

# HAMILTON COUNTY SCHOOL BOARD

## Section 504 of the Rehabilitation Act of 1973

### Informal Grievance Procedures and Impartial Hearing Procedures

#### 1. DISAGREEMENT BETWEEN PARENT AND SCHOOL

- a. Initial concerns regarding a student are handled between the Parent(s) and Teacher(s).
- b. Next, the Section 504 School Liaison designee will consult in regard to screening/evaluation procedures and specific requirements under Section 504.
- c. The next step involves a meeting with the Child Study Team, a School Administrator and the Section 504 School Liaison designee. The School Principal will provide a written response to the Parent's request.
- d. If the Parent(s) and School exhaust all negotiating options, then Section 2(a) is completed.

#### 2. DISTRICT SECTION 504 FACILITATOR

- a. The District Section 504 Facilitator/Coordinator of Exceptional Student Education assists the School and Parent(s) in defining the Section 504 rules and regulations as they apply to the case. At the school level, the District Section 504 Facilitator acts as a mediator and helps the school and Parent(s) consider and/or develop alternatives to the issue. A written response will be provided to the Parent(s).
- b. If the District Section 504/Facilitator, Parent(s), and School exhaust all negotiating options, then Section 3 (a) is completed.

#### 3. DISTRICT SECTION 504 REVIEW COMMITTEE

- a. If an impasse continues, a District Level Team including the Assistant Superintendent, Coordinator of Exceptional Student Education, and School Psychologist may convene to review the case and direct its recommendation to the Superintendent and School Board Attorney. The parent must make a written request for review by the District Level Team. The team will provide a written response to the parent request.

#### 4. IMPARTIAL HEARING PROCEDURES

##### a. GENERAL

Parents may file a request for an impartial hearing on any action regarding the identification, evaluation, or educational placement of your child under Section 504. The due process hearing request must allege a violation that happened not more than two years before you knew or should have known about the alleged action that forms the basis of the complaint. The above timeline does not apply to you if you could not file a due process hearing request within the timeline because:

- a. The School District specifically misrepresented that it had resolved the issues identified in the complaint; or
- b. The School District withheld information from you that it was required to provide you under Section 504.

##### b. LEGAL SERVICES

The School District must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you file a request for an impartial hearing under Section 504.

##### c. DUE PROCESS HEARING REQUESTS

In order to request an impartial hearing under Section 504, you (or your attorney) must submit a due process hearing request to the School District. That impartial hearing request must contain all of the content listed below and must be kept confidential. You must also provide the Florida Department of Education with a copy of request for an impartial hearing.

### **Content of a request for impartial hearing under Section 504**

The due process hearing request must include:

1. The name of the student;
2. The address of the student's residence;
3. The name of the student's school;
4. If the student is a homeless child or youth, the student's contact information and the name of the student's school;
5. A description of the nature of the problem of the student relating to the challenged action regarding identification, evaluation, or placement under 504, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to you at the time.

### **Notice required before a hearing on a due process hearing request**

You may not have a due process hearing until you (or your attorney) files a request for impartial hearing under Section 504 that includes the information listed above.

### **Sufficiency of due process hearing request**

In order for an impartial hearing request to go forward, it must be considered sufficient. The hearing request will be considered sufficient unless the School District notifies the hearing officer and you in writing, within 15 calendar days of receiving the hearing request, that the School District believes that the due process hearing request does not meet the requirements listed above. Within five calendar days of receiving the notification of insufficiency, the hearing officer must decide if the hearing request meets the requirements listed above and notify you and the School District in writing immediately.

### **Due process hearing request amendment**

You may make changes to the impartial hearing request only if:

1. The School District approves of the changes in writing and is given the chance to resolve the hearing request through a resolution meeting, described below; or
2. By no later than five days before the impartial hearing begins, the hearing officer grants permission for the changes.

If you make changes to the impartial hearing request, the timelines for the resolution meeting (within 15 calendar days of the School District's receipt of the hearing request) and the time period for resolution (within 30 calendar days of receiving the due process hearing request) start again on the date the amended due process hearing request is filed.

### **School District response to an impartial hearing due request**

The School District must, within 10 calendar days of receiving the impartial hearing request, send you a response that specifically addresses the issues in your hearing request.

### **FORMS**

The School District has developed a form to help you file an impartial 504 hearing request. You are not required, however, to use this form and you can use another appropriate form, as long as it contains the required information for filing a sufficient impartial hearing request.

### **EARLY RESOLUTION PROCESS**

Within 15 calendar days of receiving notice of your impartial hearing request, and before the hearing begins, the School District must convene a meeting with you and the relevant member or members of the CST/504 Team who have specific knowledge of the facts identified in your hearing request. The meeting:

1. Must include a representative of the School District who has decision-making authority on behalf of the School District; and
2. May not include an attorney of the School District unless you are accompanied by an attorney.

You and the School District will determine the relevant members of the Team to attend the meeting. The purpose of the meeting is for you to discuss your hearing request, and the facts that form the basis of the hearing request, so that the School District has the opportunity to resolve the dispute. The resolution meeting is not necessary if you and the School District agree in writing to waive the meeting.

**Resolution period**

If the School District has not resolved the impartial hearing request to your satisfaction within 30 calendar days of the receipt of hearing request (during the time period for the resolution process), the impartial hearing may occur. The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below. Except where you and the School District have both agreed to waive the resolution process, your failure to participate in the resolution meeting will delay the timelines for the resolution process and the impartial hearing until you agree to participate in a meeting. If after making reasonable efforts, and documenting such efforts, the School District is not able to obtain your participation in the resolution meeting, the School District may, at the end of the 30-calendar-day resolution period, request that the hearing officer dismiss your hearing request. Documentation of such efforts must include a record of the School District's attempts to arrange a mutually agreed upon time and place for the resolution meeting.

If the School District fails to hold the resolution meeting within 15 calendar days of receiving notice of your impartial hearing request or fails to participate in the resolution meeting, you may ask the hearing officer to order that the 45-calendar-day hearing timeline begin.

**Adjustments to the 30-calendar-day resolution period**

If you and the School District agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the impartial hearing starts the next day. After the start of the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the School District agree in writing that no agreement is possible, then the 45-calendar-day timeline for the impartial hearing starts the next day.

**Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the School District must enter into a legally binding agreement that is:

1. Signed by you and a representative of the School District who has the authority to bind the School District; and
2. Enforceable in any State court of competent jurisdiction.

**Agreement review period**

If you and the School District enter into an agreement as a result of a resolution meeting, either you or the School District may void the agreement within three business days of the time that both you and the School District signed the agreement.

**IMPARTIAL HEARING UNDER SECTION 504****General**

As set forth above, when a request for impartial hearing is filed by you under Section 504, you must be provided an opportunity for an impartial hearing. Should a due process hearing be required, the hearing will be conducted by the Florida Department of Education through an impartial hearing officer (Administrative Law Judge (ALJ)) with Florida's Division of Administrative Hearings (DOAH) in accordance with applicable Florida Statutes and State Board of Education Rules. Florida has a one-tiered impartial hearing system wherein the Florida Department of Education or another State-level agency or entity (other than the School District) is responsible for convening impartial hearings. An appeal from an impartial hearing decision goes directly to a federal district or State circuit court.

**Impartial hearing officer (i.e., Administrative Law Judge (ALJ))**

At a minimum, a hearing officer:

1. Must not be an employee of the School District that is involved in the education or care of the student. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be generally knowledgeable about the provisions of Section 504 and federal and State regulations pertaining to Section 504; and
4. Must have the knowledge and ability to conduct impartial hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

**Subject matter of impartial hearings**

You may not raise issues at the impartial hearing that were not addressed in your hearing request, unless the School District agrees.

## **HEARING RIGHTS**

### **General**

Any party to an impartial due process hearing under 504 has the right to:

1. Be represented by counsel or to be represented by a qualified representative under the qualifications and standards set forth in Rules 28-106.106 and 28-106.107, F.A.C., or to be accompanied and advised by individuals with special knowledge or training with respect to the problems of students with disabilities, or any combination of the above;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
5. Obtain written, or, at your option, electronic findings of fact and decisions.

### **Parental rights at hearings**

You must be given the right to:

1. Attend any hearing requested;
2. Be represented by counsel at a hearing; and
3. Have the decision made at the hearing reviewed.

## **APPEALS**

### **FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW**

#### **Finality of impartial hearing decision**

A decision made in an impartial hearing is final, except that either party involved in the hearing may appeal the decision by bringing a civil action, as described below.

### **TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS**

The Florida Department of Education will ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described above under the sub-heading **Adjustments to the 30-calendar-day resolution period**, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party. Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### **CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS**

#### **General**

If you or the School District does not agree with the findings and decision in the due process hearing, you or the School District has the right to bring a civil action for review of the hearing officer's decision. The civil action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

#### **Time limitation**

The party bringing the action for review shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action for review of the decision.

#### **Additional procedures**

In any civil action, the court:

1. Receives the records of the impartial hearing proceedings;
2. Hears additional evidence at your or the School district's request; and
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.