3 R’s of Section 504:

Regulations; Responsibilities; and Resources

REHABILITATION ACT OF 1973
[As Amended Through PL 114–95, Enacted December 10, 2015]

AN ACT To replace the Vocational Rehabilitation Act, to extend and revise the authorization of grants to States for vocational rehabilitation services, with special emphasis on services to individuals with the most severe disabilities, to expand special Federal responsibilities and research and training programs with respect to individuals with disabilities, to create linkage between State vocational rehabilitation programs and workforce investment activities carried out under title I of the Workforce Investment Act of 1998, to establish special responsibilities for the Secretary of Education for coordination of all activities with respect to individuals with disabilities within and across programs administered by the Federal Government, and for other purposes.

TITLE V—RIGHTS AND ADVOCACY

- Sec. 501. Employment of individuals with disabilities.
- Sec. 502. Architectural and Transportation Barriers Compliance Board.
- Sec. 503. Employment under Federal contracts.
- Sec. 504. Nondiscrimination under Federal grants and programs.
- Sec. 505. Remedies and attorneys’ fees.
- Sec. 506. Secretarial responsibilities.
- Sec. 507. Interagency Disability Coordinating Council.
- Sec. 508. Electronic and information technology regulations.
- Sec. 509. Protection and advocacy of individual rights.
SEC. 504. (a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978.

(b) For the purposes of this section, the term “program or activity” means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or (B) a local educational agency (as defined in section 8101 of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system; (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship— (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended,
in the case of any other corporation, partnership, private organization, or sole proprietorship; or (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance. (c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this sub-section shall be construed with reference to the regulations existing on the date of the enactment of this subsection.

(d) The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201– 12204 and 12210), as such sections relate to employment.
SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

Slide 2

Subpart A -- General Provisions
Sec.
104.1 Purpose.
104.2 Application.
104.3 Definitions.
104.4 Discrimination prohibited.
104.5 Assurances required.
104.6 Remedial action, voluntary action, and self-evaluation.
104.7 Designation of responsible employee and adoption of grievance procedures.
104.8 Notice.
104.9 Administrative requirements for small recipients.
104.10 Effect of state or local law or other requirements and effect of employment opportunities.

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Subpart B -- Employment Practices
104.11 Discrimination prohibited.
104.12 Reasonable accommodation.
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Subpart C -- Accessibility
104.21 Discrimination prohibited.
104.22 Existing facilities.
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Subpart D -- Preschool, Elementary, and Secondary Education
104.31 Application of this subpart.
104.32 Location and notification.
104.33 Free appropriate public education.
104.34 Educational setting.
104.35 Evaluation and placement.
104.36 Procedural safeguards.
104.37 Nonacademic services.
104.38 Preschool and adult education.
104.39 Private education.
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.
§ 300.511 Impartial due process hearing Slide 1

(a) General. Whenever a due process complaint is received under §§ 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

§ 300.511 Impartial due process hearing Slide 2

(c) Impartial hearing officer. (1) At a minimum, a hearing officer - (i) Must not be - (A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.
§ 300.511 Impartial due process hearing Slide 4

(e) **Timeline for requesting a hearing.** A **parent** or agency must request an impartial hearing on their due process complaint within two years of the date the **parent** or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the **State** has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that **State** law.

§ 300.511 Impartial due process hearing Slide 5

(f) **Exceptions to the timeline.** The timeline described in paragraph (e) of this section does not apply to a **parent** if the **parent** was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or
2. The LEA’s withholding of information from the **parent** that was required under this part to be provided to the **parent**.

(Approved by the Office of Management and Budget under control number 1820-0600)


SAMPLE BOARD POLICY

POLICY TITLE: Section 504 of the Rehabilitation Act

POLICY NO: 296 Hearing Procedure
SECTION 504 HEARING PROCEDURE--
PURPOSE AND SCOPE
Slide 1
An impartial hearing procedure is available to students and their parents to resolve differences dealing with educational services available under Section 504 of the Rehabilitation Act (hereinafter “Section 504”) when such differences cannot be resolved by means of a less formal procedure. Students and their parents are encouraged to use this school district’s Civil Rights Grievance Procedure for resolution of differences whenever possible. The hearing procedures and procedural safeguards set forth in this policy apply to the identification, evaluation, or educational placement of a student, as set forth in 34 CFR 104.36. A student qualifies for a free appropriate public education, including related services, under Section 504 if he/she has a physical or mental impairment which substantially limits one or more major life activities.

SECTION 504 HEARING PROCEDURE--
PURPOSE AND SCOPE
Slide 2
The following definitions will apply to all related hearing matters:
1. “Days” means calendar days;
2. “Parents” means parents or legal guardians;
3. “Placement” means the program concerning the educational placement of the student.

HEARING PROCEDURES
Slide 1
A Section 504 impartial hearing may be requested by the school district or a parent of an affected student on matters directly related to the school district’s decisions or actions regarding the following:
1. The identification or eligibility of a student as disabled under Section 504;
2. The evaluation procedures utilized with the student, including a decision not to evaluate a student; or
3. The educational placement and/or related aids and services recommended for or provided to the student, including any change in placement as a result of disciplinary action.
All requests for a hearing under this policy must be submitted in writing addressed to the Superintendent of Schools. The written request for a hearing must contain:
1. The specific nature of the dispute;
2. The specific relief or remedy requested; and
3. Any other information the school district or parents believe is important to understand the dispute.
The hearing procedure will be presided over and decided by an impartial hearing officer. The Superintendent of Schools, or his/her designee, will select an impartial hearing officer within fifteen (15) days of receipt of the request for a Section 504 hearing. The selected impartial hearing officer will:
1. Be qualified to review school district decisions relating to Section 504;
2. Be impartial and unbiased; and
3. Not be an employee of the school district.

The selected hearing officer, prior to the hearing, will review the school district's actions and notify the parties in writing of the date of the hearing. The parents and the school district will be given at least ten (10) days' notice of the date of the hearing. The notice from the appointed hearing officer will contain:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is being held;
3. A statement of the availability of relevant records for examination;
4. A concise statement of the issues in dispute;
5. A statement setting forth the right of the student's parents or guardian to participate in the hearing procedure; and
6. A statement of the right to be represented by counsel.

All written correspondence will be provided in English and/or interpreted in the parents' primary language.

The hearing will be conducted and a written decision will be mailed by the hearing officer to all parties within forty-five (45) days from the date of the hearing assignment, except that either party to the hearing may request a continuance. The continuance may be granted by the hearing officer upon a showing of good cause. Any continuance(s) granted by the hearing officer will extend the time for rendering a final hearing decision for a period equal to the length of the continuance(s).
HEARING PROCEDURES  

Slide 6

The appointed hearing officer will preside at the hearing and will conduct the hearing proceedings in a manner that allows all parties the following rights:
1. The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of disabled children;
2. The right to present evidence and oral arguments;
3. The right to an electronic verbatim record of the hearing; and
4. The right to written findings of fact and a decision on the matter.

Slide 7

Parents involved in the hearing process will have the right to:
1. Have the student present at the hearing; and
2. Open the hearing to the public.
In cases where there are language differences, an interpreter will be provided by the school district.

The appointed hearing officer will review all relevant facts presented at the hearing and will determine whether the student’s rights have been fully observed. The hearing officer will have the authority to uphold, reverse, or modify the school district’s decisions or actions with regard to:

Slide 8

1. Identification of the student as disabled;
2. Evaluation procedures utilized with the student, including a decision not to evaluate a student; and
3. Educational placement and/or services and accommodations recommended for or provided to the student.
DECISION OF THE HEARING OFFICER

A copy of the hearing officer’s findings of fact and decision will be delivered to the school district and the parents within forty-five (45) days from the date of the assignment of the hearing officer, unless a continuance was granted.

The decision of the hearing officer is binding on all parties concerned and may be appealed to a court of competent jurisdiction.

RECORD OF THE HEARING

An electronic verbatim recording of the Section 504 hearing will be on file at the school district administration office and will be available for review upon request by the parents and/or any of the involved parties.

SECTION 200: SCHOOL BOARD © 2001 Eberharter-Maki & Tappen, PA D2/12/98-M2/2/01-SC0/0/0

LEGAL REFERENCE:
29 USC Chapter 16
34 CFR Part 104
ADOPTED: Oct. 11, 2005
AMENDED:
Glossary of Terms Slide 1

Model Process and Resources for 504 Plan Implementation

New Hampshire Department of Education

504 Plan: A 504 Plan outlines the accommodations and/or related services associated with the student’s disability/impairment and which are necessary so that he or she may participate in the general classroom setting and/or all educational programs.

Glossary of Terms Slide 2

Eligibility: In order to be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. (Mitigating measures cannot be considered when determining whether or not a student’s impairment substantially limits one or more major life activities, however in order to receive accommodations and/or related services a student must require accommodations/related aids after considering the positive effects of mitigating measures.)

Glossary of Terms Slide 3

504 Team: The Office of Civil Rights (OCR) requires that Section 504 eligibility decisions be made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Best practice guidance is to include: the parent(s), student (at the secondary school level), an individual with authority to commit fiscal and personnel resources for the district, at least one classroom teacher with a good understanding of how the student does in school, and for some medical disabilities a school nurse.
**Glossary of Terms Slide 4**

**Evaluation:** The amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the accommodation/related services options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. School districts are required to draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student’s learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

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**Glossary of Terms Slide 5**

**Physical or Mental Impairment:** A physical or mental impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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**Glossary of Terms Slide 6**

**Major Life Activity:** These include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. In the Americans with Disabilities Amendments Act of 2008 (Amendments Act), activities were added to include eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. A list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions were also added within the Amendments.
Mitigating Measures: While this term does not have a formal definition, the Amendments Act does not allow mitigating measures to be considered when determining if an individual has a disability and whether it substantially limits a major life activity. These include medication, medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications. Mitigating measures can be considered when determining what accommodations and/or related services are necessary for the student to have equal access to all school experiences.

**Substantial Limitation:** This is determined on a case by case basis, and requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

**Accommodation Versus Modification:** An accommodation changes the way a student learns. A modification changes what a student is taught and expected to learn.

**Re-Evaluation of the 504 Plan:** Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child’s parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise). Section 504 also requires a school district to conduct a re-evaluation prior to any significant change in placement for the student.
Significant Change in Placement: The Office of Civil Rights considers the following examples as a significant change in placement for a student:

- An exclusion from the educational program of more than 10 school days
- Transferring a student from one type of program to another
- Terminating or significantly reducing a related service

What Is Section 504?

Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs.
What Is Section 504? Slide 2

Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Who Is Protected from Discrimination? Slide 1

Section 504 protects qualified individuals with disabilities. Under this law, individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning.

Who Is Protected from Discrimination? Slide 2

Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness.

In addition to meeting the above definition, for purposes of receiving services, education or training, qualified individuals with disabilities are persons who meet normal and essential eligibility requirements.
For purposes of employment, qualified individuals with disabilities are persons who, with reasonable accommodation, can perform the essential functions of the job for which they have applied or have been hired to perform. (Complaints alleging employment discrimination on the basis of disability against a single individual will be referred to the U.S. Equal Employment Opportunity Commission for processing.) Reasonable accommodation means an employer is required to take reasonable steps to accommodate your disability unless it would cause the employer undue hardship.

Section 504 prohibitions against discrimination apply to service availability, accessibility, delivery, employment, and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A recipient of Federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits.
- Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers.

These and other prohibitions against discrimination based on disability can be found in the DHHS Section 504 regulation at 45 CFR Part 84.

For information on how to file a complaint of discrimination, or to obtain information of a civil rights nature, please contact us. OCR employees will make every effort to provide prompt service.

Hotlines: 1-800-368-1019 (Voice) 1-800-537-7697 (TDD)
E-Mail: ocrmail@hhs.gov Website: http://www.hhs.gov/ocr
It is important that you understand that a parent or person in parental relationship have the following legal rights according to Section 504 of the Rehabilitation Act of 1973.

**Referral and Evaluation Process**

Any student who needs or is believed to need special accommodations, related services or programs under Section 504 of Rehabilitation Act of 1973, may be referred to the Section 504 Committee for evaluation. All school districts are mandated to have a Section 504 Committee.

The Section 504 Committee shall be composed of persons knowledgeable about the student’s school history, the student’s individual needs, the meaning of evaluation data, and the placement options.

The student’s parent or person in parental relationship shall be notified of the Section 504 Committee meeting at least 5 calendar days prior to the meeting and shall be invited to participate in the meeting.

The Section 504 Committee shall consider all relevant information on the student to determine whether he or she is disabled under Section 504.

Information may include reports from physicians, observations from parents, teachers, school personnel, results from standardized tests, etc.

The Section 504 Committee has the responsibility to refer a student to the Committee on Special Education if it is felt that the student may have an educational disability, which may be more appropriately addressed by the Committee on Special Education.
**Accommodation Plan**

The Section 504 Committee shall determine whether the student is disabled under Section 504, and, if so, develop a written educational plan describing what accommodations, services or programs will be provided to meet the student's needs. The student's parent or person in parental relationship shall be notified in writing of the Section 504 Committee's determination and recommendations.

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**Review of the Student's Evaluation and Plan**

The Section 504 Committee shall meet periodically to review the student's evaluation and plan. In addition, prior to any significant change in the plan, a review or reassessment of the student's needs shall be conducted.

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**Procedural Safeguards Slide 1**

The parent or person in parental relationship shall be notified in writing of any district decision concerning the identification, evaluation, and placement of a student.

The parent or person in parental relationship shall have the right to examine the student's records.
Procedural Safeguards  Slide 2

Parents or persons in parental relationship who disagree with the identification, evaluation or placement of a student with disabilities shall have the right to request an impartial due-process hearing. The request for a hearing shall be made in writing, within thirty days of receipt of the Section 504 Committee's determination. The request shall state the reasons the hearing is being requested and be sent to the chairperson of the Section 504 Committee.

Procedural Safeguards  Slide 3

The parent or person in parental relationship shall have an opportunity to participate and be represented by counsel at the due process hearing.

If an impartial due-process hearing is to be held under the Individuals with Disabilities Education Act (IDEA) concerning issues relevant to the Section 504 proceeding, a hearing officer qualified to conduct IDEA proceedings may consider Section 504 issues at the impartial hearing. The issues under IDEA and Section 504 shall be separately addressed in the hearing decision.

Procedural Safeguards  Slide 4

The parent or person in parental relationship shall be notified in writing of the hearing officer's decision. The school district or parent or person in parental relationship may seek review of the decision of the Section 504 hearing officer by the Commissioner of Education, or the State Review Officer, as appropriate, and by a federal court of competent jurisdiction.
Procedures to Follow at the Hearing  Slide 1

A Section 504 due-process hearing may be called at the request of the school district or a parent or person in parental relationship. The proceedings shall be presided over and decided by an impartial hearing officer. Requests for a due-process hearing must be submitted in writing to the district. Parents or persons in parental relationship shall be notified of the hearing at least 7 days prior to the date set for the hearing. The notice shall contain:

Procedures to Follow at the Hearing  Slide 2

• A statement of time, place and nature of the hearing;
• A statement of the legal authority and jurisdiction under which the hearing is being held;
• A statement of the matters asserted;
• A statement of the right to be represented by counsel; and
• A statement of the right to examine relevant records. All communication to the parent or person in parental relationship shall be in English or in the native language or mode of communication of the parent or person in parental relationship.

Procedures to Follow at the Hearing  Slide 3

At the hearing, each party shall have an opportunity to present relevant information and outside expert testimony. A copy of the hearing officer's decision shall be delivered to the school district and the parent or person in parental relationship within 45 days following completion of the hearing. The decision of the hearing officer is binding on all parties involved; it is subject to review by the Commission of Education, or the State Review Officer, as appropriate, and by a federal court of competent jurisdiction.
Section 504 Due-Process Hearing Procedures Slide 1

An impartial due-process hearing will be utilized to resolve differences involving the education of a Section 504 qualified handicapped student when such differences cannot be resolved by means of a less formal procedure. In this instance, due process is defined as an opportunity to present objections and reasons for the objections to the decision and/or procedures of the committee regarding application of Section 504. A Section 504 due-process hearing may be called at the request of the District or a parent, guardian, or surrogate parent of an affected student.

Section 504 Due-Process Hearing Procedures Slide 2

The proceedings will be presided over and decided by an impartial hearing officer. *Impartial hearing officer* means a person selected to preside at a due-process hearing to assure that proper procedures are followed and to assure the protection of the rights of both parties.

In all related hearing matters the following definitions shall apply:

Section 504 Due-Process Hearing Procedures Slide 3

*Days* means calendar days.

- *Placement plan* means the program by which the decision concerning the educational placement of the student is decided.

- *Parent(s)* means parent(s), guardian, or surrogate parent.

Parents or the District may initiate a due process hearing on a matter related to (1) eligibility and related procedures; (2) procedural safeguards; or (3) provision of a free and appropriate public education (FAPE) to the student.
Requests for a due-process hearing must be submitted in writing to the Superintendent. Hearing notifications to the parents shall be given at least twenty (20) days prior to the date for the hearing. The notice shall contain:

- A statement of time, place, and nature of the hearing.
- A statement of the legal authority and jurisdiction under which the hearing is being held.
- A reference to the particular section of the statutes and rules involved.
- A statement of the availability of relevant records for examination.

A short and plain statement of the matters asserted.

A statement of the right to be represented by counsel.

All written correspondence shall be provided in English and/or interpreted in the primary language of the parents.

The hearing officer shall preside at the hearing and shall conduct the proceedings in an impartial manner to the end that all parties involved have an opportunity to:

- Present their evidence.
- Produce outside expert testimony and be represented by legal counsel and by individuals with knowledge or training with respect to problems of handicapped students.

Parents involved in the hearing will be given the right to:

- Have the student present at the hearing.
- Open the hearing to the public.
- Have access to and copies of the student’s records.
Hearing Procedures

In cases where there are language differences, an interpreter shall be provided.
The hearing officer shall review all relevant facts concerning the educational placement.

• The hearing officer shall determine whether the District has met all procedural aspects of the education accommodation plan.
• The hearing officer shall render a decision that is binding on all parties, except that in cases any action taken must comply with current California Education Codes and federal court decisions.

The hearing officer shall render a decision that is binding on all parties, except that in cases any action taken must comply with current California Education Codes and federal court decisions.

The hearing officer shall ascertain that:

• The procedures utilized in determining the student's needs have been appropriate in nature and degree.
• The student's rights have been fully observed.
• The provision of aids, services, or programs to the student afford a free and appropriate public education.

If the parents' primary language is other than English, the hearing officer shall appoint an interpreter.

Record of Hearing

A written or electronic verbatim recording of the Section 504 due-process hearing shall be on file at the District office and will be available for review upon request to the parents and/or any of the involved parties. Parents may have a copy of the proceedings in English and in the primary language of the home.

REF: Adapted from Section 504 and the Schools
By Perry A. Zirkel, Ph.D., J.D., L.L.M.
The purpose of this article is to synthesize, as a set of practice pointers, the limited legal sources specific to impartial hearings under § 504, such as letters of findings from the U.S. Department of Education's Office for Civil Rights (OCR). The primary thrust of the practice pointers is for school districts in relation to so-called “§ 504-only” students, as contrasted with those also covered under the IDEA definition of disability, although other individuals and organizations may also find this information beneficial.

- The district, as the recipient of federal funds, has this legal obligation.
- In fulfilling this obligation, check carefully the availability of the state's IDEA impartial hearing system.
- This right, along with the other § 504 procedural safeguards, extends to child find, i.e., students reasonably suspected of meeting the § 504 eligibility standards.
- Make sure that you provide the requisite procedural safeguards notice, which includes the parents' right for an impartial hearing under § 504, upon each action regarding identification, evaluation, or educational placement.

- Do not confuse the regulatory requirement for a grievance procedure with that for an impartial hearing under § 504. Moreover, do not require use of the grievance procedure as a prerequisite for obtaining a § 504 hearing.
- Provide a reasonable period for filing for the hearing.
- Do not unilaterally determine that the issues have been resolved, thus denying the parent's request and right to a hearing.
- Make sure that the hearing officer meets the applicable standards for impartiality:
– not an employee of the school district
– not an employee of another district that shares a contract for special education services
– not an individual that otherwise has a personal or professional conflict of interest
– not an individual who has participated in the formulation of state policy concerning student with disabilities.

• Although the IDEA procedural requirements for the hearing is one means of complying with § 504, they serve as an optimum model rather than a required minimum. For example, the hearing may not, must, meet the IDEA requirements, such as the rights of cross-examination (as compared with follow-up questions) and a transcript (as compared with a tape recording).
• Make sure that the hearing is scheduled and completed within a reasonable period of time.
• Make sure to include an outside “review procedure” for the hearing decision.

• Be very careful, consulting with local legal counsel, about the relationship with the exhaustion requirement for IDEA hearings.

West’s Education Law Reporter
Education Law Into Practice
October 20, 2016
Section 504 Resources

FLASH DRIVE PROVIDED

Slide 1

1. Board Policy: Section 504 of the Rehabilitation Act Hearing Procedures
2. CA ECS6505: Due Process Hearing
3. FAPE under 504: US Department of Education Advisory
4. Hearing Procedures: Section 504 Due-Process Hearing Procedures
5. Hearing Script: sample hearing script
6. Impartial Hearing Officer: IDEA definition

Slide 2

7. New Hampshire Department of Education Hearing Officer's Guide to Section 504 Impartial Hearings
   Model Users Guide to Section 504 Impartial Hearings
8. Dear Colleague Letters: OCR advisories
   Extracurricular Activities, January 25, 2013
   Bullying, October 21, 2014
   ADHD, July 26, 2016
9. Procedural Safeguards: Florida Department of Education
Section 504 Resources

12. Zirkel Articles (Perry A. Zirkel, Ph.D, J.D., LL.M.) – used with permission of the author
   • §504 Impartial Hearing Officer (IHO): Administrative Adjudicative Route
   • The Public Schools' Obligation for Impartial Hearings under Section 504
   • Impartial Hearings under 504

Thank you for attending today's presentation
For questions, please contact Jerry at:
ghime@earthlink.net