



The Metropolitan Nashville Public Schools (MNPS) is committed to maintaining equitable employment/educational practices, services, programs and activities that are accessible and usable by qualified individuals with disabilities. For more specific information regarding the Americans with Disabilities Act (ADA) compliance and grievance procedures, refer to SBO 1.103.

Revision History

June 2013

January 2013

Review

Annually

Date Last

Reviewed

June 2014

DEFINITION

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act prohibit discrimination, including harassment, against students with disabilities.

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

Title II of the Americans with Disabilities Act, 1990 protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.

COORDINATOR

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

NOTICE

MNPS shall make available the name(s), office address and telephone number of the ADA and Section 504 coordinator(s).

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

504 COMPLAINT PROCEDURES

There are two-complaint processes: The Informal Grievance Process and Formal Complaint Process.

Informal Grievance Process

Anyone may use the informal complaint procedures to report and resolve complaints of disability discrimination. Use of the informal complaint process is not required prior to filing a grievance.

A parent/guardian is encouraged to first meet and discuss the complaint with the local school 504 Coordinator, teacher or building administrator involved with the objective of resolving the matter promptly and informally. If the complaint is not resolved as of that meeting, or if the complainant wishes to bypass the informal complaint process, the parent/guardian may file a grievance.

Formal Complaint Process

The District coordinator will hear Section 504 complaints. Complaints of disability discrimination may be made orally or in writing to the District coordinator who will endeavor to accomplish prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA/Section 504. The complainant and subject of the complaint will be provided the opportunity to present witnesses and evidence. The coordinator will respond to all complaints within twenty (20) days with a written response as well as information on further grievance procedures that may be followed if the complaining party is not satisfied with the coordinator's proposed resolution.

Appeal Process

If the parent/guardian wishes to appeal the decision of the District Section 504 Coordinator, he/she may submit a signed statement of appeal to the Chief Operating Officer or his/her designee within ten (10) days after receipt of the District Coordinator's response. The Chief Operating Officer or his/her designee will meet with all parties involved, formulate a conclusion, and respond in writing to the grievance within fifteen (15) days.

If appropriate, the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the student and others.

The complainant may file a complaint with the U.S. Department of Education, Office for Civil Rights, at any time before or during these grievance procedures.

504 DUE PROCESS HEARING PROCEDURES

Section 504 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. 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.

Written 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 a written request for a due process hearing to the Section 504 coordinator. The written request must be made 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.

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.

Legal Representation at Hearing

If a parent/guardian is represented by a licensed attorney at the due process hearing, he/she must inform the 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 the coordinator's 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, he/she 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 hearing shall be closed to the public unless the parent/guardian requests an open hearing. The hearing officer may reasonably limit testimony and introduction of exhibits for reasons or relevance.

Recording

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be electronically recorded. The school system shall provide a copy

of the recording to the parent/guardian upon 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 appeals the decision of the hearing officer to a court of competent jurisdiction, the school system shall prepare a written transcript of the hearing 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 as determined by the hearing officer. The parent/guardian will present his/her case first by making an opening statement outlining the issues, calling witnesses, and making a closing argument. The school system will present its side next. At the end of the school system's presentation, the parent/guardian may offer a short response. Each side may present personally or through their representatives.

Submission of Exhibits

As part of their presentations and at the discretion of the hearing officer, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions. 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 Arguments

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

Decision

The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement and issue a written opinion. Such decision shall address all of the issues raised by the parent/guardian as well as any corrective actions, if any, the school system must take. 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 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, he/she may seek review of the decision in a court of competent jurisdiction.

References/Authority

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