

NOTICE OF RIGHTS OF STUDENTS AND PARENTS UNDER SECTION 504

Section 504 of the Rehabilitation Act of 1973, commonly referred to as "Section 504," is a nondiscrimination statute enacted by the United States Congress. The purpose of Section 504 is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

The implementing regulations for Section 504 as set out in 34 CFR Part 104 provide parents and/or students with the following rights:

1. Your child has the right to an appropriate education designed to meet his or her individual educational needs as adequately as the needs of non-disabled students. 34 CFR 104.33.
2. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties who provide services not operated by or provided by the recipient are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.
3. Your child has a right to participate in an educational setting (academic and nonacademic) with non-disabled students to the maximum extent appropriate to his or her needs. 34 CFR 104.34.
4. Your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. 34 CFR 104.34.
5. Your child has a right to an evaluation prior to a Section 504 determination of eligibility. 34 CFR 104.35.
6. You have the right to not consent to the school system's request to evaluate your child. 34 CFR 104.35.
7. You have the right to ensure that evaluation procedures, which may include testing, conform to the requirements of 34 CFR 104.35.
8. You have the right to ensure that the school system will consider information from a variety of sources as appropriate, which may include aptitude and achievement tests, grades, teacher recommendations and observations, physical conditions, social or cultural background, medical records, and parental recommendations. 34 CFR 104.35.
9. You have the right to ensure that placement decisions are made by a group of persons, including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.
10. If your child is eligible under Section 504, your child has a right to periodic reevaluations, including prior to any subsequent significant change of placement. 34 CFR 104.35.

11. You have the right to notice prior to any actions by the school system regarding the identification, evaluation, or placement of your child. 34 CFR 104.36.
12. You have the right to examine your child's educational records. 34 CFR 104.36.
13. You have the right to an impartial hearing with respect to the school system's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. 34CFR 104.36.
14. You have the right to receive a copy of this notice and a copy of the school system's impartial hearing procedure upon request. 34 CFR 104.36.
15. If you disagree with the decision of the impartial hearing officer (school board members and other district employees are not considered impartial hearing officers), you have a right to a review of that decision according to the school system's impartial hearing procedure. 34 CFR 104.36.
16. You have the right to, at any time, file a complaint with the United States Department of Education's Office for Civil Rights.

SECTION 504 PROCEDURAL SAFEGUARDS

1. Overview: Any student or parent or guardian (“grievant”) may request an impartial hearing due to the school system’s actions or inactions regarding your child’s identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the school system’s Section 504 Coordinator; however, a grievant’s failure to request a hearing in writing does not alleviate the school system’s obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school system’s Section 504 Coordinator. The school system’s Section 504 Coordinator will assist the grievant in completing the written Request for Hearing.

2. Hearing Request: The Request for the Hearing must include the following:

- a. The name of the student.
- b. The address of the residence of the student.
- c. The name of the school the student is attending.
- d. The decision that is the subject of the hearing.
- e. The requested reasons for review.
- f. The proposed remedy sought by the grievant.
- g. The name and contact information of the grievant.

Within 10 business days from receiving the grievant’s Request for Hearing, the Section 504 Coordinator will acknowledge the Request for Hearing in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the grievant of the specific information needed to complete the request. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

3. Mediation: The school system may offer mediation to resolve the issues detailed by the grievant in his or her Request for Hearing. Mediation is voluntary and both the grievant and school system must agree to participate. The grievant may terminate the mediation at any time. If the mediation is terminated without an agreement, the school system will follow the procedures for conducting an impartial hearing without an additional Request for Hearing.

4. Hearing Procedures:

- a. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant’s Request for Hearing unless agreed to otherwise by the grievant or a continuance is granted by the impartial review official.

- b. Upon a showing of good cause by the grievant or school system, the impartial review official, at his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.
- c. The grievant will have an opportunity to examine the child's educational records prior to the hearing.
- d. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.
- e. The grievant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the impartial hearing officer may require the recipient to defend its position/decision regarding the claims (i.e. A recipient shall place a disabled student in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §104.34). One or more representatives of the school system, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.
- f. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings. The impartial review official shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.
- g. The impartial review official shall determine the weight to be given any evidence based on its reliability and probative value.
- h. The hearing shall be closed to the public.
- i. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.
- j. Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.

- k. Testimony shall be recorded by court reporting or audio recording at the expense of the recipient. All documentation related to the hearing shall be retained by the recipient.
- l. Unless otherwise required by law, the impartial review official shall uphold the action of school system unless the grievant can prove that a preponderance of the evidence supports his or her claim.
- m. Failure of the grievant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the impartial review official or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.

5. Decision: The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.

6. Review: If not satisfied with the decision of the impartial review official, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations.

