



# UNITED INDEPENDENT SCHOOL DISTRICT INFORMATIONAL ITEM

**TOPIC:** SECTION 504 DUE PROCESS HEARING PROCEDURES

**SUBMITTED BY:** Pamela R. Juarez **OF:** Instructional Department

**APPROVED FOR TRANSMITTAL TO SCHOOL BOARD:** \_\_\_\_\_

**DATE ASSIGNED FOR BOARD CONSIDERATION:** May 19, 2010

## INFORMATIONAL REPORT:

Finalized Section 504 Due Process Hearing Procedures for immediate implementation.



## **Section 504 Due Process Hearing Procedures**

### **Pursuant to FNG (Legal) and Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent wishes to contest any action of the District with regard to a child's identification, evaluation, and placement under Section 504. This provision is found within 34 C.F.R. § 104.36. If you request a Section 504 hearing with the District, you have the right to personally participate and to be represented at the hearing by an attorney or advocate at parent expense.

Contested actions or omissions that are appropriate for a Section 504 hearing with the District should involve either identification, evaluation or placement issues involving a disabled child under Section 504.

#### **Request for Due Process**

The attached form should be completed by a parent or adult student who is requesting that the District hold a Section 504 Due Process Hearing. The parent may be contacted to clarify what is being requested. Timelines for the appointment of a hearing officer will not begin until it is clear from the parent's request for due process that the dispute at issue is regarding the Section 504 identification, evaluation or placement of a child.

#### **Hearing Officer**

The District will appoint an impartial Hearing Officer to preside over the hearing and issue a decision. Such appointment will be made within fifteen (15) days of the date of receipt of a clear Request for a Due Process Hearing. The Hearing Officer will be hired by the District as an independent contractor at no expense to the parent. The Hearing Officer that is appointed will not be a current employee of the District. The Hearing Officer need not be an attorney, but shall be familiar with the requirements of §504 and the District's Hearing Procedures under §504. The District's choice of an impartial Hearing Officer is final and may not be made an issue at the due process hearing, since such an issue would not relate to the identification, evaluation, or placement of a disabled child under §504. If a parent disputes the impartiality of the appointed Hearing Officer, he or she may raise such issue in a review of the Hearing Officer's opinion by a court of competent jurisdiction or in a complaint to the appropriate Office for Civil Rights regional office.

#### **Computing Deadlines**

For the purpose of computing deadlines, all references to days shall mean "calendar days." The day the time period begins is not counted. For example, if a clear Request for a Due Process Hearing is received by the District on Friday and the District has 15 days to appoint a hearing officer, Friday is "day 0", Saturday is "day 1", and Sunday is "day 2." Count the last day unless it is a Saturday, Sunday, or District holiday. If the last day falls on a Saturday, Sunday, or District holiday, the deadline is the next day that is not a Saturday, Sunday, or District holiday. A District calendar may be viewed at the District's website, [www.uisd.net](http://www.uisd.net), or in the District's Student Handbook.

### **Legal Representation at Hearing**

The District will not have legal representation at the hearing unless the parent notifies the District that they will have legal representation. If a parent is to be represented by a licensed attorney at the due process hearing, he or she must inform the District's §504 Coordinator and the appointed hearing officer of that fact in writing at least seven (7) calendar days prior to the hearing date or the hearing can be continued upon the District's request.

### **Pre-Hearing Conference**

The Hearing Officer will schedule a Pre-Hearing Conference during which the parent or his or her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference can also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process. The Pre-Hearing Conference can be held via telephone or in person depending on the Hearing Officer's decision based on the convenience to both parties.

### **Scheduling of Hearing**

The appointed Hearing Officer shall issue an Order Setting Hearing Date to the parent and the District's §504 Coordinator in writing within three (3) days of the prehearing conference. Such Order shall set a date for a hearing to be held within fifteen (15) days of the date of issuance of the Hearing Officer's Order. The Order shall also set forth a mutually agreeable time and place for the hearing. Each side will have an equal amount of time to present their position to the Hearing Officer who will make the determination as to time constraints based upon the issues involved. This information will be included in the order. Upon a showing of good cause, the Hearing Officer, at his or her discretion, may grant a continuance of the hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.

### **Dismissals**

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

### **Hearing**

The hearing shall be conducted in an informal, non-adversarial manner. The parties shall address the Hearing Officer by name (i.e. Mr. or Ms.). The hearing shall be closed or open to the public, at the parent's request. Rules of Evidence and Civil Procedure will not apply. The Hearing Officer may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. Witnesses will present their information in narrative form. Cross-examination of witnesses will not be allowed. The parent will present its case first, by making an opening statement which outlines the parent's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. The District will present its side next. At the end of the District's presentation, the Parent may offer a short response to the District's case.

The entire due process hearing will be tape-recorded but will not be transcribed by a court reporter. The parent may obtain a copy of the tape recording at his or her request. If not satisfied by the decision of the Hearing Officer, a parent may seek review of the hearing decision in a court of competent jurisdiction; generally the closest federal district court and the District will then prepare a written transcript of the hearing tape recording to be offered to the court as an exhibit. Exhibits submitted to the Hearing Officer by either party must be marked. The Hearing Officer may allow or request written closing arguments and, if so, time lines for their submission shall be set by the Hearing Officer at the conclusion of the hearing. The Hearing Officer must issue a written opinion addressing and ruling on all issues raised by the Petitioner and indicating what corrective action, if any, the District must take. Formal findings of fact and conclusions of law are not required. Any issue or claim raised by the parent that is left unaddressed by the Hearing Officer in his or her decision will be deemed to have been denied. The decision must be issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district. A Hearing Officer may not award attorneys' fees as a part of relief granted to a parent.

### **Complaints to the Office for Civil Rights (OCR).**

At any time, a parent may file a complaint with the Office of Civil Rights (OCR) if he or she believes that the District has violated any provision or regulation of §504. The filing of a complaint does not affect the hearing process or the time lines set forth above. OCR addresses §504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.

**The OCR office for Texas is located at:**  
**Office for Civil Rights**  
**Dallas Regional office/Region VI**  
**1999 Bryan Street, Suite 1620**  
**Dallas, Texas 75201-6810**  
**Telephone: 214-661-9600**  
**FAX: 214-661-9587; TDD: 877-521-2172**

**The OCR National Headquarters is located at:**  
**U.S. Department of Education**  
**Office for Civil Rights**  
**Customer Service Team**  
**400 Maryland Avenue, SW**  
**Washington, D.C. 20202-1100**  
**Telephone: 1-800-421-3481**  
**FAX: 202-245-6840; TDD: 877-521-2172**  
**Email: [OCR@ed.gov](mailto:OCR@ed.gov)**

## Request for Section 504 Due Process

Student's Full Name: \_\_\_\_\_ Date of Birth \_\_\_\_\_

Student's Address: \_\_\_\_\_

School Student Attends: \_\_\_\_\_

Parent or Guardian's Full Name: \_\_\_\_\_

Parent or Guardian's Address: \_\_\_\_\_

Parent or Guardian's Phone Number: \_\_\_\_\_

I am requesting that a Section 504 Due Process Hearing be scheduled regarding the following issues:

Section 504 identification – \_\_\_\_\_

\_\_\_\_\_

Section 504 evaluation – \_\_\_\_\_

\_\_\_\_\_

Section 504 placement - \_\_\_\_\_

\_\_\_\_\_

**I declare that the foregoing is true and correct to the best of my knowledge after reasonable diligent inquiry.**

\_\_\_\_\_  
Parent/Guardian/Authorized Representative Signature

\_\_\_\_\_  
Date

Return this form by Fax or Mail to:

Dr. Guadalupe Gorordo  
Executive Director of Instructional Accountability  
4410 State Hwy. 359  
Laredo, Texas 78043  
Telephone: (956) 473-2090  
Fax: (956) 473-5259

*United Independent School District  
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