

ADMINISTRATIVE PROCEDURES FOR POLICY 1730

504 COMPLAINT PROCEDURES

1730-P

Adopted: August 2, 2010

I. Section 504/ADA Grievance Procedures

Students, parents or employees who believe that the School District has discriminated against them because of their disability in violation of School Board Policy 1730, Nondiscrimination on the Basis of Disabilities, or in violation of Section 504 of the Rehabilitation Act of 1973 ("§504") or the Americans with Disabilities Act ("ADA"), may file a written grievance pursuant to Board Policy 1720, Discrimination, Harassment and Bullying Complaint Procedure. *See 34 C.F.R. § 104.7.* The grievance will be promptly investigated using the informal and formal procedures set out in that policy in an effort to reach an equitable resolution.

II. Section 504 Impartial Hearing Procedures

Students, parents, or guardians who wish to contest an action of the School District over matters related to the student's identification, evaluation, or educational placement under §504 may request an impartial hearing. Students and parents have the right to participate personally at the hearing and to be represented by an attorney, at their own expense. *See 34 C.F.R. § 104.36.*

A. Requests for an Impartial Hearing

Requests for impartial hearings shall be made in writing and directed to the School District's 504 Coordinator at the following address:

Executive Director of Student and Transportation Services
504/ADA Coordinator
Asheville City Schools
85 Mountain Street
Asheville, NC 28801
(828) 350-6160

A hearing must be requested within thirty (30) calendar days of the dispute giving rise to the hearing; however, requests for a hearing made after 30 days may still be accepted. The hearing request must include the following information:

1. The name of the student, the address of the residence of the student, the telephone number of the student, and the name of the school the student is attending;
2. A description of the decision made by school district personnel or the student's 504 Team with which the complainant disagrees that relates to

the identification, evaluation or placement of the student, including facts relating to such decision; and

3. A description of how the student is adversely affected by the decision and a proposed resolution of the problem to the extent known and available to the party at that time.

B. Appointment of a Hearing Officer

The School District 504 Coordinator will designate himself/herself or another impartial hearing officer within five (5) school days of receipt of a request for a hearing.

C. Pre-Hearing Procedures

1. The hearing officer is responsible for the following matters prior to the hearing:
 - a. Within five (5) school days of appointment, securing a date, time, and location for the hearing that are convenient to both parties, and notifying both parties, in writing, of the date, time, and location of the hearing.
 - b. Ascertaining whether the parties will be represented at the hearing.
 - c. Ascertaining whether the hearing will be open to the public.
 - d. Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
2. A list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) must be exchanged by the parties and received by the hearing officer at least five (5) school days before the hearing. The hearing officer 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.
3. Pre-hearing conferences should be held, if appropriate.

D. Hearing Procedures

1. The parties have the following rights in a hearing:
 - a. to have the student, parents or guardian participate in the hearing and be represented by counsel at their own expense;
 - b. to present evidence and cross-examine witnesses; and

- c. to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party).
 2. In connection with the hearing, the hearing officer shall:
 - a. Maintain an atmosphere conducive to impartiality and fairness.
 - b. Maintain an accurate record of the proceedings.
 - c. Issue a written and dated decision, based solely on the evidence presented in the hearing, to all parties setting forth findings of fact, conclusions of law, and orders, if necessary, which will be binding on all parties.
 - d. Provide the written decision to the parties within forty-five (45) calendar days after the request for a hearing is received by the school district, unless continued upon a request of either party to the hearing. A continuance can be granted by the hearing officer upon a showing of good cause.
 - e. Assign the burden of proof to the party seeking relief.
 4. The decision or order of the hearing officer shall be implemented no later than twenty (20) school days following the date of the decision, unless either party seeks review of the decision as set forth below.
 5. The hearing officer shall hold all records for thirty (30) calendar days after issuance of a decision. In the event of an appeal, the 504 Coordinator will provide the hearing officer with the name and address of the review officer and request that the records be forwarded to the review officer. The hearing officer shall transmit the records to the review officer within three (3) school days of the 504 Coordinator's request. In the event that no appeal is made, the hearing officer shall return the records to the 504 Coordinator.

III. Review and Appeal Procedures

- A. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. *See 34 C.F.R. § 104.36.*
- B. An appeal may be made by an aggrieved party by filing a written notice with the 504 Coordinator setting out specific objections to the decision within five (5) school days of the date of the decision issued by the hearing officer.
- C. An impartial review officer will be appointed by the 504 Coordinator within five (5) school days of the request for review.

- D. The review officer shall:
1. examine the record of the hearing;
 2. seek additional evidence, if necessary;
 3. allow additional written or oral argument, if necessary;
 4. advise the parties of the right to be represented by counsel at their own expense during the review proceedings; and
 5. issue a written decision.
- E. The review officer shall uphold the initial decision unless the initial decision is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.
- F. The review officer's decision must be issued within thirty (30) school days of receipt of the request for an appeal, unless continued at the request of a party. A continuance can be granted by the review officer upon a showing of good cause. A copy of the decision must be sent to all parties.
- G. The record of the administrative hearing shall be sent by the review officer to the 504 Coordinator upon the issuance of the decision.
- H. The 504 Coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
- I. Any party aggrieved by the review officer's decision may file a civil action in a court of appropriate jurisdiction (normally, the nearest federal district court). *See 29 U.S.C. § 794a.*

IV. Office for Civil Rights

Students and parents may also at any time file a 504 complaint with the Office for Civil Rights, U.S. Department of Health and Human Services.