

## **SECTION 504 IMPARTIAL HEARING PROCEDURES**

The parent/guardian of a student (or an adult student) with a disability as defined by Section 504 of the Rehabilitation Act of 1973 (“Section 504”) may request an impartial hearing to resolve disagreements related to the identification, evaluation, or educational placement of the student under Section 504. *See* 34 C.F.R. § 104.36.

### **I. Scope of Jurisdiction for a 504 Hearing**

1. A 504 hearing is available to resolve disagreements relating to the identification, evaluation, or education placement of a student with a disability, as provided in Section 504.
2. A 504 hearing is not available for disagreements arising under Section 504 that do not relate to identification, evaluation or educational placement.
3. A 504 hearing is not available for disputes or disagreements that can be addressed through the due process procedures set forth in the Individuals with Disabilities Education Act (“IDEA”). *See* 20 U.S.C. § 1415 (f).

### **II. Parties to a 504 Hearing**

1. The parties to a 504 hearing are (1) the parent/guardian of a minor student with a disability under Section 504, or the student if 18 or older (the “Complainant”); and (2) the Cabarrus County Schools administration, represented by the school district’s Section 504 Coordinator (“504 Coordinator”) or designee (the “Respondent”).
2. To be eligible for a Section 504 hearing, a student must be enrolled in the Cabarrus County Schools. Withdrawal from enrollment is grounds to reject a request for hearing or terminate a hearing procedure that is in process.

### **III. Request for a 504 Hearing**

1. A request for a 504 hearing shall be made in writing and directed to the 504 Coordinator.

2. A hearing must be requested within sixty (60) calendar days of the decision giving rise to a dispute related to the identification, evaluation, or educational placement of a student.
3. A request for a hearing must include the following information:
  - a. The name, street address, mailing address (if different), telephone number and e-mail address (if available) of the Complainant;
  - b. The name of the student, residence address of the student (or available contact information in the case of a homeless student), and name of the school the student is enrolled in and attending;
  - c. A description of the decision(s) made by the school giving rise to the dispute, including facts and dates relating to such decision(s) and the name(s) of the individual(s) who made such decision(s);
  - d. A specific description of how the decision(s) violated Section 504; and
  - e. A proposed resolution to the dispute to the extent known or reasonably available to the Complainant at the time.
4. When the Complainant requests a 504 Hearing, he or she must bring all claims and all potential claims that can be raised at the time Complainant makes his or her request.
5. A Complainant may, in lieu of a 504 Hearing, make a written request for a hearing before the board. If a Complainant requests a hearing before the board, he or she waives his or her right to a hearing by an impartial hearing officer. Upon request of the Complainant, the board will hold a hearing pursuant to Policy 2500, Hearings Before the Board. The board will provide a written response within thirty (30) days after receiving the request, unless further investigation is necessary, or the hearing necessitates that more time be taken to respond

**IV. Screening by 504 Coordinator**

1. The 504 Coordinator shall review the request for a 504 hearing in consultation with the Board Attorney.
2. The 504 Coordinator may deny a 504 hearing request if the request does not meet the criteria of Sections I, II or III.
3. The 504 Coordinator also may deny a 504 Hearing request if the request does not present a viable claim under Section 504. This provision is to avoid unnecessary expense and educator time in addressing clearly unmeritorious claims, analogous to the manner in which unmeritorious claims in judicial proceedings may be resolved without trial through dismissal or summary judgment. In making this decision, the 504 Coordinator shall not deny a claim merely because the 504 Coordinator thinks the claim is unlikely to prevail. Rather the Board Attorney shall be guided by the standards of Rules 12(b) and 56 of the North Carolina Rules of Civil Procedure, dealing with dismissal and summary judgment, respectively.
4. The 504 Coordinator may deny the 504 hearing request if any of the following are true:
  - a. The same or similar allegation(s) based on the same operative facts has been previously decided;
  - b. The Board has recently investigated or is current investigating the same or similar claim(s) based on the same operative facts in the same school year for the same student;
  - c. The same or similar claim based on the same operative facts has been filed by either the Complainant or someone other than the Complainant against the Cabarrus County Board of Education through the Board's internal grievance procedures or another federal, state, or local civil rights enforcement agency; or
  - d. The Board obtains credible information indicating that the allegations raised by the

Complainant are currently resolved and are therefore no longer appropriate for investigation.

5. The 504 Coordinator may communicate with the Complainant to clarify and/or narrow the request for hearing.
6. The 504 Coordinator shall notify the parties of his/her decision as to whether the parent is entitled to a 504 Hearing. If a request for a 504 Hearing is denied in full or in part, the notice shall identify the reason(s) for the denial.
7. The 504 Coordinator shall complete his/her review and notify the parties within fourteen (14) calendar days of receipt of the hearing request if feasible. This time period may be extended if it is necessary for the 504 Coordinator to communicate with the Complainant.

**V. Appointment and Engagement of an Impartial Hearing Officer (“IHO”)**

1. Within ten (10) school days of the written notice from the 504 Coordinator approving a 504 hearing, or as soon thereafter as is feasible, the 504 Coordinator shall appoint an Impartial Hearing Officer (“IHO”).
2. The IHO shall have expertise and experience in disability law. The 504 Coordinator will consult with the Board Attorney regarding suitable IHOs.
3. The 504 Coordinator and the school district Finance Officer shall approve and execute an Engagement Agreement with the IHO. The Engagement Agreement shall include a reasonable “Not to Exceed” amount. If the “Not to Exceed” amount precludes a 504 hearing, then the District shall renegotiate the Engagement Agreement with the IHO.

**VI. Pre-Hearing Procedures**

1. Within ten (10) school days after execution of the Engagement Agreement, the IHO shall arrange a pre-hearing conference with the parties. The pre-hearing conference may be by telephone.
2. At the pre-hearing conference, the IHO shall:

- a. Secure a date, time, and location for the hearing that is convenient to both parties and, if feasible, scheduled to commence within thirty (30) calendar days of the pre-hearing conference;
  - b. Ascertain whether the parties will be represented by counsel at the hearing; and
  - c. Identify the specific issues to be addressed during the hearing based on the request for hearing, the proposed resolution provided by the Complainant, and the Board Attorney's screening of the request for hearing.
3. After the pre-hearing conference, the IHO shall notify the parties of the results of the pre-hearing conference and any other relevant matters concerning the hearing.
  4. The parties shall provide to each other and the IHO a list of witnesses and any documents to be presented during the hearing at least five (5) school days in advance of the hearing, unless otherwise permitted by the IHO for good cause shown. The IHO has the authority to exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five (5) school days before the hearing.
  5. Each party shall be limited to ten (10) witnesses, unless otherwise permitted by the IHO for good cause shown.
  6. If the Complainant designates more than five (5) school district employees as witnesses, the school district may elect to have no more than five (5) of such designated witnesses attend the hearing. On request of the school district the IHO may rule that any school district employee designated as a witness by the Complainant need not appear if the witness's testimony appears likely to be redundant, irrelevant or of marginal value.
  7. Documentary evidence shall be directly related to the specific issues identified by the IHO during the pre-hearing conference.
  8. Each party shall be limited to five hundred (500) pages of documents (not counting 504

plans, evaluation results, meeting notes and notices of meetings), unless otherwise permitted by the IHO for good cause shown.

9. If a party submits for evidence any audio recordings exceeding sixty (60) minutes cumulative, the party shall identify (by minute and seconds) the portion(s) of the recording to be presented as evidence and a “best efforts” transcription of such portion(s).
10. The 504 Coordinator shall arrange for a tape recording of the hearing. Each party will be entitled to receive a copy of the tape recording. In addition, if requested by either party, the IHO shall arrange for the hearing to be recorded by a court reporter who is to be paid for his or her attendance by the party requesting the court reporter

## **VII. Hearing Procedures**

1. A hearing is to be completed within sixty (60) school days of appointment of execution of the Engagement Agreement, unless an extension of time is granted at the request of either party for good cause shown or by mutual agreement of the parties.
2. A hearing is not to last more than two (2) days. Accordingly, each party shall be limited to two hundred forty (240) minutes of hearing time to present his or her main case and rebuttal (not counting cross-examination time or questions by the IHO). Parties shall organize their cases so as to make their presentations within these time limitations.
3. The North Carolina Rules of Evidence are instructive, but not controlling; the IHO may admit any evidence deemed, in his/her sole discretion, to be competent and relevant.
4. The party requesting the hearing carries the burden of proof.
5. The parties have the following rights in a hearing:
  - a. To be represented by legal counsel with each party being responsible for its own attorney’s fees;
  - b. To present evidence and cross examine witnesses;
  - c. To request that the IHO prohibit the introduction of evidence and testimony of any

- witnesses that were not disclosed five (5) business days prior to the hearing;
- d. To obtain a copy of the tape recording of the hearing;
  - e. To obtain at their own expense a copy of the transcript of the hearing, if the hearing is recorded by a court reporter;
  - f. To submit a pre-hearing statement at least forty-eight (48) hours prior to the hearing; and/or a post-hearing statement within seven (7) calendar days after the hearing.
6. In connection with the hearing, the IHO shall:
    - a. Maintain an atmosphere conducive to fairness and civility; and
    - b. Maintain impartiality;
  7. Ensure that the evidence in the hearing is relevant to the issues identified at the pre-hearing conference, or to any subsequent amendment of the issues if such amendment is mutually agreed upon by the parties or otherwise permitted by the IHO for good cause shown;
  8. Maintain an accurate record of the proceedings; and
  9. Efficiently move the case to conclusion within the two (2) day limitation.

**VIII. Decision of Impartial Hearing Officer**

1. A written decision shall be issued to all parties setting forth the IHO's Findings of Fact and Conclusions of Law based on the evidence presented in the hearing.
2. The decision shall be issued within thirty (30) calendar days after the conclusion of the hearing, unless extended for good cause upon request of either party to the hearing.
3. The IHO shall apply the legal standards that would apply to a civil lawsuit alleging a violation of Section 504 within the jurisdiction of the Fourth Circuit Court of Appeals.
4. The IHO's decision is final and binding on all parties unless either party files a timely appeal to the Board of Education.

**IX. Appeal**

Either party may appeal, in writing, to the Board of Education, or any other entity with competent jurisdiction, within fourteen (14) calendar days after receipt of the decision. The school district does not by these 504 hearing procedures purport to confer jurisdiction on a court. The rules and procedures of the entity to which an appeal is made shall govern the proceeding(s).

**X. Modification of Mutual Consent**

The parties may by mutual consent modify any of the procedures set forth herein, so as to achieve convenience or efficiency under the particular circumstances.

**XI. Timelines**

The timelines specified in these procedures for action by CCS employees/agents or the IHO shall be regarded as directory and subject to “best efforts,” but failure of CCS employees/agents or the IHO to meet a timeline under these procedures shall not invalidate otherwise lawful actions or decisions.