

Lindale ISD

# **SECTION 504**

SECTION 504 HEARINGS

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## **Section 504 Hearings**

### **What is Required**

A parent may request an impartial due process hearing before an impartial hearing officer for matters relating to the identification, evaluation, and placement of a student believed to need special instruction or related services due to a disability under Section 504. To do so, the parent must submit a request for an impartial due process hearing in writing to the District Section 504 Coordinator within ninety (90) calendar days of when the parent first became aware of the District's action or omission related to the identification, evaluation, and/or placement of the student under Section 504. The request must specify that the parent is seeking an impartial due process hearing conducted by an impartial hearing officer under Section 504.

If the parent's intent to initiate a due process hearing is not clear based on the submitted request, the District Section 504 Coordinator will contact the parent for clarification. Should the District Section 504 Coordinator need to ask clarifying questions regarding the parent's intent to request a hearing, this period of time will not count towards the other timelines set forth in this section. Where, despite attempts for clarification from the parent, the District Section 504 Coordinator is still unable to ascertain the parent's intent, the District will initiate due process procedures and request that the impartial hearing officer determine whether the parent is seeking a due process hearing under Section 504.

The availability and use of the procedure for requesting a Section 504 hearing does not prevent a parent from utilizing the District's Section 504 complaint procedures or filing a complaint of disability-based discrimination with the Office for Civil Rights or a civil action in federal or state court. See [SECTION 504 COMPLAINTS] and [OCR COMPLAINTS]. Unlike under the IDEA, the parent is not required to exhaust their administrative remedies by proceeding through a Section 504 hearing prior to bringing claims in federal or state court.

### **Request for Section 504 Hearing**

A request for a Section 504 hearing shall contain the following:

- A statement requesting a Section 504 hearing;
- The specific nature of the decision(s) made by the District or the Section 504 Committee with which the parent/guardian disagrees;
- The specific relief the parent/guardian seeks; and
- Any other information the parent/guardian believes will assist in the understanding of the request.

**Timelines**

Section 504 does not have specific regulations for timelines for the completion of Section 504 hearings. However, the District will adhere to standards of fundamental fairness and reasonableness to ensure the prompt and just resolution of issues. An unnecessary delay in providing an impartial hearing may constitute a violation of Section 504. Therefore, unless extenuating circumstances exist, the District will make every effort to hold the due process hearing within sixty (60) school days after the request for the hearing is received by the District. The hearing officer shall issue the decision to the parent and the District within fifteen (15) school days of the conclusion of the hearing. These time frames may be extended by mutual agreement of the parties or by the hearing officer based on good cause, as determined by the hearing officer.

**Parental Rights and Procedural Safeguards**

The parent must be allowed to participate and present information at the due process hearing and to be represented by counsel or another advocate or representative at their expense. The parent is required to notify the District Section 504 Coordinator and the hearing officer in writing of any representation by a licensed attorney or other representative within ten (10) school days prior to the hearing date. Should the parent fail to do so in a timely manner, the District will immediately request that the hearing be continued to a later date upon learning of the representation and such request will be good cause for a continuance.

The Campus Section 504 Chairperson will notify the parent of their right to an impartial hearing by providing the parent a copy of the *Section 504 Parent Rights* in accordance with District policy. See [PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS]. The District's grievance or compliant procedures do not replace the District's obligations to provide impartial hearings under Section 504, and the grievance procedures or complaint may not be used as a prerequisite for the impartial hearing.

**Appointment of a Hearing Officer**

The District will appoint an impartial hearing officer to preside over the hearing. The hearing officer is provided at no cost to the parent. To ensure impartiality, the District will use an independent contractor to serve as the hearing officer in a Section 504 hearing. District employees may not serve as hearing officers in a Section 504 hearing, and the District may not use employees of another school district that shares a contractual arrangement for the provision of services to students with disabilities. Likewise, no member of the District's Board or direct relative of any member of the District's Board may serve as a hearing officer in a Section 504 hearing. The hearing officer shall not have any professional or personal involvement with either the District or the parent that would affect his or her impartiality or objectivity in the matter. To dispute the impartiality of a hearing

officer, the parent must file a complaint in state or federal court or with the OCR. See [OCR COMPLAINTS].

While the hearing officer is not required to be a licensed attorney, the District must appoint an individual who is familiar with the requirements under Section 504 and the District's procedures relating to Section 504.

### **Preliminary Proceedings**

Upon appointment, the hearing officer will issue an order setting the hearing date to the parent/representative and District Section 504 Coordinator/District Representative within a reasonable time. The order will also include information relating to the time and place of the hearing. The hearing officer may grant a request for a continuance for good cause upon request by the parent and/or District.

The hearing officer may also schedule a pre-hearing conference, requiring the parties to confer to clarify the issues to be presented at the hearing and resolve any preliminary matters prior to the hearing. During a pre-hearing conference, the District may raise issues relating to the parent's claims, including issues relating to the jurisdiction of the hearing officer to hear certain claims. Should the hearing officer determine that he or she lacks jurisdiction to address the factual claims or legal issues raised by the parent, the hearing officer may dismiss the claims prior to the hearing and explain the reasoning to the parent/representative and District Section 504 Coordinator/District Representative at that time.

The parties will also be required to exchange five (5) school days before the hearing any documents the party intends to present at the hearing as well as a list of witnesses who will present testimony at the hearing, including the name of the witness, the witness' role in the hearing, and the subject matter of the witness' testimony. If information is not included in this exchange, the party will have a right to request that the hearing officer prohibit the introduction of the document or witness at the hearing.

### **Procedures for Section 504 Hearings**

The informal hearing will be closed to the public. Both sides may present the hearing officer with relevant information and challenge the validity or weight to be given to the information presented to the hearing officer. However, the hearing officer has the sole discretion to determine the validity and weight to be given to the information presented. While the parties may submit documents supporting their positions, the hearing officer has discretion to limit the number of documents to be submitted.

Neither the Texas or Federal Rules of Civil Procedure or the Texas or Federal Rules of Evidence apply in a Section 504 hearing. Thus, the parties may not make legal objections to the admissibility of information presented to the hearing officer, and the hearing officer

has the sole discretion as to whether to consider the evidence presented in making the determination. Witness testimony is much more informal in a due process hearing under Section 504 than under the IDEA. Specifically, in a Section 504 hearing, witness testimony may be presented in narrative form, rather than the formal question and answer form. Although the parties may request that the hearing officer ask additional questions, cross-examination of witnesses is not allowed in Section 504 hearings. The hearing officer may limit the number of witnesses and/or the length of the witness testimony.

The District is not required to provide a court reporter to produce a formal written transcript of the hearing. However, the due process hearing shall be recorded, and the District will provide the parent a copy of the recording upon request. Should the parent exercise the right to review the decision in federal or state court, the District will produce a written transcript of the hearing based on the recording to present as an exhibit to the court.

If necessary to ensure parent participation by a parent whose native language is not English, an interpreter shall be provided by the District. This interpreter may be a current District employee who is appropriately qualified to serve in this role.

Upon the conclusion of the hearing, the hearing officer will determine whether the parties may submit written closing briefs in support of their positions. If the hearing officer allows closing briefs, the hearing officer will set the timeline for the submission of the closing brief. The hearing officer will also set a date for the issuance of a written decision. Even if the hearing officer provides an oral ruling at the end of the hearing, a written decision is still required.

### **Hearing Officer's Decision**

The hearing officer will prepare a written decision including findings of fact and conclusions of law. The decision will be pursuant to the legal standards as set forth in Section 504 and related law. The decision shall address all of the issues raised by the parent/guardian, as identified at the prehearing conference, as well as any corrective actions, if any, the District must take. Any issue or claim raised by the parent/guardian or corrective action requested that is left unaddressed by the hearing officer will be deemed to have been denied.

The hearing officer may only issue relief relating to the District's identification, evaluation, or placement of the student under Section 504. Furthermore, the hearing officer may not award attorneys' fees to the parent in any circumstance through this process.

A written decision will be provided to the parent and the District within fifteen (15) school days of the hearing, unless agreed otherwise.

### **Review of Decision**

Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. See 34 C.F.R. § 104.36. An appeal may be noted by an aggrieved party by filing a written notice of appeal with the District Section 504 Coordinator within ten (10) school days of the date of the decision issued by the hearing officer. An impartial review officer will be appointed by the District within five (5) school days of the request for review. The review officer will conduct an impartial review of the hearing decision.

The review officer shall:

- advise the parties of the right to be represented by counsel at their own expense during the review proceedings;
- examine the record of the hearing;
- determine whether the procedures at the impartial hearing were in accordance with the requirements of due process;
- afford the parties an opportunity for written or oral argument, or both, at the discretion of the review officer;
- seek additional evidence, if necessary, at the discretion of the review officer; and
- issue a written decision.

The review officer shall uphold the initial decision of the hearing officer unless it is found to be arbitrary or capricious, contrary to law, or not supported by evidence. The review officer's decision must be issued within thirty (30) calendar days from the date of appointment, unless continued at the request of a party. A continuance can be granted by the review officer upon a showing of good cause. A copy of the decision must be sent to all parties. The record of the administrative hearings shall be sent by the review officer to the District Section 504 Coordinator upon the issuance of the decision. The District Section 504 Coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings. Any party aggrieved by the review officer's decision may file a civil action in a court of appropriate jurisdiction. See 29 U.S.C. § 794a.

## **Evidence of Implementation**

- Request for Section 504 Hearing
- *Section 504 Parent Rights*
- Appointment of Impartial Hearing Officer
- Participation in Pre-Hearing Conference
- Section 504 Hearing
- Recording of Section 504 Hearing
- Transcript of Section 504 Hearing
- Hearing Officer Decision
- Request for Review by Review Officer
- Appointment of Review Officer
- Decision of Review Officer

## **Resources**

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\)  
- Electronic Code of Federal Regulations](#)

[Technical Assistance: Section 504 – Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[The Public Schools' Obligation for Impartial Hearings under Section 504 - Perry Zirkel \(2012\)](#)

## **CITATIONS**

Board Policy FB and Board Policy FNG; 29 USC 794; 34 CFR 104.36, 104.7