

Sweetwater City Board of Education

Monitoring: Review: Annually, in August	Descriptor Term: Section 504 and ADA Grievance Procedures	Descriptor Code: 1.802	Issued Date:
		Rescinds: BBDD	Issued: 07/08/13

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

3 **DEFINITION**

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

8 *Title II of the Americans with Disabilities Act, 1990* provides that: No otherwise qualified individual with a
9 disability shall be discriminated against in regard to job application procedures, the hiring, advancement, or
10 discharge of employees, employee compensation, job training and other terms, conditions and privileges of
11 employment.²

12 **COORDINATOR**³

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

17 **NOTICE**⁴

18 The Board shall make available the name, office address and telephone number of the ADA/Section 504
19 coordinator. Methods of initial and continuing notification may include the posting of notices, publication in
20 newspapers and student and employee handbooks and distribution of memoranda or other written
21 communications.

22 **COMPLAINT PROCEDURE**⁵

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

28 **DUE PROCESS HEARING PROCEDURES**

29 Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent
30 wishes to contest any action of the school system with regard to a child's identification, evaluation, and
31 placement under Section 504.6 If a parent/guardian requests a Section 504 hearing, the parent/guardian has the

1 right to personally participate and to be represented at the hearing by an attorney or advocate at the parent's
2 expense. Contested actions or omissions that are appropriate for a Section 504 hearing should involve
3 identification, evaluation, or placement issues involving a child who has or is believed to have a disability.

4 *Request for Hearing*

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

9 *Impartial Hearing Officer*

10 The director of schools or his/her designee shall appoint an impartial hearing officer to preside over the hearing
11 and issue a decision. Such appointment will be made within fifteen (15) days of the date of receipt of a request
12 for a due process hearing. The hearing officer will be hired as an independent contractor at no expense to the
13 parent. The hearing officer that is appointed shall not be a current employee of the school system and shall not
14 be related to any member of the Board of Education. The hearing officer need not be an attorney but shall be
15 familiar with the requirements of Section 504 and the hearing procedures under Section 504. The choice of an
16 impartial hearing officer is final and may not be presented as an issue at the due process hearing since such an
17 issue would not relate to the identification, evaluation, or placement of a disabled child under Section 504. If a
18 parent/guardian disputes the impartiality of the appointed hearing officer, he/she may raise such issue in a
19 review of the hearing officer's opinion by a court of competent jurisdiction or in a complaint to the Office for
20 Civil Rights.

21 Office for Civil Rights
22 U.S. Department of Education
23 61 Forsyth St. S.W., Suite 19T10
24 Atlanta, GA 30303-8927
25 Telephone: 404-974-9406; TDD: 877-521-2172
26 Email: OCR.Atlanta@ed.gov

27 *Scheduling of Hearing*

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

31 *Continuances*

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

34 *Legal Representation at Hearing*

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

1 *Pre-Hearing Conference*

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

7 *Dismissals*

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

11 *Hearing*

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

15 *Recording*

16 Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be video
17 recorded. The school system shall provide a copy of the recording to the parent/guardian upon request. In order
18 for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of
19 their presentations. If a parent/guardian appeals the decision of the hearing officer to a court of competent
20 jurisdiction, the school system shall prepare a written transcript of the hearing to be offered to the court as an
21 exhibit.

22 *Witnesses*

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

26 *Format of Presentation*

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

32 *Submission of Exhibits*

33 As part of their presentations and at the discretion of the hearing officer, the parties may submit any reports,
34 evaluations, correspondence, notes, or any other documents that may support their positions. Exhibits submitted
35 to the hearing officer by either party must be marked. The hearing officer may, in the exercise of his/her

1 discretion, reasonably limit the number of documents to be submitted for his/her review, as well as the number
2 of witnesses and the length and/or scope of their presentations or statements.

3 *Closing Arguments*

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

6 *Decision*

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

14 *Review Procedure/Appeal*

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

Legal References

1. 34 CFR § 104.4(a)
2. 42 USCA §12112(a)
3. 28 CFR § 35.107
4. 28 CFR § 35.106; 34 CFR § 104.8
5. 28 CFR § 35.170, .172
6. 34 CFR §104.36

Cross References