

## SECTION 504 IMPARTIAL HEARING PROCEDURE

1. Impartial hearings are available under Section 504 to resolve disagreements between parents and the school division over matters related to the identification, evaluation, or educational placement of a student with a disability. See 34 C.F.R. § 104.36.
  - a) Exception for student use of drugs or alcohol. School divisions can take disciplinary action against any student with a disability “who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.” 29 U.S.C. § 705(20)(C)(iv). Furthermore, disciplinary matters relating to a student’s current use of illegal drugs or alcohol are not reviewable in a hearing. See id.
  - b) These hearing procedures shall not be used if the remedy requested by the complainant is available through the due process procedures set forth in the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415 (f).

### 2. Requesting a Hearing

- a) Requests for hearings shall be made in writing and directed to the school division’s Section 504 Coordinator (“coordinator”). A hearing must be requested within ninety (90) calendar days of the dispute giving rise to the hearing. The hearing request must include the following information:
  - (i) The name of the student, the address of the residence of the student (or available contact information in the case of a homeless student), and the name of the school the student is attending;
  - (ii) In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the student and the name of the school the student is attending;
  - (iii) A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and
  - (iv) A proposed resolution of the problem to the extent known and available to the party at the time.

### 3. Appointment of a Hearing Officer

- a) The coordinator will appoint an impartial hearing officer from the list of special education hearing officers maintained by the Supreme Court of Virginia or from the list of attorneys appointed by the School Board, who have expertise and training in disability law. The hearing officer should be appointed within five (5) school days of receipt of a request for a hearing

4. Pre-Hearing Procedures

- a) The hearing officer is responsible for the following matters prior to the hearing:
  - (i) Within five (5) school days of appointment, securing a date, time, and location for the hearing that are convenient to both parties, and notifying both parties, in writing, of the date, time, and location of the hearing.
  - (ii) Ascertaining whether the parties will be represented at the hearing.
  - (iii) Ascertaining whether the hearing will be open to the public.
  - (iv) Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
- b) A list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) must be exchanged by the parties and received by the hearing officer at least five (5) school days before the hearing. The hearing officer has the authority to exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five (5) school days before the hearing.
- c) Pre-hearing conferences should be held, if appropriate.

5. Hearing Procedures

- a) The parties have the following rights in a hearing:
  - (i) To participate in the hearing and be represented by counsel at their own expense;
  - (ii) To present evidence and cross-examine witnesses; and
  - (iii) To obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party).
- b) For hearings requested on behalf of students, the student may attend the hearing.
- c) In connection with the hearing, the hearing officer shall:
  - (i) Maintain an atmosphere conducive to impartiality and fairness.
  - (ii) Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEA.
  - (iii) Maintain an accurate record of the proceedings.

- (iv) Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
  - (v) Render a written decision within forty-five (45) calendar days from the date of appointment, unless continued upon a request of either party to the hearing. A continuance can be granted by the hearing officer upon a showing of good cause.
  - (vi) Assign the burden of proof to the party seeking relief.
- d) The hearing officer shall hold all records for thirty (30) calendar days after issuance of a decision. In the event an appeal is noted, the coordinator will provide the hearing officer with the name and address of the review officer and request that the records be forwarded to the review officer. The hearing officer shall transmit the records to the review officer within three (3) school days of the coordinator's request. In the event that no appeal is made, the hearing officer shall return the records to the coordinator.

## **SECTION 504 REVIEW PROCEDURE**

1. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. See 34 C.F.R. § 104.36.
2. An appeal may be noted by an aggrieved party by filing a written notice of appeal with the school division's Section 504 Coordinator ("coordinator") within thirty (30) calendar days of the date of the decision issued by the hearing officer.
3. An impartial review officer must be appointed by the coordinator from the same list from which the initial hearing officer was appointed and within five (5) school days of the request for review.
4. The review officer will conduct an impartial review of the hearing decision.
5. The review officer shall:
  - a) advise the parties of the right to be represented by counsel at their own expense during the review proceedings;
  - b) examine the record of the hearing;
  - c) determine whether the procedures at the impartial hearing were in accordance with the requirements of due process;
  - d) afford the parties an opportunity for written or oral argument, or both, at the discretion of the review officer;
  - e) seek additional evidence, if necessary; and
  - f) issue a written decision.
6. The review officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by evidence.
7. 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.
8. The record of the administrative hearings shall be sent by the review officer to the coordinator upon the issuance of the decision.
9. The coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
10. 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.