADA/Section 504. The coordinator
37 will respond to all complaints within twenty (20) days with a written response as well as information on
38 further grievance procedures that may be followed if the complaining party is not satisfied with the
39 coordinator's proposed resolution.

1 DUE PROCESS HEARING PROCEDURES

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3 Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a
4 parent wishes to contest any action of the school system with regard to a child's identification, evalua-
5 tion, and placement under Section 504.⁶ If a parent/guardian requests a Section 504 hearing, the parent/
6 guardian has the right to personally participate and to be represented at the hearing by an attorney or
7 advocate at the parent's expense. Contested actions or omissions that are appropriate for a Section 504
8 hearing should involve identification, evaluation, or placement issues involving a child who has or is
9 believed to have a disability.

10 11 *Written or Oral Request for Hearing*

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13 A parent/guardian who wishes to challenge an action or omission with regard to the identification,
14 evaluation, or placement of a student who has or is believed to have a disability as defined by Section
15 504, shall make a written or oral request for a due process hearing to the Section 504 coordinator. The
16 written request must be made on a form provided through the Central Office.

17 18 *Impartial Hearing Officer*

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20 The director of schools or his/her designee shall appoint an impartial hearing officer to preside over
21 the hearing and issue a decision. Such appointment will be made within fifteen (15) days of the date
22 of receipt of a request for a due process hearing. The hearing officer will be hired as an independent
23 contractor at no expense to the parent. The hearing officer that is appointed shall not be a current em-
24 ployee of the school system and shall not be related to any member of the Board of Education. The
25 hearing officer need not be an attorney but shall be familiar with the requirements of Section 504 and
26 the hearing procedures under Section 504. The choice of an impartial hearing officer is final and may
27 not be presented as an issue at the due process hearing since such an issue would not relate to the iden-
28 tification, evaluation, or placement of a disabled child under Section 504. If a parent/guardian disputes
29 the impartiality of the appointed hearing officer, he/she may raise such issue in a review of the hearing
30 officer's opinion by a court of competent jurisdiction or in a complaint to the Office for Civil Rights.

31 32 Office for Civil Rights

33 U.S. Department of Education

34 61 Forsyth St. S.W., Suite 19T10

35 Atlanta, GA 30303-8927

36 Telephone: 404-974-9406; TOO: 877-521-2172

37 Email: OCR.Atlanta@ed.gov

38 39 *Scheduling of Hearing*

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41 The appointed hearing officer shall set a date for the hearing within fifteen (15) days of his/her appoint-
42 ment and provide this information in writing to the parent/guardian and the Section 504 coordinator.
43 The hearing shall take place at a mutually agreeable time and place.

Continuances

Upon a showing of good cause, the hearing officer, at his/her discretion may grant a continuance of the hearing date and set a new hearing date.

Legal Representation at Hearing

If a parent/guardian is represented by a licensed attorney at the due process hearing, he/she must inform the Section 504 coordinator and the appointed hearing officer of that fact, in writing, at least seven (7) calendar days prior to the hearing date, or the hearing can be continued upon the coordinator's request. The school system shall not have legal representation at the hearing unless the parent provides notice that he/she will have legal representation.

Pre-Hearing Conference

The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference will also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process. The Pre-Hearing Conference can be held via telephone or in person depending on the hearing officer's decision based on the convenience to both parties.

Dismissals

If, after the Pre-Hearing Conference, the hearing officer finds that the parent, as a matter of law, alleges and/or raises no factual claims or legal issues that come within his/her jurisdiction as a Section 504 hearing officer, he/she may dismiss the hearing and issue an order to that effect explaining the basis for such finding.

Hearing

The hearing shall be conducted in an informal, non-adversarial manner. The hearing shall be closed to the public unless the parent/guardian requests an open hearing. The hearing officer may reasonably limit testimony and introduction of exhibits for reasons or relevance.

Recording

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be video recorded. The school system shall provide a copy of the recording to the parent/guardian upon request. In order for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations. If a parent/guardian appeals the decision of the hearing officer to a court of competent jurisdiction, the school system shall prepare a written transcript of the hearing to be offered to the court as an exhibit.

Witnesses

Witnesses will present their information in narrative form, without the traditional question and answer format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the hearing officer, at his/her discretion, ask a witness a certain question.

1 *Format of Presentation*

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3 Each side will have an equal amount of time to present their positions as determined by the hearing
4 officer. The parent/guardian will present his/her case first by making an opening statement outlining the
5 issues, calling witnesses, and making a closing argument. The school system will present its side next.
6 At the end of the school system's presentation, the parent/guardian may offer a short response. Each
7 side may present personally or through their representatives.

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9 *Submission of Exhibits*

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11 As part of their presentations and at the discretion of the hearing officer, the parties may submit any
12 reports, evaluations, correspondence, notes, or any other documents that may support their positions.
13 Exhibits submitted to the hearing officer by either party must be marked. The hearing officer may, in
14 the exercise of his/her discretion, reasonably limit the number of documents to be submitted for his/her
15 review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

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17 *Closing Arguments*

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19 The hearing officer may allow or request written closing arguments summarizing and characterizing the
20 information presented at the hearing.

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22 *Decision*

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24 The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under
25 advisement and issue a written opinion. Such decision shall address all of the issues raised by the par-
26 ent/guardian as well as any corrective actions, if any, the school system must take. Any issue or claim
27 raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision will be
28 deemed to have been denied. The decision must be issued within forty-five (45) days after the date
29 the Request for a Due Process Hearing is received by the district. The hearing officer may not award
30 attorneys' fees as a part of the relief granted to a parent/guardian or the district.

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32 *Review Procedure/Appeal*

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34 If the parent/guardian is not satisfied by the decision of the hearing officer, he/she may seek review of
35 the decision in a court of competent jurisdiction.
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42 Legal Reference:

- 43 1. 34 CFR § 104.4(a)
44 2. 42 USCA §12112(a)
45 3. 28 CFR § 35.107
46 4. 28 CFR § 35.106; 34 CFR § 104.8
47 5. 28 CFR § 35.170;172
48 6. 34 CFR §104.36