

# Tennessee School Boards Association

Monitoring: <b>Review: Annually, in September</b>	Descriptor Term: <b>Section 504 and ADA Grievance Procedures</b>	Descriptor Code: <b>1.802</b>	Issued Date:
		Rescinds:	Issued:

1 The Board is committed to maintaining equitable employment/educational practices, services, programs  
2 and activities that are accessible and usable by qualified individuals with disabilities.

## 3 4 **DEFINITION**

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6 *Section 504 of the Rehabilitation Act of 1973* provides that: No otherwise qualified individual with  
7 handicaps in the United States...solely by reason of his/her handicap, be excluded from the participation  
8 in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving  
9 federal financial assistance.<sup>1</sup>

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11 *Title II of the Americans with Disabilities Act, 1990* provides that: No otherwise qualified individual with  
12 a disability shall be discriminated against in regard to job application procedures, the hiring, advance-  
13 ment, or discharge of employees, employee compensation, job training and other terms, conditions and  
14 privileges of employment.<sup>2</sup>

## 15 16 **COORDINATOR**<sup>3</sup>

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18 The Board shall designate at least one employee to coordinate its efforts to comply with and carry out  
19 its responsibilities under the Americans with Disabilities Act (ADA) and Section 504, including any  
20 investigation of any complaint alleging non-compliance with the Acts or alleging any actions that  
21 would be prohibited by the Acts.

## 22 23 **NOTICE**<sup>4</sup>

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25 The Board shall make available the name, office address and telephone number of the ADA/Section  
26 504 coordinator.

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28 Methods of initial and continuing notification may include the posting of notices, publication in newspapers  
29 and student and employee handbooks and distribution of memoranda or other written communications.

## 30 31 **COMPLAINT PROCEDURE**<sup>5</sup>

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33 The coordinator will hear ADA/Section 504 complaints. Complaints shall be submitted orally or in  
34 writing to the coordinator who will endeavor to accomplish prompt and equitable resolution of complaints  
35 alleging any action that would be prohibited by the ADA/Section 504. The coordinator will respond to  
36 all complaints within twenty (20) days with a written response as well as information on further grievance  
37 procedures that may be followed if the complaining party is not satisfied with the coordinator's  
38 proposed resolution.

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## **DUE PROCESS HEARING PROCEDURES**

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 school system with regard to a child's identification, evaluation, and placement under Section 504.<sup>6</sup> If a parent/guardian requests a Section 504 hearing, the parent/guardian has the right to personally participate and to be represented at the hearing by an attorney or advocate at the parent's expense. Contested actions or omissions that are appropriate for a Section 504 hearing should involve identification, evaluation, or placement issues involving a child who has or is believed to have a disability.

### *Request for Hearing*

A parent/guardian who wishes to challenge an action or omission with regard to the identification, evaluation, or placement of a student who has or is believed to have a disability as defined by Section 504, shall make an oral or written request for a due process hearing to the Section 504 coordinator. The request shall be submitted on or reduced to writing on a form provided through the Central Office.

### *Impartial Hearing Officer*

The director of schools or his/her designee shall 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 request for a due process hearing. The hearing officer will be hired as an independent contractor at no expense to the parent. The hearing officer that is appointed shall not be a current employee of the school system and shall not be related to any member of the Board of Education. The hearing officer need not be an attorney but shall be familiar with the requirements of Section 504 and the hearing procedures under Section 504. The choice of an impartial hearing officer is final and may not be presented as 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 Section 504. If a parent/guardian disputes the impartiality of the appointed hearing officer, he/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 Office for Civil Rights.

### *Office for Civil Rights*

U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T10  
Atlanta, GA 30303-8927  
Telephone: 404-974-9406; TDD: 877-521-2172  
Email: OCR.Atlanta@ed.gov

### *Scheduling of Hearing*

The appointed hearing officer shall set a date for the hearing within fifteen (15) days of his/her appointment and provide this information in writing to the parent/guardian and the Section 504 coordinator. The hearing shall take place at a mutually agreeable time and place.

1 *Continuances*

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3 Upon a showing of good cause, the hearing officer, at his/her discretion may grant a continuance of the  
4 hearing date and set a new hearing date.

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6 *Legal Representation at Hearing*

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8 If a parent/guardian is represented by a licensed attorney at the due process hearing, he/she must inform  
9 the Section 504 coordinator and the appointed hearing officer of that fact, in writing, at least seven (7)  
10 calendar days prior to the hearing date, or the hearing can be continued upon the coordinator's request.

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12 *Pre-Hearing Conference*

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14 The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her  
15 representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Confer-  
16 ence will also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties'  
17 questions regarding the hearing process. The Pre-Hearing Conference can be held via telephone or in  
18 person depending on the hearing officer's decision based on the convenience to both parties.

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20 *Dismissals*

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

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27 *Hearing*

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29 The hearing shall be conducted in an informal, non-adversarial manner. The hearing shall be closed  
30 to the public unless the parent/guardian requests an open hearing. The hearing officer may reasonably  
31 limit testimony and introduction of exhibits for reasons or relevance.

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33 *Recording*

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35 Instead of a formal written transcript produced by a court reporter, the entire due process hearing will  
36 be video recorded. The school system shall provide a copy of the recording to the parent/guardian upon  
37 request. In order for an accurate recording to be made, the parties and witnesses shall introduce them-  
38 selves at the beginning of their presentations. If a parent/guardian appeals the decision of the hearing  
39 officer to a court of competent jurisdiction, the school system shall prepare a written transcript of the  
40 hearing to be offered to the court as an exhibit.

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42 *Witnesses*

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44 Witnesses will present their information in narrative form, without the traditional question and answer  
45 format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request  
46 that the hearing officer, at his/her discretion, ask a witness a certain question.

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1 *Format of Presentation*

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3 Each side will have an equal amount of time to present their positions as determined by the hearing  
4 officer. The parent/guardian will present his/her case first by making an opening statement outlining the  
5 issues, calling witnesses, and making a closing argument. The school system will present its side next.  
6 At the end of the school system's presentation, the parent/guardian may offer a short response. Each  
7 side may present personally or through their representatives.

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9 *Submission of Exhibits*

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11 As part of their presentations and at the discretion of the hearing officer, the parties may submit any  
12 reports, evaluations, correspondence, notes, or any other documents that may support their positions.  
13 Exhibits submitted to the hearing officer by either party must be marked. The hearing officer may, in  
14 the exercise of his/her discretion, reasonably limit the number of documents to be submitted for his/her  
15 review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

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17 *Closing Arguments*

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19 The hearing officer may allow or request written closing arguments summarizing and characterizing the  
20 information presented at the hearing.

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22 *Decision*

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24 The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under  
25 advisement and issue a written opinion. Such decision shall address all of the issues raised by the par-  
26 ent/guardian as well as any corrective actions, if any, the school system must take. Any issue or claim  
27 raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision will be  
28 deemed to have been denied. The decision must be issued within forty-five (45) days after the date  
29 the Request for a Due Process Hearing is received by the district. The hearing officer may not award  
30 attorneys' fees as a part of the relief granted to a parent/guardian or the district.

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32 *Review Procedure/Appeal*

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34 If the parent/guardian is not satisfied by the decision of the hearing officer, he/she may seek review of  
35 the decision in a court of competent jurisdiction.

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Legal Reference:

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1. 34 CFR § 104.4(a)

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2. 42 USCA §12112(a)

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3. 28 CFR § 35.107

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4. 28 CFR § 35.106; 34 CFR § 104.8

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5. 28 CFR § 35.170;172

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6. 34 CFR §104.36

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