

<b>TENNESSEE STATE BOARD OF EDUCATION</b>		
<b>AMERICANS WITH DISABILITIES ACT (ADA) AND SECTION 504</b>		<b>1802</b>
<b>ADOPTED:</b> <b>July 28, 2017</b>	<b>REVISED:</b> <b>May 29, 2020</b>	<b>MONITORING:</b> <b>Review: Annually</b>

~~The State Board is committed to upholding equitable employment and educational practices, services, programs, and activities and maintaining facilities that are accessible and usable by individuals with disabilities, to the extent provided by law.~~

~~As defined by Title II of the Americans with Disabilities Act (“ADA”), no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.<sup>1,2</sup>~~

~~As defined by Section 504 of the Rehabilitation Act of 1973 (“Section 504”), no qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance.<sup>1,2</sup>~~

~~**State Board Coordination.**<sup>4</sup> The Director of Schools shall designate at least one (1) State Board employee to coordinate efforts to comply with and fulfill obligations arising under ADA and Section 504 (collectively the “Acts”) and monitor the school’s compliance with obligations under ADA and Section 504, including cooperation and coordination with the school’s coordinator with regard to the investigation of any complaint alleging non-compliance with the Acts or alleging any actions that would be prohibited by the Acts.~~

~~**School Coordination.**<sup>4</sup> Each authorized charter school shall designate at least one (1) employee to coordinate its compliance efforts and carry out responsibilities under ADA and Section 504, including investigation of any complaint alleging noncompliance under the Acts or any act or omission that would be prohibited by the Acts.~~

~~The school shall make available to interested individuals the name, office address, and telephone number of the designated employee(s). Annually, the school shall notify the State Board by July 1 of the designated employee(s) coordinating ADA and Section 504 compliance.~~

~~**School Complaint Procedure.**<sup>5</sup> The school shall adopt a complaint policy or procedure and disseminate it to employees, students, and the school community. The school’s policy or procedure shall outline the process for handling complaints regarding ADA/Section 504. The school’s ADA/Section 504 coordinator shall handle any complaint involving ADA/Section 504. The school’s ADA/Section 504 coordinator shall provide a copy of each complaint received to the State Board’s ADA/Section 504 coordinator. The school’s ADA/Section 504 coordinator shall respond to all~~

complaints promptly in accordance with the school's policy. A copy of the response to a complaint shall also be provided to the parent and to the State Board's ADA/Section 504 Coordinator.

~~**Section 504 Due Process Hearing Procedures.** Each authorized charter school shall follow these procedures for Section 504 due process hearings and disseminate it to employees, students, and the school community. The school may choose to adopt a due process hearing procedure with additional requirements. If the school adopts a procedure with additional requirements, it shall provide a copy to the State Board.~~

~~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 school with regard to a child's identification, evaluation, and placement under Section 504.<sup>6</sup> If a parent/guardian requests a Section 504 hearing, the parent/guardian has the right to personally participate and to be represented 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 should involve identification, evaluation, or placement issues involving a child who has or is believed to have a disability.~~

#### *Request for Hearing*

~~A parent/guardian who wishes to challenge an 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 an oral or written request for a due process hearing to the school's Section 504 coordinator. The request shall be submitted on or reduced to writing on a form provided by the school. The school's Section 504 coordinator shall notify the State Board's Section 504 coordinator of any request for a due process hearing upon receipt.~~

#### *Impartial Hearing Officer*

~~The school leader or his/her designee shall 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 request for a due process hearing. The hearing officer will be hired as an independent contractor at no expense to the parent. The hearing officer that is appointed shall not be a current employee of the school or district and shall not be related to any member of the school's governing board. The hearing officer need not be an attorney but shall be familiar with the requirements of Section 504 and the hearing procedures under Section 504. The 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, he/she 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.~~

Office for Civil Rights  
U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T10  
Atlanta, GA 30303-8927  
Telephone: 404-974-9406; TDD: 877-521-2172  
Email: OCR.Atlanta@ed.gov

### *Scheduling of Hearing*

The appointed hearing officer shall set a date for the hearing within fifteen (15) days of his/her appointment and provide this information in writing to the parent/guardian and both the district's and the school's Section 504 coordinator. The hearing shall take place at a mutually agreeable time and place.

### *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.

### *Legal Representation at Hearing*

If a parent/guardian is represented by a licensed attorney at the due process hearing, he/she must inform the school's 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 coordinator's 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, he/she 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 hearing shall be closed to the public unless the parent/guardian requests an open hearing. The hearing officer may reasonably limit testimony and introduction of exhibits for reasons of relevance.

### *Recording*

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be video recorded. The school shall provide a copy of the recording to the parent/guardian upon 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 appeals the decision of the hearing officer to a court of competent jurisdiction, the school shall prepare a written transcript of the hearing 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 as determined by the hearing officer. The parent/guardian will present his/her case first by making an opening statement outlining the issues, calling witnesses, and making a closing argument. The school will present its side next.

At the end of the school's presentation, the parent/guardian may offer a short response. Each side may present personally or through their representatives.

### *Submission of Exhibits*

As part of their presentations and at the discretion of the hearing officer, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions. 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 Arguments*

The hearing officer may allow or request written closing arguments summarizing and characterizing the information presented at the hearing.

### *Decision*

The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement and issue a written opinion. Such decision shall address all of the issues raised by the parent/guardian as well as any corrective actions, if any, the school system must take. 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 decision must be issued within forty five (45) days after the date the Request for a Due Process Hearing is received by the school. The hearing officer may not award attorneys' fees as a part of the relief granted to a parent/guardian or the school.

### *Review Procedure/Appeal*

If the parent/guardian is not satisfied by the decision of the hearing officer, he/she may seek review of the decision in a court of competent jurisdiction.

**ADA or Section 504 Grievances.** ADA or Section 504 legal or other administrative actions may be filed without filing a complaint or grievance with the State Board or school. Complaints shall be directed to the following:

**ADA Complaints:**

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Civil Rights Division  
Disability Rights Section—1425 NYAV  
Washington, D.C. 20530

[Online: Complaint Form \(en Español\)](#) (Instructions for submitting attachments are on the form.)

Telephone: 1-800-514-0301 (voice); 1-800-514-0383 (TTY)  
Fax: (202) 307-1197

**Section 504 Complaints:**

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: 800-877-8339

Email: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)

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Legal References:

<sup>1</sup> T.C.A. § 49-13-111(b)

<sup>2</sup> 42 U.S.C. § 12112(a)

<sup>3</sup> 34 C.F.R. § 104.4(a)

<sup>4</sup> 28 C.F.R. § 35.107

<sup>5</sup> 28 C.F.R. § 35.170, 35.172

<sup>6</sup> 34 C.F.R. § 104.36

Cross References:

Employee Rights 5104

Grievances and Complaints 1200

Complaint/Grievance Procedures