BRANDYWINE SCHOOL DISTRICT NOTICE OF RIGHTS OF STUDENTS AND PARENTS UNDER SECTION 504

Section 504 of the Rehabilitation Act of 1973, commonly referred to as "Section 504," is a nondiscrimination statute enacted by the United States Congress. The purpose of Section 504 is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to non-disabled students.

For more information regarding Section 504, or if you have questions or need additional assistance, please contact us at the following address:

Brandywine School District 504 Coordinator
1311 Brandywine Boulevard
Wilmington, DE 19809

The implementing regulations of Section 504 provide parents and/or students with the following rights:

1. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of non-disabled students. 34 CFR 104.33.

2. Your child has the right to free educational services except for those fees that are imposed on non-disabled students or their parents. Insurers and similar third parties who provide services not operated by or provided by the recipient are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.

3. Your child has a right to participate in an educational setting (academic and nonacademic) with non-disabled students to the maximum extent appropriate to his/her needs. 34 CFR 104.34.

4. Your child has a right to facilities, services, and activities that are comparable to those provided for non-disabled students. 34 CFR 104.34.

5. Your child has a right to an evaluation prior to a Section 504 determination of eligibility. 34 CFR 104.35.

6. You have the right not to consent to the district's evaluation of your child. 34 CFR 104.35.

7. You have the right to ensure that evaluation procedures, which may include testing, conform to the requirements of 34 CFR 104.35.

8. You have the right to ensure that the district considers information from a variety sources, as appropriate, which may include aptitude and achievement tests, grades, teacher recommendations and observations, physical conditions, social or cultural background, medical records, and parental recommendations. 34 CFR 104.35.

9. You have the right to ensure that placement decisions are made by a group of persons, including persons knowledgeable about your child, the meaning of evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.

10. If your child is determined to be eligible under Section 504, then your child has a right to periodic reevaluations, including prior to any subsequent significant change of placement. 34 CFR 104.35.

11. You have the right to receive notice prior to any actions by the district regarding the identification, evaluation, or placement of your child. 34 CFR 104.36.

12. You have the right to examine your child's educational records. 34 CFR 104.36.

13. You have the right to file an informal grievance. Procedures for filing an informal grievance are addressed in the District's Section 504 Procedural Safeguards.

14. You have the right to an impartial hearing with respect to the school system's actions regarding your child's identification, evaluation, or educational placement, with the opportunity for parental participation in the hearing and representation by an attorney. 34 CFR 104.36.

15. You have the right to receive a copy of this notice and a copy of the district's impartial hearing procedure upon request. 34 CFR 104.36.

16. If you disagree with the decision of the impartial hearing officer, you have the right to a review of that decision according to the district's impartial hearing procedures. 34 CFR 104.36.

17. You have the right to, at any time, file a complaint with the United States Department of Education's Office for Civil Rights, at:

Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: (215) 656-8541
Facsimile: (215) 656-8605
Email: OCR.Philadelphia@ed.gov

Brandywine School District
Section 504 Procedural
Safeguards

1. **Informal grievance:** It is the policy of the District not to discriminate against students with regard to access to programs, services and activities on the basis of disability. If informal discussions have not achieved a resolution, the student/parent/guardian may obtain a Grievance Filing Form from the Principal. The completed form should be submitted to the Principal within fifteen (15) school days of the action that is the subject of the informal grievance. Within fifteen (15) school days of receipt of the written grievance, the Principal shall provide the grievant with a Grievance Resolution Notice that upholds, modifies or denies the resolution sought. If the grievant is not satisfied with the Principal's response, they may request an impartial hearing as outlined below. Please note that you are not required to exhaust the District's grievance or hearing procedures before filing a complaint with the federal Office of Civil Rights.

2. **Impartial Hearing:** Any student, parent, or guardian ("Complainant") may request an impartial hearing due to the school system's actions or inactions regarding your child's identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be submitted in writing to the District's Section 504 Coordinator at 1311 Brandywine Boulevard, Wilmington, DE 19809. However, a Complainant's failure to request a hearing in writing does not alleviate the District's obligation to provide an impartial hearing if the Complainant orally requests an impartial hearing through the District's Section 504 Coordinator. The District's Section 504 Coordinator will, upon request, assist the grievant in completing the written Request for Hearing.

3. **Impartial Hearing Request**. The Request for Hearing must include the following information:

    a. The name of the student.
    b. The student's residential address.
    c. The name of the school the student is attending.
    d. The decision that is the subject of the hearing.
    e. The requested reasons for review.
    f. The proposed remedy sought by the Complainant.
    g. The name and contact information of the Complainant.

    Within 10 business days of receiving the Complainant's Request for Hearing, the Section 504 Coordinator will acknowledge its receipt in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the Complainant of the specific information needed to complete the request. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

4. **Mediation**. The District may offer mediation to resolve the issues detailed by the Complainant in their Request for Hearing. Mediation is voluntary and both the Complainant and the District must agree to participate. The Complainant may terminate the mediation at any time. If the mediation is terminated without an agreement, the District will follow the procedure for conducting an impartial hearing without requiring an additional Request for Hearing.

5. **Hearing Procedures:**

    a. The Section 504 Coordinator will obtain an impartial hearing officer (the "IHO") who will conduct the hearing within 45 calendar days from the receipt of the Complainant's Request for Hearing unless otherwise agreed to by the Complainant or if a continuance is granted by the IHO.
    b. Upon a showing of good cause by the Complainant or the District, the IHO may, at their discretion, grant a continuance and set a new hearing date. The request for a continuance must be made in writing and be copied to the other party.
    c. The Complainant will have an opportunity to examine the child's educational records prior to the hearing.

d. The Complainant will have the opportunity to be represented by legal counsel at their own expense at the hearing and participate, speak, examine witnesses, and present evidence at the hearing. If the Complainant is to be represented by legal counsel at the hearing, they must so inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing, Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.
e. The Complainant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the IHO may require the District to defend its position/decision regarding the claims. One or more representatives of the District, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the Complainant's testimony and answer questions posed by the IHO.
f. The IHO shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to the hearing. The IHO shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.
g. The IHO shall determine the weight to be given any evidence based on its reliability and probative value.
h. The hearing shall be closed to the public.
i. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.
j. Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The IHO, at their discretion, may allow further examination of witnesses or ask questions of the witnesses.
k. Testimony shall be recorded by court reporter or by audio recording at the expense of the District. All documentation related to the hearing shall be retained by the District.
l. Unless otherwise required by law, the IHO shall uphold the action of the District unless the Complainant can prove that a preponderance of the evidence supports his or her claim.
m. Failure of the Complainant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the IHO or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.

6. **Decision:** The IHO shall issue a written decision within 20 calendar days of the date the hearing concluded. The determination of the IHO shall not include any monetary damages or the award of any attorney's fees.

7. **Review:** If not satisfied with the decision of the IHO, any party may pursue any right of review, appeal, cause of action or claim available to them under the law.