

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.

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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