

504 Policies & Procedures for Due Process

Contributed by Administrator
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LCSS Parent/Student Rights in

Identification, Evaluation, and Placement

The following is a description of the rights granted to students with a disability by Section 504 of the Rehabilitation Act of 1973, a civil rights statute, which prohibits discrimination against persons with a disability in any program or activity receiving federal financial assistance. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disability;

2. Have your school district advise you of your rights under federal law;

3. Receive notice with respect to identification, evaluation, or placement of your child;

4. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities;

5. Have your child educated in facilities and receive services comparable to those provided non-disabled students;

6. Have your child receive special education and related services if s/he is found to be eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act;

7. Have evaluation, education, and placement decisions made based upon a variety to information sources, and by persons who know the student, the evaluation data, and placement options;

8. Have transportation provided to and from an alternative placement setting at no greater cost to you than would have been incurred if the student were placed in a program operated by the district;

9. Have you child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district;

10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, education program, and placement;

11. Obtain copies of education records at a reasonable cost, unless the fee would effectively deny you access to the records;

12. A response from the school district to reasonable requests for explanations and interpretations of your child's records;

13. Request the amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time, and advise you of the right to a hearing;

14. File a local grievance;

15. Request voluntary mediation or an impartial hearing related to decisions or action regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Written hearing requests must be submitted to the 504 Coordinator/designee of the local school system and include the following information:

§ The reason for the request;

§ A suitable time for the hearing: morning, afternoon, evening;

§ Two possible dates for the hearing; and

§ Whether the hearing will be closed or open to the public

The hearing must be held no less than fifteen (15) days and no more than thirty (30) days from the time you asked for the hearing, unless you agree otherwise, or the impartial hearing officer grants a continuance at the request of one of the parties.

Reasons for the request:

1. Denied identification, evaluation or educational placement of persons who, because of a disability, need or are believed to need special education or related services.

2. Placed in a setting which is not the least restrictive environment.

3. Denied appropriate services due to inaccessibility of programs.

4. Denied modifications to regular education program because of identified disability.

5. Denied participation in extracurricular and nonacademic activities because of disability.

16. Ask for payment of reasonable attorney fees.

The person who is responsible for ensuring compliance with Section 504 is:

Elaine Townsend

District Section 504 Coordinator

731-967-5591

LCSS – Due Process Hearing Procedures

Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent wishes to contest any action of the Lexington City School District with regard to a child's identification, evaluation, and placement under Section 504. This provision is found within 34 CFR §104.36. If a parent/guardian requests a Section 504 hearing with the Lexington City School District, the parent/guardian has the right to personally participate and to be represented by at the hearing by an attorney or advocate at the parent's expense.

Contested actions or omissions that are appropriate for a Section 504 hearing with the Lexington City School District should involve identification, evaluation, or placement issues involving a child who has or is believed to have a disability.

Request for Due Process

A parent/guardian who wishes to challenge the Lexington City School District's action or omission with regard to the identification, evaluation, or placement of a student who has or is believed to have a disability as defined by Section 504, shall make a written request for a due process hearing to the LCSS Section 504 coordinator. If a request is received orally, it should be reduced to writing or the parent/guardian should be provided a form to reduce the request to writing. The written request must make clear that the parent is seeking a due process hearing under Section 504 before an impartial Section 504 hearing officer. The written request must be made on a form provided by the LCSS for that purpose. If the intent to seek a due process hearing is not clear from the face of the request, the LCSS Section 504 coordinator may contact the parent to clarify the request and ascertain whether the parent wishes to initiate a Section 504 due process hearing. The coordinator may also assist the parent in clarifying any questions regarding due process rights under Section 504. Timelines for the appointment of a hearing officer will not begin until it is clear from the parent/guardian's request for due process that the dispute at issue is regarding the Section 504 identification, evaluation or placement of a child. If after such communication, the LCSS is still unsure whether the parent is requesting a due process hearing under Section 504, the LCSS shall initiate due process procedures, and appointed hearing officer will hold a pre-hearing conference to decide whether the parent is seeking a due process hearing under Section 504, and whether the hearing office has jurisdiction to entertain the claims and issues raised by the parent.

Hearing Officer

The LCSS will appoint an impartial hearing officer to preside over the hearing and issue a decision. Such appointment will be made within fifteen (15) days of the date of receipt of a clear request for a due process hearing. The hearing officer will be hired by the LCSS as an independent contractor at no expense to the parent. The hearing officer that is appointed shall not be a current employee of the LCSS and shall not be related to any member of the LCSS local board of education. The hearing officer need not be an attorney, but shall be familiar with the requirements of Section 504 and the LCSS hearing procedures under Section 504. The District's choice of an impartial hearing officer is final and may not be presented as 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 Section 504. If a parent/guardian disputes the impartiality of the appointed hearing officer, s/he may raise such issue in a review of the hearing officer's opinion by a court of competent jurisdiction or in a complaint to the Office for Civil Rights. The regional office which covers Tennessee is: U.S. Department of Education Office for Civil Rights - Atlanta | 61 Forsythe Street, SW, Suite 19T70 | Atlanta, GA 30303 | (404-974-9406).

Scheduling of Hearing

The appointed hearing officer shall issue an Order Setting Hearing Date to the parent/guardian and the LCSS Section 504 coordinator in writing. Such Order shall set a date for the 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.

Continuances

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

Legal Representation at Hearing

The LCSS will not have legal representation at the hearing unless the parent notifies the LCSS that they will have legal representation. If a parent/guardian is represented by a licensed attorney at the due process hearing, s/he must inform the LCSS Section 504 coordinator and the appointed hearing officer of that fact, in writing, at least seven (7) calendar days prior to the hearing date, or the hearing can be continued upon the LCSS request.

Pre-Hearing Conference

The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference will also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process. The Pre-Hearing Conference can be held via telephone or in person depending on the Hearing Officer's decision based on the convenience to both parties.

Dismissals

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

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 as the parent/guardian's request. The federal nor the Tennessee Rules of Evidence or Procedure will apply. The hearing officer may reasonably limit testimony and introduction of documentary exhibits for reasons or relevance.

Recording

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape-recorded. The parent/guardian may obtain a copy of the tape-recording, at his/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/guardian proceeds to a review of the due process hearing decision to a court of competent jurisdiction, the LCSS 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/her discretion, ask a witness a certain question.

Format of Presentation

Each side will have an equal amount of time to present their positions to the hearing officer, who will make the determination as to time constraints based upon the issues involved. The parent/guardian will present its case first, by making an opening statement, which outlines the parent/guardian's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. The LCSS will present its side next. All of the preceding may be done either personally or through counsel, except for personal presentations or statements. At the end of the LCSS presentation, the parent/guardian may offer a short response to the LCSS case.

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 /her discretion. Exhibits submitted to the hearing officer by either party must be marked. The hearing officer may, in the exercise of his/her discretion, reasonably limit the number of documents to be submitted for his/her review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

Closing Argument/Briefs

The hearing officer may allow or request written closing arguments summarizing and characterizing the information presented at the hearing; and provide legal authority in support of each party's position. The hearing officer will set time lines for their submission at the conclusion of the hearing.

Decision

The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement; but, in all cases, the hearing officer shall issue a written opinion addressing and ruling on all issues raised by the Petitioner, indicating what corrective action, if any, the LCSS must take. Formal findings of fact and conclusions of law are not required. Any issue or claim raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision will be deemed to have been denied. The hearing officer should include in his/her decision that the unaddressed issues/claims have been denied. The decision must be issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district. The hearing officer may not award attorneys' fees as a part of the relief granted to a parent/guardian or the district.

Review Procedure/Appeal

If the parent/guardian is not satisfied by the decision of the hearing officer, s/he 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)

A parent/guardian may file a complaint with the Office for Civil Rights (OCR) if s/he believes that the (District) has violated any provision or regulation of Section 504. The filing of a complaint does not affect the hearing process or the time lines set forth above. OCR addresses Section 504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Case Processing Manual. A parent/guardian should contact OCR or consult its Case Processing Manual concerning timeframes for filing OCR complaints.

The OCR office for Tennessee is located at:

Atlanta Office - Office for Civil Rights U.S. Department of Education

61 Forsyth St. S.W., Suite 19T10

Atlanta, GA 30303-8927

Telephone: 404-974-9406

FAX: 404-974-9471; TDD: 877-521-2172

Email: OCR.Atlanta@ed.gov

The OCR National Headquarters is located at:

U.S. Department of Education

Office for Civil Rights

Lyndon Baines Johnson Department of Education Bldg

400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone: 800-421-3481

FAX: 202-453-6012; TDD: 877-521-2172

Email: OCR@ed.gov

