

## SECTION ONE: Section 504 Compliance Requirements & Procedural Safeguards

### Legal Requirements

This document addresses Section 504 of the Rehabilitation Act of 1973 and its application to students with disabilities. The purpose of this document is to help school districts/charter schools better understand their obligations and assist parents and stakeholders in knowledge of Section 504. It is for informational purposes only and not intended as a substitute for legal advice. Reference to “student with a disability” in most cases refers to a student that is eligible for services under Section 504.

### Section 504 of the Rehabilitation Act of 1973 Overview

Section 504 of the Rehabilitation Act of 1973 (34 C.F.R. Part 104), commonly known as Section 504, is a federal civil rights statute that prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance stating:

*“No otherwise qualified individual with disabilities in the United States... shall solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.”*

Section 504 establishes a student’s right to full access to education and all school-related activities. It requires schools to provide appropriate related services and aids to meet the individual needs of specific students. The statute requires that students with disabilities receive an education equivalent in quality to the education of students without a disability at no expense to the parent or guardian. This requirement is known as a free and appropriate public education (FAPE). Section 504 applies to elementary and secondary schools, preschool and adult education.

### **Section 504 Eligibility**

A student is considered eligible for services under Section 504 if they meet the definition of a person with a disability:

- has a physical or mental impairment which substantially limits a major life activity;
- has a record of such an impairment; or
- is regarded as having such an impairment

Physical and mental impairment is defined in the regulations as “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, genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities” 34 C.F.R. 104.3(j)(2)(i). When determining the

existence of an impairment, mitigating measures cannot be considered except glasses or contacts. Mitigating measures may have a corrective effect on the major life activity (*i.e.* medication, assistive devices, modifications and accommodations).

The physical or mental impairment must substantially limit a major life activity. When determining the existence of a substantial limitation in a public school setting, compare the student being considered for services to a student without a disability (*T.J.W. v. Dothan City Board of Education*, 26 IDELR 999 [M.D. Ala. 1997]). A diagnosis alone does not constitute automatic eligibility; the impairment must substantially limit a major life activity.

Major life activities include without limitation breathing, caring for one's self, hearing, learning, performing manual tasks, seeing, speaking, walking, or working.

### **Section 504 Procedural Safeguards & Protections**

Section 504 procedural safeguards are designed to protect the rights of students with a disability and their parent or guardian. These safeguards provide families and school systems with mechanisms to prevent disability discrimination. Written procedures regarding a school system's administration of Section 504 services are required.

Section 504 procedural safeguards include:

- notice of this non-discrimination law and its applicability
- referral by a parent(s) or district/charter school personnel when there is a suspicion that a student has a disability and is in need of services
- parental consent for initial evaluation
- evaluation, determination of qualification, and placement made by a team based on information from a variety of sources - including assessments, attendance, behavior referrals, grades, teacher and parent observation or a formal diagnosis (formal diagnosis not required)
- periodic re-evaluation
- opportunity for students and parents to examine relevant records
- provide parent and student as appropriate copy of rights under Section 504
- impartial hearing procedure with opportunity for representation by counsel, and
- review procedure

Response to Intervention (RTI) cannot be used to delay or deny a referral or initial evaluation as described in the Office of Special Education and Rehabilitation Services (OSEP) Memo 11-07, January 2011.

Section 504 also provides protections for students with disabilities who are subjected to out-of-school suspensions for conduct code violations due to behaviors which are the result of the students' disability.

Annual professional development for educators on Section 504 compliance requirements are encouraged to ensure that K-12 school systems meet the responsibility of providing a free and appropriate public education.

School systems with fifteen (15) or more employees are required to designate an employee to ensure compliance with Section 504.

## Section 504 Process

Section 504 regulations along with the Office for Civil Rights (OCR) provide direction on the process needed to insure compliance by districts/charter schools. A depiction of this process can be found in Figure 1. For additional assistance on the Section 504 process, see SECTION THREE: Section 504 Resources (*i.e.* Sample Section 504 Process Checklist).

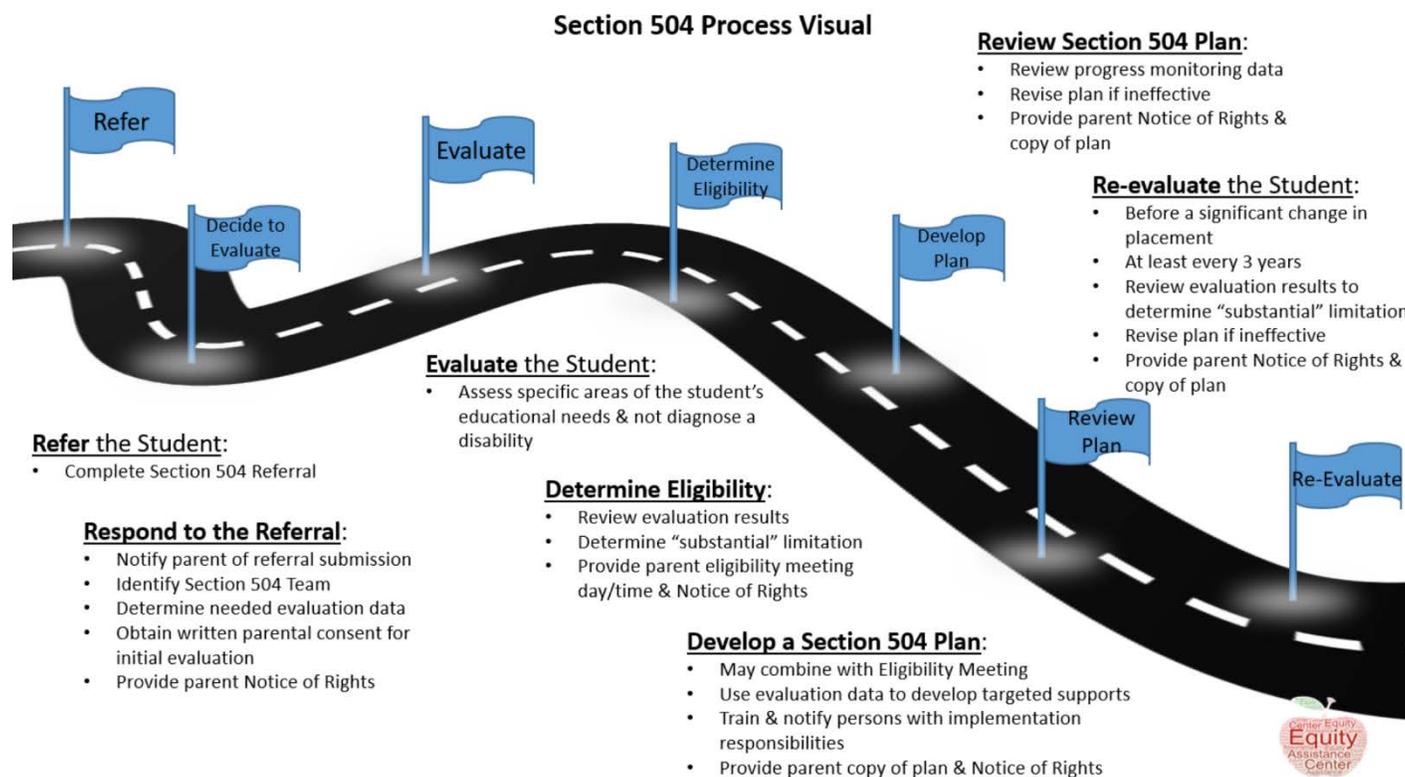


Figure 1

## Section 504 Enforcement

Section 504 is a civil rights law and therefore one responsibility of the comprehensive general education system. As such, superintendents and building leaders are responsible for the administration of Section 504 within districts/charter schools.

The [Equity Assistance Center \(EAC\)](#) provides technical assistance concerning Section 504, as appropriate, to public school districts/charter schools so that they are aided in their efforts of ensuring that students meet or exceed educational milestones along pathways to graduate prepared for college, career, and community engagement. EAC monitors compliance through complaint investigations.

The [Office for Civil Rights \(OCR\)](#) of the U.S. Department of Education maintains the ultimate responsibility for enforcing Section 504 of the Rehabilitation Act of 1973. OCR monitors compliance through complaint investigations and compliance reviews.

Title II of the Americans with Disabilities Act of 1990

Additionally, public school systems are government entities covered by [Title II of the Americans with Disabilities Act of 1990](#) (ADA). The ADA extends the requirement of Section 504 prohibiting discrimination on the basis of disability in employment (Title I), state and local governments (Title II), and places of public accommodation and commercial facilities (Title III). The [ADA Amendments Act of 2008 \(P.L. 110-325\)](#) provided additional examples of general activities that are “major life activities” in a non-exhaustive list including bending, communicating, concentrating, eating, lifting, reading, sleeping, standing, and thinking.

A comparison of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 can be found in Chart 1.

<b>Comparison of Section 504 (RA) &amp; Title II (ADA)</b>		
	<b>Section 504 of Rehabilitation Act</b>	<b>Title II of ADA</b>
<b>Purpose</b>	Common assumption that all people with disabilities can work.	
	Civil rights law to prohibit discrimination on the basis of disability in programs and activities, public & private that receive federal financial assistance.	Civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, & accommodations that receive state and local government funds (Title II).
<b>Who is protected?</b>	Any person whom: <ul style="list-style-type: none"> <li>• (1) has a physical or mental impairment that substantially limits one or more major life activities,</li> <li>• (2) has a record of such an impairment, or</li> <li>• (3) is regarded as having such an impairment.</li> </ul>	Any person with a disability whom: <ul style="list-style-type: none"> <li>• (1) has a physical or mental impairment that substantially limits one or more life activities, or</li> <li>• (2) has a record of such impairment, or</li> <li>• (3) is regarded as having such an impairment.</li> </ul>
<b>Free &amp; Appropriate Public Education (FAPE)</b>	Protections include an appropriate education comparable in quality to that provided to students without disabilities at no expense to the parent/guardian.	Protections apply to nonsectarian private schools, but not to private schools controlled by a religious organization.
<b>Funding</b>	No Section 504 funds. State & local jurisdictions have responsibility.	No ADA funds. Limited tax credits may be available for removing architectural or transportation barriers.
<b>Procedural Safeguards</b>	Section 504 requires notice to parents regarding identification, evaluation and/or placements. Written notice is recommended.	ADA requires no specific procedural safeguards related to special education. ADA details complaint procedures and consequences for noncompliance.
<b>Evaluation &amp; Placement Procedures</b>	Section 504 requires consent for initial evaluation. That evaluation must be done by persons knowledgeable of the student, consider a variety of sources/data, & documented. Diagnosis is not required. Students must be educated with non-disabled peers to the maximum extent appropriate.	ADA required no specific evaluation & placement procedures. ADA details reasonable accommodations for eligible activities & settings.

Chart 1

## Roles & Responsibilities

Clearly defined roles and responsibilities are key to ensuring an effective Section 504 process. A depiction of these roles can be found in Figure 2.

### **All district/charter school employees**

- Identify and locate all children with disabilities
- Submit referrals for Section 504 as appropriate
- Ensure that students with disabilities are educated with non-disabled students to the maximum extent appropriate
- Provide a “free and appropriate public education”
- Ensure that students with disabilities have an equal opportunity to participate in nonacademic and extracurricular services and activities
- Understand the requirements and intent of Section 504 regulations

### **Local School Board**

- Adopt a Section 504 policy and procedure that includes a Grievance Procedure.
- Review data-based annual report of Section 504 and ADA compliance

### **Local Educational Agency (LEA) & School District**

- Establish guiding documents, procedural safeguards, and nondiscriminatory evaluation/placement processes
- Designate and train employee responsible for ensuring compliance with Section 504 regulations (if maintains fifteen [15] or more employees)
- Provide an annual non-discrimination notice that provides the name and telephone number of the Section 504 Coordinator
- Provide complaint procedures for parents, students, and employees
- Ensure resources necessary for individualized services and support
- Train staff enabling them to perform services and make appropriate accommodations
- Convey the requirement that educators/staff implement Section 504 Plan’s and not doing so may constitute noncompliance with district expectations
- Provide for a process whereby Section 504 records are efficiently transferred within the district/charter school and outside the district/school (in and out of state)

### **Section 504 Coordinator**

- Conduct self-reviews and monitor Section 504 procedures and practices – including the timeline from referral submission to the team meeting
- Ensure Section 504 Plans are disseminated to appropriate staff
- Ensure that funding approval for resources to implement plans progresses through the appropriate channels
- Develop awareness, materials and trainings for school staff and families
- Maintain records/data and prepare annual reports on compliance to the LEA leadership team and local school board

- Serve as liaison to DESE Equity Assistance Center (EAC) and Office for Civil Rights (OCR)
- Monitor the reduction of architecture barriers for individuals with disabilities
- Send parent communication concerning Section 504 (*i.e.* notice of identification, notice of Parental Rights, meeting date, copy of plan)
- Identify Section 504 Team members and schedule meetings
- Implement grievance procedures for submitted Section 504 complaints

*Section 504 Coordinator role may be divided among District & Campus Level Section 504 Coordinators as appropriate.*

### **School Administration**

- Identify campus Section 504 Coordinator as appropriate
- Support Section 504 process and make available meeting space and time
- Implement grievance procedures for submitted Section 504 complaints

### **School Section 504 Team**

- Use knowledge about the student to make decisions
- Consider the student's learning process
- Understand the meaning of the reviewed evaluation data
- Be familiar with placement options
- Request Section 504 Team meeting to review plan if no longer appropriate

### **Related Service Providers** (as needed)

- Conduct evaluations
- Provide input for Section 504 Team meetings
- Provided services

### **School Nurse** (as needed)

- Review student school health records (*i.e.* visits to health office, absences for medical reasons, parent and teacher concerns)
- Interpret the student's health status; explain the major life activity affected, health limitation of the student, and anticipated duration of limitation
- Recommend health-related accommodations and supports
- May need to obtain medical reports
- May need to develop an Individual Health Plan (IHP)

### **Teacher(s)**

- Communicate observed weaknesses and strengths
- Provide input for team meetings and plan development
- Request Section 504 Team meeting to review plan if no longer appropriate
- Develop a process ensuring consistent implementation of Section 504 Plans

### **Parent or Guardian**

- Communicate observed weaknesses and strengths

- Participate in meetings and discussions of changes in the child's education (*i.e.* location of services)
- Request Section 504 Team meeting to review plan if no longer appropriate
- Maintain awareness of rights under Section 504

**Student**

- Communicate weaknesses and strengths
- Maintain awareness of rights under Section 504

## Section 504 Roles & Responsibilities

### Teacher(s)

- Provide input (observed weaknesses & strengths) for team meetings/plan development
- Request Section 504 Team meeting to review plan if no longer appropriate
- Develop a process ensuring consistent implementation of Section 504 plans.

### Related Service Providers (as needed)

- Conduct evaluations
- Provide input for Section 504 Team meetings
- Provided services

### School Nurse (as needed)

- Review student school health records (*i.e.* visits to health office, absences for medical reasons)
- Interpret the student's health status; explain the major life activity affected, health limitation, & anticipated duration of limitation
- Recommend health-related accommodations & supports
- May need to obtain medical reports
- May need to develop an Individual Health Plan (IHP)

### Student

- Communicate weaknesses & strengths
- Maintain awareness of rights under Section 504

### Parent or Guardian

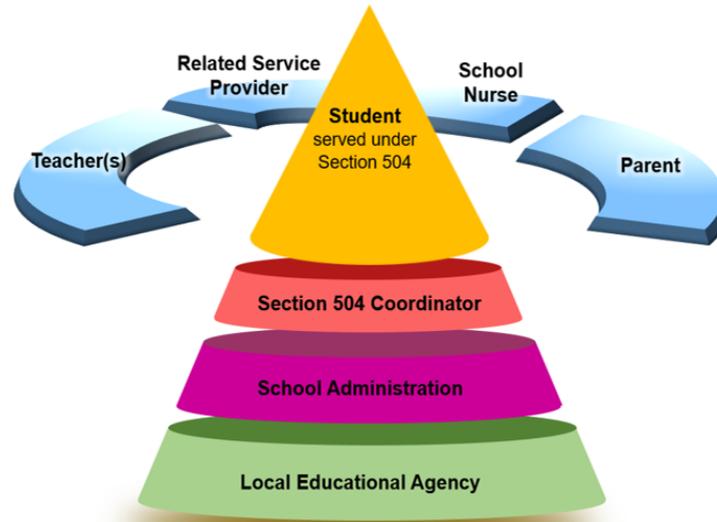
- Communicate observed weaknesses & strengths
- Participate in meetings/considerations of FAPE
- Maintain awareness of Section 504 rights
- Request Section 504 Team meeting to review plan if no longer appropriate

### School Section 504 Team

- Use knowledge about the student to make decisions
- Consider the student's learning process
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### School Administration

- Identify campus Section 504 Coordinator as appropriate
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### Section 504 Coordinator

- Conduct self-reviews & monitor Section 504 procedures & practices – including the timeline from referral submission to the team meeting
- Ensure Section 504 plans are disseminated to appropriate staff
- Develop awareness, materials & trainings for school staff & families
- Maintain records/data & prepare annual reports on compliance to the LEA leadership team and local school board
- Serve as liaison to ADE Equity Assistance Center (EAC) & Office for Civil Rights (OCR)
- Monitor the reduction of architecture barriers for individuals with disabilities
- Send parent communication concerning Section 504 (*i.e.* notice of identification, notice of parental rights, notice of meeting, copy of plan)
- Identify Section 504 Team members & schedule meetings
- Implement grievance procedures for submitted Section 504 complaints

*Role may be divided among District & Campus Level Section 504 Coordinators as appropriate.*

### Local Educational Agency (LEA) (School District & Charter School)

- Establish guiding documents, procedural safeguards, & nondiscriminatory evaluation/placement processes
- Designate & train employee responsible for ensuring compliance with Section 504 regulations (if maintains fifteen [15] or more employees)
- Provide an annual non-discrimination notice that provides the name & telephone number of the Section 504 Coordinator
- Provide complaint policies & procedures to parents, students, & employees
- Ensure resources necessary for individualized services & support
- Train staff enabling them to perform services & make appropriate accommodations
- Provide for a process whereby Section 504 records are efficiently transferred within the district & outside the district (in & out of state)



## Complaints & Investigations

It is the right of a student, parent or stakeholder to informally or formally submit their Section 504 concern for review. The review and investigation of the submitted concern must be uniform and guided by a structured process.

### District/Charter School Section 504 Complaint Quick Resolution Practices

When Section 504 concerns are resolved quickly through an informal process it is often described as a quick resolution. To aid in quick resolution practices, the district team should support school administrator awareness of the following:

- School District/Charter School Grievance Policy and procedures concerning complaints
- District and campus level Section 504 coordinators
- How to determine if an individual is making a complaint and how to seek clarification at early stages
- How to determine if the complainant reviewed the school system's Grievance Policy
- Ways to advise their direct supervisor of the measures taken to achieve resolution and the supports needed.
- Ways to achieve resolution at the lowest level of the chain of command and how to document measures to achieve resolution – such as:

#### **LISTEN**

- Let the complainant have their say. Make it clear that you have heard the complaint using confirmatory phrases. Write down specifics of the complaint.
- Remain calm and let the complainant know you value their coming to you.
- Determine the practice or action the complainant believes is in violation of Section 504, the steps already taken to resolve the matter, and the corrective action desired by the complainant.
- Provide a time to contact the complainant with your progress towards resolving the issue.

#### **INVESTIGATE**

- Determine the immediate need of the complaint and if you need to respond straight away.
- Adhere to the school system's Section 504 complaint investigation and notification procedures.
- Determine adherence to Section 504 policies and procedures concerning the complaint.
- Speak with appropriate individuals including Building/District Section 504 Coordinator and the Section 504 Team to gain insight about their consideration of the student's educational needs for them to receive a comparable education to students without disabilities.
- Document the investigation.

## **SEEK RESOLUTION**

- Consider all possible resolutions and unintended outcomes. Seek support as needed from the District Section 504 Coordinator.
- Consider needed adjustments to the school's Section 504 practices. Acknowledge any errors made, if necessary.
- Convey to the complainant any adjustments in practices, resolution options if appropriate and the decision.
- If the complainant is unsatisfied with the outcome, make them aware of the procedures available to them as described in the School District Section 504 Grievance Policy.

### District/Charter School Section 504 Investigation Practices

Investigations are conducted when allegations arise of non-compliance with Section 504. Investigations need to be comprehensive, in-depth, fact-finding endeavors to obtain all the information involving the allegation. Facts are used to determine if the allegations are true and may involve analyzing documents and evidence and/or conducting interviews. The investigation is finalized when it is determined if or to what degree a Section 504 violation occurred. The complainant's allegations are either substantiated or unsubstantiated.

Section 504 Investigators should be impartial and have knowledge of Section 504.

### District/Charter School Section 504 Grievance Policy & Procedures

Section 504 concerns may be addressed via a formal resolution process. The school system is required to adopt a grievance procedure for students, parents or employees. Parties may submit Section 504 complaints or invoke due process hearing rights for alleged violations. A separate procedure for students and employees is not necessary. A school system may adopt a single grievance procedure to satisfy its obligation under Title IX, Section 504, ADA, and the Age Discrimination Act. One procedure can be written to cover multiple grievance discrimination and harassment policies.

An important feature of the grievance process is that it be effective within the school system's setting. There is no specific procedural format or grievance content, but to satisfy due process standards, the Office for Civil Rights (OCR) advises that a compliant grievance procedure include:

- Alternative methods of filing complaints such as verbally or in writing;
- Procedures for equitable resolution of complaints;
- Opportunities to present evidence;
- Prompt and reasonable time frames;
- Notification of findings, and
- An appeal process and identification of the person responsible for reconsidering complaints.

School systems are obligated to disseminate grievance policies and procedures. The means by and degree to which they are disseminated is at the discretion of the

district/charter school. It is perceived by some that making grievance procedures widely available leads to an increase in frivolous complaints, but when combined with a well-constructed code of conduct/expectations, published grievance policies reinforce the concept of consequences attached to behaviors. Making grievance policies and procedures available on an “as requested” basis will not satisfy the requirements of civil rights laws.

### Complaints & Retaliation

Retaliation is prohibited. Districts, charter schools, and individuals are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

### Office for Civil Rights (OCR) Complaints

Individuals may file complaints with the Office for Civil Rights (OCR) if it is believed that there has been a violation of any provision or regulation of Section 504. Although OCR addresses Section 504 complaints separately and independently of the local hearing process, typically they may not investigate the same allegations that are pending in a hearing. OCR may be contacted to obtain a complaint form or you may file a discrimination complaint by using their on-line complaint form. You may also write an e-mail or a letter to the OCR enforcement office that serves Arkansas using the following information:

Office for Civil Rights, Kansas City Office  
U.S. Department of Education  
One Petticoat Lane  
1010 Walnut Street, Suite 320  
Kansas City, Missouri 75201-64106  
Fax: 816-268-0599  
Email: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

### Equity Assistance Center (EAC) Section 504 Complaint Investigation Procedures

#### **Equity Assistance Center (EAC) Section 504 Role:**

A primary objective of the Equity Assistance Center (EAC) complaint process is to resolve complainant allegation(s) promptly and appropriately to achieve the vision and mission of the Arkansas Division of Elementary and Secondary Education (DESE). The EAC provides technical assistance to Arkansas public schools, districts, and charter schools in the area of Section 504 to enable them to effectively understand their responsibilities of providing equitable educational opportunities to all students, implement policies and procedures that are non-discriminatory, and document compliance.

#### **Equity Assistance Center (EAC) Section 504 Complaint Process:**

An EAC Section 504 complaint is a written statement alleging that Section 504 of the Rehabilitation Act of 1973 has been misinterpreted or violated and requesting the EAC investigate and provide technical assistance. Complainants must provide their contact

information. Complaints may be filed by email, postal mail, fax, or in person using the following information:

Equity Assistance Center  
Arkansas Division of Elementary and Secondary Education  
Four Capitol Mall, Box 25  
Little Rock, AR 72201  
Fax: 501-682-7288  
Email: [ADE.equityassistance@arkansas.gov](mailto:ADE.equityassistance@arkansas.gov)

Upon receipt, the EAC determines whether the submitted correspondence meets the requirements of a formal complaint. When a complaint is received alleging that a public school, district, or charter school is in violation of Section 504, the procedures below apply:

1. Determine if the complaint is sufficient.
2. Assign a case number and establish a file.
3. Acknowledge complaint by sending a written letter and requesting parent permission to release student information.
4. Provide a courtesy call to superintendent relaying the submission of a complaint.
5. Assign EAC staff to the complaint.
6. Perform investigation of complaint allegation(s).
7. Determine whether evidence was found to support a conclusion of noncompliance.
8. Provide written notification to complainant and school district/charter school regarding results at the conclusion of the investigation.
9. Written notification is carbon-copied/forwarded to necessary Arkansas Department of Education parties or the Office for Civil Rights (OCR).
10. Records retention of a written complaint, complaint file log, correspondence letters and attachments, and all evidence used in the investigation are maintained in DESE electronic server for five years from date of written decision.

A complaint may be resolved at any time before the conclusion of the investigation, by the complainant withdrawing the allegation(s) in writing.

If the complainant elects to file the same complaint with any other entity while the EAC is investigating, the EAC will cease to investigate the complaint. In addition, the EAC will not investigate complaints that the Office for Civil Rights (OCR) has previously resolved.

## Equity Assistance Center (EAC) Complaint Form

The complaint form developed by the Equity Assistance Center (EAC) (below) is available in English, Spanish, and Vietnamese.

### About the Complainant

Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Your Position:  Student  Parent  School Employee  Advocate  Other (specify): \_\_\_\_\_

Student Name: \_\_\_\_\_ Age: \_\_\_\_\_ Grade: \_\_\_\_\_

LEA/District & School: \_\_\_\_\_

### Complaint

Specific policy/law violated (if known):

Age Discrimination Act of 1975

Anti-Bullying

Arkansas Public School Choice Act of 1989 (Garland County)

Constitutionally Protected Prayer in Public Elementary and Secondary Schools

Public School Choice Act of 2015

Retaliation

Section 504 of the Rehabilitation Act of 1973

Student Discipline and Handbook Policies

Title IX of the Education Amendments of 1972 (Discrimination on basis of sex, sexual harassment, and inappropriate sexual behavior)

Title VI of the Civil Rights Act of 1964 (Discrimination on basis of color, religion, national origin & gender)

Other policies/laws (specify): \_\_\_\_\_

Describe facts of alleged act--including dates. Must allege a violation that occurred within the past 120 days.

Have you attempted to resolve the above-mentioned allegations with the school system through an internal grievance procedure, appeal, or due process hearing?

YES  NO  If yes, describe actions you have taken to seek resolution.

Have the allegation(s) been filed with any other federal, state, or civil rights office, or any federal or state court?

YES  NO  If yes, describe below.

Describe the resolution you are seeking?

Verify that the information you provided is accurate and sign.

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Signature

Date

This form is optional. A complaint may be submitted using plain paper, stationery, etc. Attach additional pages or evidence if necessary.

Submit the complaint or request EAC complaint investigation procedures via any of the following ways:

**Mailing & Street Address**

Equity Assistance Center  
Arkansas Division of Elementary and Secondary Education  
Four Capitol Mall, Box 25  
Little Rock, AR 72201

**Fax Number**

501-682-7288

**Email Address**

[ADE.equityassistance@arkansas.gov](mailto:ADE.equityassistance@arkansas.gov)

**Webpage**

<http://www.arkansased.gov/divisions/legal/equity-assistance>



## Section 504 Hearing Procedures

School districts and charter schools are required to provide an impartial hearing when requested to resolve issues concerning compliance with Section 504. Although the Equity Assistance Center (EAC) at the Arkansas Division of Elementary and Secondary Education (DESE) does not provide impartial hearings pertaining to Section 504, this section has been developed to aid K-12 school systems in their compliance.

### **Impartial Hearing Request**

**WHO:** A Section 504 due process hearing may be called at the request of the school district/charter school or a parent/guardian. Complainants have the right to representation by counsel.

**WHEN:** A request for a due process hearing must be filed within a specified time frame.

**HOW:** A request for a due process hearing must be submitted in writing to the district/charter school.

### **School District and Charter School Response when an Impartial Hearing Request is Filed**

- Ensure that all communication to the parent/guardian is in the appropriate native language or mode of communication
- Provide parent a copy of their rights under Section 504
- Inform the parent/guardian of any low-cost legal services and other relevant services available in the area
- Select an impartial hearing officer that is either an attorney or an individual with knowledge of the Section 504 law and neither employed by nor representing the district/charter school.
- Notify parent/guardian of the time, location and purpose of the conferences/hearings, a statement of the issues involved, the particular sections of the statute(s) and rule(s) involved, the complainant's right to have an attorney present at their own expense, the name of the impartial hearing officer who will conduct the hearing, and the hearing officer's contact information.

Additionally, the district/charter school should identify an individual (*i.e.* Section 504 Coordinator) to maintain a list of persons who serve as hearing officers. This list should include a statement regarding the backgrounds of each of the hearing officers and should be made available upon request.

### **Hearing Officer Role & Duties**

The hearing should be presided over and decided by the impartial hearing officer. The hearing officer has the power to administer the oath or affirmation to anyone who will testify at the hearing. They may assist the parties present in making a full statement of the facts in order to bring out the information necessary to decide the issue. The hearing officer may define the issues to be considered and regulate the presentation of

the evidence. The officer may issue subpoenas upon request of any party and may examine witnesses. The hearing officer may rule on any requests or motions that are made prior to or during the due process hearing.

### **Purpose of a Pre-Hearing Conference**

A prehearing conference is not necessarily required, but may benefit the hearing proceedings. During a prehearing conference, the officer has the opportunity to discuss the hearing. Discussion items may include:

- established hearing procedures,
- applicable burden(s) of proof,
- issues on which the hearing will be held,
- facts not in dispute,
- rule on outstanding motions or the admissibility of exhibits,
- document authenticity,
- determination whether the parent has been provided the opportunity to inspect their child's education records,
- number of witnesses, witness order, and the expected length of direct and cross examination for each witness,
- determination whether the child will be present,
- arrangements for telephone testimony, and
- arrangements for participants that require special accommodations or assistive technology.

At the discretion of the hearing officer, the prehearing conference may be conducted by telephone.

After the prehearing conference, the hearing officer should prepare a summary of the matters discussed.

### **Requests for Information**

Each party should attempt in good faith to meet requests for documents, releases, or information, as soon as practicable. When there is a dispute between parties concerning a request for documents, any party may file a motion with the hearing officer to compel the release of the requested information.

### **Impartial Hearing Procedures**

**BURDEN OF PROOF:** It is the responsibility of the party that requested the hearing to prove the facts of their issue through a preponderance or majority of the evidence. These facts must be related to the relevant issue being considered.

**ORDER OF PROOF:** The party that requested the hearing should present its evidence first unless otherwise agreed to by the parties. All parties should have opportunity to

present testimony and evidence, cross-examine, and make opening and closing statements.

All hearings should be electronically recorded by the hearing officer or their designee. Hearing files and the official record of the hearing should be maintained.

For an example due process impartial hearing agenda, see SECTION THREE: Section 504 Resources (*i.e.* Sample Impartial Hearing Agenda).

### **Hearing Officer’s Decision**

A copy of the hearing officer’s decision should be delivered to the district/charter school and the parent/guardian at the completion of the hearing within the designated time frame described in the districts hearing procedures. The decision of the hearing officer is binding on all parties involved and should be implemented immediately unless a delay is agreed to by both parties in writing or an appeal to a federal court is filed.

Cases may be dismissed with or without prejudice. Dismissal with prejudice signifies that the issues raised in the hearing request are closed and cannot be reopened in subsequent requests. Dismissal without prejudice indicates that the same issue may be raised at a later date by filing a new request for hearing.

### **Advice for Hearing Participants**

Suggestions for Section 504 impartial hearing participants may be found in Figure 3.



Figure 3