

Baldwin County School District Section 504 Procedural Safeguards

1. Overview: Any student or parent or guardian (the “Complainant”) may request an impartial hearing due to the School District’s actions or inactions regarding the student’s identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the School District’s Section 504 Coordinator; however, a Complainant’s failure to request a hearing in writing does not alleviate the School District’s obligation to provide an impartial hearing if the Complainant orally requests an impartial hearing through the School District’s Section 504 Coordinator. The School District’s Section 504 Coordinator will assist the Complainant in completing the written Request for Hearing.

2. Hearing Request: The written Request for the Hearing must include the following:

- a. The name of the student.
- b. The address of the residence of the student.
- c. The name of the school the student is attending.
- d. The decision of the School District that is the subject of the hearing.
- e. The requested reasons for review.
- f. The proposed remedy sought by the Complainant.
- g. The name and contact information of the Complainant.

Within 10 business days from receiving the Complainant’s Request for Hearing, the Section 504 Coordinator will acknowledge the Request for Hearing in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the Complainant of the specific information needed and assist in the completion of the Request for Hearing. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

3. Mediation: The School District may offer mediation to resolve the issues detailed by the Complainant in his or her Request for Hearing. Mediation is voluntary and both the Complainant and School District must agree to participate. The Complainant may terminate the mediation at any time. If the mediation is terminated without an agreement, the School District will follow the procedures for conducting an impartial hearing without an additional Request for Hearing.

4. Hearing Procedures:

- a. The Section 504 Coordinator, with the assistance of the Superintendent, will identify and obtain a Hearing Officer who will conduct a hearing within 45 calendar days from the receipt of the Complainant's Request for Hearing unless agreed to otherwise by the Complainant or a continuance is granted by the Hearing Officer. The Hearing Officer must (i) have knowledge or training in Section 504, (ii) not be an employee of the School District, and (iii) not have a personal or professional interest that would conflict with his/her objectivity in the hearing. It is not required that the Complainant consent to the Hearing Officer who is selected.
- b. Upon a showing of good cause by the Complainant or School District, the Hearing Officer, in his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.
- c. The Complainant will have an opportunity to examine the child's educational records prior to the hearing.
- d. The Complainant will have the opportunity to be represented by legal counsel at his or her own expense and participate, speak, examine witnesses, and present information at the hearing. If the Complainant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.
- e. The Complainant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the Hearing Officer may require the recipient to defend its position/decision regarding the claims (i.e. A recipient shall place a disabled student in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §104.34). One or more representatives of the School District, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the Complainant's testimony and answer questions posed by the Hearing Officer.
- f. The Hearing Officer shall not have the power to subpoena witnesses or require the parties to conduct any discovery. The strict rules of evidence shall not apply to hearings. The Hearing Officer shall have the authority to issue pre-hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present and testify.
- g. The Hearing Officer shall determine the weight to be given any evidence based on its reliability and probative value.
- h. The hearing shall be closed to the public.
- i. The issues of the hearing will be limited to those raised in the written Request for Hearing.

- j. Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The Hearing Officer, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses. The Hearing Officer retains the right to set time parameters and restrictions on the hearing and the examination of witnesses and presentation of evidence. Either party may request that the witnesses be sequestered.
- k. Testimony shall be recorded by court reporting or audio recording at the expense of the School District. All documentation related to the hearing shall be retained by the School District.
- l. Unless otherwise required by law, the Hearing Officer shall uphold the action of School District unless the Complainant can prove that a preponderance of the evidence supports his or her claim(s).
- m. Failure of the Complainant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the Hearing Officer or just cause is shown, shall constitute a waiver of the right to a personal appearance before the Hearing Officer.

5. Decision: The Hearing Officer shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the Hearing Officer shall not include any monetary damages or the award of any attorney's fees. The decision of the Hearing Officer is final and binding unless appealed.

6. Review: If not satisfied with the decision of the Hearing Officer, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations.

Please NOTE the following:

- The School District is responsible for costs directly related to providing impartial hearings described in these procedures, including compensation of the Hearing Officer, transcripts, or recordings of the hearing and other related costs.
- The School District is not responsible for costs of legal counsel or other representatives of the Complainant, or for the costs of producing or reproducing the evidence presented by the Complainant.
- Any timelines specified herein may be extended by agreement between the School District and the Complainant, or by order of the Hearing Officer.