

Hardin County Board of Education

Monitoring: Review: Annually, in September	Descriptor Term: Section 504 and ADA Grievance Procedures	Descriptor Code: 1.802	Issued Date: 04/11/16
		Rescinds: 1.802	Issued: 01/22/13

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.

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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 with
12 a disability shall be discriminated against in regard to job application procedures, the hiring, advance-
13 ment, or discharge of employees, employee compensation, job training and other terms, conditions and
14 privileges of employment.²

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16 **COORDINATOR**³

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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.

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23 The Board designates the Elementary and Secondary Supervisors as Coordinators for the purposes set
24 forth in this policy.

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26 **NOTICE**⁴

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28 The Board shall make available the title, office address and telephone number of the ADA/Section 504
29 coordinator.

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31 Methods of initial and continuing notification may include the posting of notices, publication in newspapers
32 and student and employee handbooks and distribution of memoranda or other written communications.

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34 **COMPLAINT PROCEDURE**⁵

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

2 **DUE PROCESS HEARING PROCEDURES**

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

12 *Written Request for Hearing*

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15 A parent/guardian who wishes to challenge an action or omission with regard to the identification,
16 evaluation, or placement of a student who has or is believed to have a disability as defined by Section
17 504, shall make a written request for a due process hearing to the Section 504 coordinator. The written
18 request must be made on a form provided through the Central Office.

19 *Impartial Hearing Officer*

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

33 *Office for Civil Rights*

34 U.S. Department of Education

35 61 Forsyth St. S.W., Suite 19T10

36 Atlanta, GA 30303-8927

37 Telephone: 404-974-9406; TDD: 877-521-2172

38 Email: OCR.Atlanta@ed.gov

39 *Scheduling of Hearing*

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

1 *Continuances*

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

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6 *Pre-Hearing Conference*

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

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14 *Dismissals*

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

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21 *Hearing*

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

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27 *Recording*

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29 The Due Process Hearing shall be recorded. The school system shall provide a copy of the recording
30 to the parent/guardian upon request and shall receive payment for the cost of reproduction. In order
31 for an accurate recording to be made, the parties and witnesses shall introduce themselves at the begin-
32 ning of their presentations. If a parent/guardian appeals the decision of the hearing officer to a court of
33 competent jurisdiction, the school system shall provide a written transcript of the hearing to be offered
34 to the court as an exhibit.

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36 *Witnesses*

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

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42 *Format of Presentation*

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

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1 *Submission of Exhibits*

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3 As part of their presentations and at the discretion of the hearing officer, the parties may submit any
4 reports, evaluations, correspondence, notes, or any other documents that may support their positions.
5 Exhibits submitted to the hearing officer by either party must be marked. The hearing officer may, in
6 the exercise of his/her discretion, reasonably limit the number of documents to be submitted for his/her
7 review, as well as the number of witnesses and the length and/or scope of their presentations or statements.
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9 *Closing Arguments*

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11 The hearing officer may allow or request written closing arguments summarizing and characterizing the
12 information presented at the hearing.
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14 *Decision*

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16 The hearing officer will issue a written opinion within forty-five (45) days after the date the request for
17 a Due Process Hearing is received by the district. Such decision shall address all of the issues raised
18 by the parent/guardian as well as any corrective actions, if any, the school system must take. Any issue
19 or claim raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision
20 will be deemed to have been denied.
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22 *Review Procedure/Appeal*

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

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33 1. 34 CFR § 104.4(a)
34 2. 42 USCA §12112(a)
35 3. 28 CFR § 35.107
36 4. 28 CFR § 35.106; 34 CFR § 104.8
37 5. 28 CFR § 35.170;172
38 6. 34 CFR §104.36
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