

Section 504 Due Process Hearing Procedures

Right to Due Process. In the event a parent or guardian [hereinafter “parent”] wishes to contest an action or omission on the part of the District with regard to the identification, evaluation, or placement of a disabled child under §504 of the Rehabilitation Act of 1973 [“§504”], the parent has a right to an impartial hearing before an impartial hearing officer. Omissions on the part of the District with regard to a disabled child might include, for example, the District's failure to identify a child eligible for services under §504. Thus, a child's identification as eligible for services under §504 is not an absolute prerequisite to the right to due process.

Parent Participation & Representation. A parent has the right to participate, speak, and present information at the due process hearing, and to be represented by legal counsel or any other type of advocate or representative of their choice at their expense. If a parent is to be represented by a licensed attorney at the due process hearing, he or she must inform the District's §504 Coordinator and the appointed hearing officer of that fact in writing at least seven (7) calendar days prior to the hearing date. Failure to notify the §504 Coordinator and the appointed hearing officer of that fact in writing shall constitute good cause for a continuance of the hearing date. (*See "Continuances" below*).

Initiation of Due Process Procedures. A parent who wishes to challenge a District's action or omission with regard to the identification, evaluation, or placement of a disabled child must submit a written Request for a Due Process Hearing to the District's §504 Coordinator. Such a written request must make clear that the parent is seeking a due process hearing under §504 before an impartial §504 Hearing Officer. The written request may be made on a form provided by the District for that purpose. If an intent to seek a due process hearing under §504 is not clear from the face of a Request, the District's 504 Coordinator may contact the parent to clarify the Request and ascertain whether the parent wishes to initiate a §504 due process hearing. The Coordinator may also assist the parent in clarifying any questions regarding due process rights under §504. The reasonable time involved in ascertaining whether an ambiguous or unclear Request seeks a due process hearing under §504 shall toll the time lines set forth in these procedures (meaning that such time will not count toward the time line days specified in these procedures). If after such communication, the District is still unsure whether the parent is requesting a due process hearing under §504, the District shall initiate due process procedures, and the appointed Hearing Officer will hold a pre-hearing conference to decide whether the parent is seeking a due process hearing under §504, and whether the Hearing Officer has jurisdiction to entertain the claims and issues raised by the parent. (*See "Pre-Hearing Conferences" below*).

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Appointment of a Hearing Officer. Within fifteen (15) days of the date of receipt of a clear Request for a Due Process Hearing, the District will appoint an impartial Hearing Officer to preside over the hearing and issue a decision. The Hearing Officer will be hired by the District as an independent contractor at no expense to the parent. The Hearing Officer shall not be a current employee of the District, and shall not be related to any member of the District's Board of Trustees to a degree prohibited under the Texas Nepotism Statute. The Hearing Officer need not be an attorney, but shall be familiar with the requirements of §504 and the District's Hearing Procedures under §504. The District's choice of an impartial Hearing Officer is final and may not be made an issue at the due process hearing, since such an issue would not relate to the identification, evaluation, or placement of a disabled child under §504. If a parent disputes the impartiality of the appointed Hearing Officer, he or she may raise such issue in a review of the Hearing Officer's opinion by a court of competent jurisdiction (*See "Review Procedure" below*), or in a complaint to the appropriate Office for Civil Rights regional office (*See "Complaints to the Office for Civil Rights (OCR)" below*).

Scheduling of Hearing. The appointed Hearing Officer shall issue an Order Setting Hearing Date to the parent and the District's §504 Coordinator in writing at his or her earliest opportunity. Such Order shall set a date for a hearing to be held within fifteen (15) days of the date of issuance of the Hearing Officer's Order. The Order shall also set forth a mutually agreeable time and place for the hearing.

Pre-Hearing Conference. The Hearing Officer may also order a Pre-Hearing Conference at which the parent or his or her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference can also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process.

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

Continuances. Upon a showing of good cause, the Hearing Officer, at his or her discretion, may grant a continuance of the hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.

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Conduct of Hearing. The hearing shall be conducted in an informal, non-adversarial manner. The parties shall address the Hearing Officer by name (i.e. Mr. or Ms.). The hearing shall be closed or open to the public, at the parent's request. The parties are free to provide the Hearing Officer with information or opinion as to the validity and weight to be given the information presented to him or her. Neither the Federal nor Texas Rules of Evidence or Civil Procedure, however, will apply. The Hearing Officer is not required to entertain any legal evidentiary objections to the admissibility, authenticity, or probative value of either oral testimony or documentary exhibits offered at the hearing. In the exercise of his or her discretion, however, the Hearing Officer may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. (*See also "Submission of Documentary Exhibits" below*).

Recording. Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape-recorded. The parent may obtain a copy of the tape recording at his or her 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 proceeds to a review of the due process hearing decision to a court of competent jurisdiction (*See "Review Procedure" below*), the District will prepare a written transcript of the hearing tape recording 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 or her discretion, ask a witness a certain question.

Format for Presentations. The parent will present its case first, by making an opening statement which outlines the parent's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. All of the preceding may be done either personally or through counsel, except for personal presentations or statements. At the end of the District's presentation, the Parent may offer a short response to the District's case. The above format is not required, but may be helpful in organizing the presentation of the case to the Hearing Officer.

Submission of Documentary Exhibits. As part of their presentations, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions and that the Hearing Officer will admit at his or her discretion. Each separate documentary exhibit submitted to the Hearing Officer by either party must be marked numerically (i.e., Parent 1, Parent 2; District 1, District 2, etc.). The Hearing Officer may, in the exercise of his or her discretion, reasonably limit the number of documents to be submitted for his or her review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

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Written Closing, Arguments or Briefs. The parties may submit, at the Hearing Officer's discretion, a written Closing Argument summarizing and characterizing the information presented at the hearing, and providing legal authority in support of their position. Time lines for the submission of Closing Arguments shall be set by the Hearing Officer at the conclusion of the hearing.

Closing of Hearing. At the conclusion of all presentations, the Hearing Officer will close the hearing and set a date for the issuance of the written decision. The Hearing Officer may make an oral ruling at the conclusion of the hearing or take the case under advisement, but must in all cases issue a written opinion addressing and ruling on all issues raised by the Petitioner and indicating what corrective action, if any, the District must take. Formal findings of fact and conclusions of law, however, are not required. Any issue or claim raised by the parent that is left unaddressed by the Hearing Officer in his or her decision will be deemed to have been denied to the parent. The decision must be issued to both parties within fifteen (15) days after the hearing.

Decision Time line. A decision must be issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district.

Remedies and Relief. The Hearing Officer must confine his or her orders and rulings to those matters that involve identification, evaluation, or placement of children under §504 and to the provisions of the regulations implementing §504. If a parent has raised issues or claims outside of the areas of identification, evaluation, or placement, that are not within the Hearing Officer's jurisdiction, the Hearing Officer will make appropriate findings to that effect either in the written decision, or at any time prior to the issuance of a decision (for example, at a Pre-Hearing Conference). A Hearing Officer may not award attorneys' fees as a part of relief granted to a parent.

Review Procedure. If not satisfied by the decision of the Hearing Officer, a parent may seek review of the hearing decision in a court of competent jurisdiction, generally the closest federal district court.

Complaints to the Office for Civil Rights (OCR). At any time, a parent may file a complaint with OCR if he or she believes that the District has violated any provision or regulation of §504. The filing of a complaint does not affect the hearing process or the time lines set forth above. OCR addresses §504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.