

# **Jefferson County Schools: 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 Jefferson County Schools with regard to a child's identification, evaluation, and placement under Section 504. This provision is found within 34 CFR §104.36. If a parent/guardian requests a Section 504 hearing with Jefferson County Schools 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 with Jefferson County Schools should involve identification, evaluation, or placement issues involving a child who has or is believed to have a disability.

## **Request for Due Process**

A parent/guardian who wishes to challenge Jefferson County Schools 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 a written request for a due process hearing to Jefferson County Schools Section 504 coordinator. If a request is received orally, it should be reduced to writing or the parent/guardian should be provided a form to reduce the request to writing. The written request must make clear that the parent is seeking a due process hearing under Section 504 before an impartial Section 504 hearing officer. The written request must be made on a form provided by Jefferson County Schools for that purpose. If the intent to seek a due process hearing is not clear from the face of the request, Jefferson County Schools Section 504 coordinator may contact the parent to clarify the request and ascertain whether the parent wishes to initiate a Section 504 due process hearing. The coordinator may also assist the parent in clarifying any questions regarding due process rights under Section 504. Timelines for the appointment of a hearing officer will not begin until it is clear from the parent/guardian's request for due process that the dispute at issue is regarding the Section 504 identification, evaluation or placement of a child. If after such communication, Jefferson County Schools is still unsure whether the parent is requesting a due process hearing under Section 504, Jefferson County Schools shall initiate due process procedures, and appointed hearing officer will hold a pre-hearing conference to decide whether the parent is seeking a due process hearing under Section 504, and whether the hearing office has jurisdiction to entertain the claims and issues raised by the parent.

## **Hearing Officer**

Jefferson County Schools 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 Jefferson County Schools as an independent contractor at no expense to the parent. The hearing officer that is appointed shall not be a current employee of Jefferson County Schools and shall not be related to any member of Jefferson County Schools local board of education. The hearing officer need not be an attorney, but shall be familiar with the requirements of Section 504 and Jefferson County Schools hearing procedures under Section 504. Jefferson County Schools 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, s/he may raise such issue in a review of the hearing officer's

Office for Civil Rights. The regional office which covers Tennessee is: U.S. Department of Education Office for Civil Rights - Atlanta | 61 Forsythe Street, SW, Suite 19T70 | Atlanta, GA 30303 | (404-974-9406).

### **Scheduling of Hearing**

The appointed hearing officer shall issue an Order Setting Hearing Date to the parent/guardian and Jefferson County Schools Section 504 coordinator in writing. Such Order shall set a date for the 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.

### **Continuances**

Upon a showing of good cause, the hearing officer, at his/her discretion may grant a continuance of the hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.

### **Legal Representation at Hearing**

Jefferson County Schools will not have legal representation at the hearing unless the parent notifies Jefferson County Schools that they will have legal representation. If a parent/guardian is represented by a licensed attorney at the due process hearing, s/he must inform Jefferson County Schools Section 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 Jefferson County Schools request.

### **Pre-Hearing Conference**

The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference will 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.

### **Dismissals**

If, after the Pre-Hearing Conference, the hearing officer finds that the parent, as a matter of law, alleges and/or raises no factual claims or legal issues that come within his/her jurisdiction as a Section 504 hearing officer, s/he may dismiss the hearing and issue an order to that effect explaining the basis 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 as the parent/guardian's request. The federal nor the Tennessee Rules of Evidence or Procedure will apply. The hearing officer may reasonably limit testimony and introduction of documentary exhibits for reasons or relevance. *Tennessee Department of Education Section 504 Manual 57* |

### **Recording**

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape-recorded. The parent/guardian may obtain a copy of the tape-recording, at his/her request. In order for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations. If a parent/guardian proceeds to a review of the due process hearing decision to a court of competent jurisdiction, Jefferson County Schools will prepare a written transcript of the hearing tape-recording to be offered to the court as an exhibit.

### **Witnesses**

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

### **Format of Presentation**

Each side will have an equal amount of time to present their positions to the hearing officer, who will make the determination as to time constraints based upon the issues involved. The parent/guardian will present its case first, by making an opening statement, which outlines the parent/guardian's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. Jefferson County Schools will present its side next. All of the preceding may be done either personally or through counsel, except for personal presentations or statements. At the end of the (District's) presentation, the parent/guardian may offer a short response to Jefferson County Schools case.

### **Submission of Documentary Exhibits**

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

### **Closing Argument/Briefs**

The hearing officer may allow or request written closing arguments summarizing and characterizing the information presented at the hearing; and provide legal authority in support of each party's position. The hearing officer will set time lines for their submission at the conclusion of the hearing.

**Decision**

The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement; but, in all cases, the hearing officer shall issue a written opinion addressing and ruling on all issues raised by the Petitioner, indicating what corrective action, if any, Jefferson County Schools must take. Formal findings of fact and conclusions of law are not required. Any issue or claim raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision will be deemed to have been denied. The hearing officer should include in his/her decision that the unaddressed issues/claims 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. The hearing officer may not award attorneys' fees as a part of the relief granted to a parent/guardian or the district.

**Review Procedure/Appeal**

If the parent/guardian is not satisfied by the decision of the hearing officer, s/he may seek review of the hearing decision in a court of competent jurisdiction (generally the closest federal district court).

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

A parent/guardian may file a complaint with the Office for Civil Rights (OCR) if s/he believes that the (District) has violated any provision or regulation of Section 504. The filing of a complaint does not affect the hearing process or the time lines set forth above. OCR addresses Section 504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCRs Case Processing Manual. A parent/guardian should contact OCR or consult its Case Processing Manual concerning timeframes for filing OCR complaints.

The OCR office for Tennessee is located at:      The OCR National Headquarters is located at:

Atlanta Office  
Office for Civil Right  
U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T10  
Atlanta, GA 30303-8927

Telephone: 404-974-9406  
FAX: 404-974-9471; TDD: 877-521-2172  
Email: OCR.Atlanta@ed.gov

U.S. Department of Education Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

Telephone: 800-421-3481  
FAX: 202-453-6012; TDD: 877-521-2172  
Email: OCR@ed.gov