

Bartlett City Board of Education		1029
Descriptor Term: SECTION 504 AND ADA GRIEVANCE PROCEDURES	Descriptor Code: Board Operations	Issue Date: 07/24/2014
	Rescinds:	Revised:

1 The Board is committed to maintaining equitable employment/educational practices,
2 services, programs and activities that are accessible and usable by qualified individuals
3 with disabilities.

4 Definition

5 *Section 504 of the Rehabilitation Act of 1973* provides that: "No otherwise qualified
6 individual with handicaps in the United States...solely by reason of his/her handicap, be
7 excluded from the participation in, be denied the benefits of, or be subjected to
8 discrimination under any program or activity receiving federal financial assistance."¹

9 *Title II of the Americans with Disabilities Act, 1990* provides that: "No otherwise qualified
10 individual with a disability shall be discriminated against in regard to job application
11 procedures, the hiring, advancement, or discharge of employees, employee
12 compensation, job training and other terms, conditions and privileges of employment."²

13 Coordinator³

14 The Board shall designate at least one employee to coordinate its efforts to comply with
15 and carry out its responsibilities under the Americans with Disabilities Act (ADA) and
16 Section 504, including any investigation of any complaint alleging non-compliance with
17 the Acts or alleging any actions that would be prohibited by the Acts.

18 Notice⁴

19 The Board shall make available the name, office address and telephone number of the
20 ADA/Section 504 coordinator. Methods of initial and continuing notification may include
21 the posting of notices, publication in newspapers and student and employee handbooks,
22 and distribution of memoranda or other written communications.

23 Complaint Procedure⁵

24 The coordinator will hear ADA/Section 504 complaints. Complaints shall be submitted
25 orally or in writing to the coordinator who will endeavor to accomplish prompt and
26 equitable resolution of complaints alleging any action that would be prohibited by the

¹ 34 C.F.R. §104.4(a)

² 42 U.S.C. §12112(a)

³ 28 C.F.R. §35.107

⁴ 28 C.F.R. §35.106; 34 C.F.R. §104.8

⁵ 28 C.F.R. §35.170; 172

1 ADA/Section 504. The coordinator will respond to all complaints within twenty (20) days
2 with a written response as well as information on further grievance procedures that may
3 be followed if the complaining party is not satisfied with the coordinator's proposed
4 resolution.

5 Due Process Hearing Procedures

6 Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process
7 hearing if a parent wishes to contest any action of the District with regard to a child's
8 identification, evaluation, and placement under Section 504.⁶ If a parent/guardian
9 requests a Section 504 hearing, the parent/ guardian has the right to personally
10 participate and to be represented at the hearing by an attorney or advocate at the parent's
11 expense. Contested actions or omissions that are appropriate for a Section 504 hearing
12 should involve identification, evaluation, or placement issues involving a child who has or
13 is believed to have a disability.

14 *Request for Hearing*

15 A parent/guardian who wishes to challenge an action or omission with regard to the
16 identification, evaluation, or placement of a student who has or is believed to have a
17 disability as defined by Section 504, shall make an oral or written request for a due
18 process hearing to the Section 504 coordinator. The request shall be submitted on or
19 reduced to writing on a form provided through the Central Office.

20 *Impartial Hearing Officer*

21 The Superintendent or his/her designee shall appoint an impartial hearing officer to
22 preside over the hearing and issue a decision. Such appointment will be made within
23 fifteen (15) days of the date of receipt of a request for a due process hearing. The hearing
24 officer will be hired as an independent contractor at no expense to the parent. The hearing
25 officer that is appointed shall not be a current employee of the District and shall not be
26 related to any member of the Board of Education. The hearing officer need not be an
27 attorney but shall be familiar with the requirements of Section 504 and the hearing
28 procedures under Section 504. The choice of an impartial hearing officer is final and may
29 not be presented as an issue at the due process hearing since such an issue would not
30 relate to the identification, evaluation, or placement of a disabled child under Section 504.
31 If a parent/guardian disputes the impartiality of the appointed hearing officer, he/she may
32 raise such issue in a review of the hearing officer's opinion by a court of competent
33 jurisdiction or in a complaint to the Office for Civil Rights.

34 Office for Civil Rights
35 U.S. Department of Education
36 61 Forsyth St. S.W., Suite 19T10
37 Atlanta, GA 30303-8927
38 Telephone: 404-974-9406; TDD: 877-521-2172
39 Email: OCR.Atlanta@ed.gov

⁶ 34 C.F.R. §104.36

1 *Scheduling of Hearing*

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

6 *Continuances*

7 Upon a showing of good cause, the hearing officer, at his/her discretion may grant a
8 continuance of the hearing date and set a new hearing date.

9 *Legal Representation at Hearing*

10 If a parent/guardian is represented by a licensed attorney at the due process hearing,
11 he/she must inform the Section 504 coordinator and the appointed hearing officer of that
12 fact, in writing, at least seven (7) calendar days prior to the hearing date, or the hearing
13 can be continued upon the coordinator's request.

14 *Pre-Hearing Conference*

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

21 *Dismissals*

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

26 *Hearing*

27 The hearing shall be conducted in an informal, non-adversarial manner. The hearing shall
28 be closed to the public unless the parent/guardian requests an open hearing. The hearing
29 officer may reasonably limit testimony and introduction of exhibits for reasons or
30 relevance.

31 *Recording*

32 Instead of a formal written transcript produced by a court reporter, the entire due process
33 hearing will be video recorded. The District shall provide a copy of the recording to the
34 parent/guardian upon request. In order for an accurate recording to be made, the parties
35 and witnesses shall introduce themselves at the beginning of their presentations. If a
36 parent/guardian appeals the decision of the hearing officer to a court of competent
37 jurisdiction, the District shall prepare a written transcript of the hearing to be offered to the
38 court as an exhibit.

1 *Witnesses*

2 Witnesses will present their information in narrative form, without the traditional question
3 and answer format of legal proceedings. Cross-examination of witnesses will not be
4 allowed, but a party may request that the hearing officer, at his/her discretion, ask a
5 witness a certain question.

6 *Format of Presentation*

7 Each side will have an equal amount of time to present their positions as determined by
8 the hearing officer. The parent/guardian will present his/her case first by making an
9 opening statement outlining the issues, calling witnesses, and making a closing
10 argument. The District will present its side next. At the end of the District's presentation,
11 the parent/guardian may offer a short response. Each side may present personally or
12 through their representatives.

13 *Submission of Exhibits*

14 As part of their presentations and at the discretion of the hearing officer, the parties may
15 submit any reports, evaluations, correspondence, notes, or any other documents that may
16 support their positions. Exhibits submitted to the hearing officer by either party must be
17 marked. The hearing officer may, in the exercise of his/her discretion, reasonably limit the
18 number of documents to be submitted for his/her review, as well as the number of
19 witnesses and the length and/or scope of their presentations or statements.

20 *Closing Arguments*

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

23 *Decision*

24 The hearing officer may make an oral ruling at the conclusion of the hearing or take the
25 case under advisement and issue a written opinion. Such decision shall address all of the
26 issues raised by the parent/ guardian as well as any corrective actions, if any, the District
27 must take. Any issue or claim raised by the parent/guardian that is left unaddressed by
28 the hearing officer in his/her decision will be deemed to have been denied. The decision
29 must be issued within forty-five (45) days after the date the Request for a Due Process
30 Hearing is received by the district. The hearing officer may not award attorneys' fees as
31 a part of the relief granted to a parent/guardian or the district.

32 *Review Procedure/Appeal*

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