

Chapter 4

Section 504: Preschool, Elementary & Secondary Programs Parental Rights & Procedural Safeguards

Parental Rights

Section 504 provides certain parental rights. Under Section 504 and school district policies, parents have the right to:

- Have their child take part in, and receive benefits from public education programs without discrimination based on a disability;
- Have the school advise them of their rights under federal law;
- Receive written notice with respect to identification, evaluation, or placement of their child;
- Have their child receive a free appropriate public education, including the right to be educated with other students without disabilities to the maximum extent appropriate and the right to have an equal opportunity to participate in school and school-related activities;
- Have their child educated in facilities and receive comparable services to those provided students without disabilities;
- Have their child receive accommodations under Section 504 of the Rehabilitation Act of 1973 if s/he qualifies;
- Have evaluation, educational, and placement decisions made based upon a variety of information sources, and by individuals who know their child, the evaluation data, and placement options;
- Have transportation provided to a school placement setting at no greater cost than would be incurred if the student were placed in a program operated by the school;
- Give their child an equal opportunity to participate in non-academic and extracurricular activities offered by the school;
- Examine all records relating to decisions regarding their child's identification, evaluation, educational program, and placement;
- Obtain copies of educational records at a reasonable cost unless the fee would effectively deny them access to the records;
- Receive a response from the school to reasonable requests for explanations and interpretations of their child's records;
- File a complaint with the Section 504 Compliance Coordinator, under the district's complaint or grievance procedures;

- Request mediation to settle disputes arising out of any decision about your child's identification, evaluation, educational program or placement;
- File a complaint with the Office for Civil Rights of the United States Department of Education; and
- Request an impartial due process hearing to settle disputes arising out of any decision about their child's identification, evaluation, educational program or placement. Parents and their child may take part in the hearing and have an attorney represent them in the process.

Notice of Parental Rights

It is advisable to publish the Notice of Parent Rights document in a student or parent handbook or other document that is distributed annually to students and parents at enrollment. Notices may also be published on the school district website.

A sample of a Notice of Parental Rights document is included in the forms in Appendix B to this handbook. It is recommended that this document be provided to any parent who requests a Section 504 evaluation. The document should also be provided to parents when the annual meeting to review Section 504 services is held.

Procedural Safeguards

A school district must design and implement a system of procedural safeguards that apply any time a district takes any action regarding the identification, evaluation, or educational placement, including services and accommodations provided, of a student protected by Section 504. The procedural safeguards must include:

- Notice;
- The opportunity of the parent to examine relevant education records;
- The opportunity for an impartial hearing, including parent participation and representation by counsel, if desired; and
- A review procedure.

Section 504 Regulations

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

The procedural safeguard requirements under IDEA are not as extensive as those required under IDEA. For students protected by both IDEA and Section 504, compliance with the procedural safeguard provisions of IDEA constitutes compliance with Section 504 requirements.

Notice

While the regulations do not specifically require written notice under section 504, OCR has generally required that written notice of parent rights be provided in writing. Additionally notice of any district proposed actions regarding the identification, evaluation, or educational placement, including services and accommodations provided, of a student protected by Section 504, should be provided to the parents in writing.

Examining Records

The right to examine records under Section 504 may be broader than the rights of parents under the Family Educational Rights and Privacy Act. The FERPA requirement that parent have access to educational records of their student applies to "educational records," while the Section 504 language references "relevant records." In *Indian Prairie (IL) School Dist.*, 51 IDELR 53 (OCR 2011), OCR concluded the district violated Section 504 by taking several months to provide the parent with an acoustical evaluation of the child's classroom. This type of report would most likely not be considered an educational record.

Impartial Hearing

When the parents and the school cannot agree about the identification, evaluation, educational program or placement of a student with a disability under Section 504, parents are entitled to a due process hearing to resolve the issues.

The regulation requires only the right of the parents to be present and the right to representation. OCR has indicated a due process hearing procedure does not have to allow for cross-examination of witnesses or recording by a court reporter. *Houston (TX) Independent School District*, 25 IDELR 163 (OCR 1996). The school can allow for cross-examination of witnesses and provide additional rights if it chooses to do so. The school should use procedures that allow for a full and fair hearing of the issues.

Section 504 does not specify who will conduct the hearing or how the hearing officer will be chosen. OCR has indicated the hearing officer should not be an employee of the district. Additionally, school board members may not serve as the impartial hearing officer. *Mathews County (VA) Pub. Schs.*, 114 LRP 42768 (OCR 2014). Many districts provide that the hearing will be before an impartial hearing officer selected by the board of education. A state trained due process hearing officer may be willing to serve in this capacity.

Ensure your documents indicate how requests for a due process hearing should be submitted in writing to the school district. Generally, these requests should be directed to the District Compliance Coordinator. If a parent submits a request for a due process hearing to a principal or building coordinator, that person should forward the request to the District Coordinator.

Upon receipt of a request for hearing, the Section 504 Coordinator secures the services of an impartial hearing officer, approved by the board. Your local procedures should identify the timeline for holding the hearing and notifying parents of the time and place for the hearing.

Once a hearing officer is hired, the coordinator should provide parents with notice of the following prior to the date set for the hearing:

- A statement of the time and place where the hearing will be held.
- A statement that relevant student records are available for examination.
- A short and plain statement of the matters asserted.
- A statement of the rights that will be afforded at the hearing:
 - ✓ The right to be represented by counsel;
 - ✓ The right of the student and the parents to be present at the hearing;

The following are rights typically afforded to students in suspension or expulsion hearings. You may provide these rights in Section 504 hearings, but you are not required to do so.

- The right to confront and cross-examine witnesses called by the school district at the hearing;
- The right to present their own witnesses;
- The right to have an orderly hearing; and
- The right to a fair and impartial decision based on the evidence presented at the hearing.

The hearing officer presides over the hearing, swearing in witnesses, and determining whether the evidence presented should be admitted. The rules of evidence do not apply to these proceedings, but any evidence offered by either party should be relevant to the issues to be decided.

Because the proceeding may result in an appeal, it is best practice to record the hearing. If appealed, the recording may be provided to the board, or ultimately a court.

The hearing officer's decision should be reduced to writing and include the date, findings of fact and conclusions of law. The decision should be provided to the parents and to the school district representative within an established time frame. The decision of the hearing officer is binding on all parties concerned, subject to the review procedure established by the school district.

Review Procedure

Many school districts allow a parent dissatisfied with the result of the due process hearing to appeal the decision to the board of education or to another appointed appeal officer. The district's procedures should establish to whom a written notice of appeal should be provided and in what time frame. Procedures should also define the timeline for holding the appeal hearing and the rights that will be afforded at the hearing. Generally, the board or the appeal officer should issue a written opinion in

within a short time frame after the hearing concludes. The decision of the board or review officer in this matter is final, but is subject to appeal to a Kansas district court pursuant to K.S.A. 60-2101(d), which allows for appeal from the decision of a school board.

Office for Civil Rights Q&A

44. What procedural safeguards are required under Section 504?

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

45. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

46. Is there a mediation requirement under Section 504?

No, mediation is not required under Section 504, but nothing in Section 504 would prohibit the voluntary use of mediation if the parties agreed.

