

# **Shaker Heights City School District**

## **Section 504**

### ***Parent Guide and Procedural Safeguards***

**Revised 2011**

# Administrative Guidelines

## SHAKER HEIGHTS CITY SCHOOL DISTRICT SECTION 504 PROCEDURAL SAFEGUARDS, SECTION 504/ADA GRIEVANCE PROCEDURE AND SECTION 504 DUE PROCESS PROCEDURES

### Introduction

The Board of Education of the Shaker Heights City School District assures students, parents, applicants for employment, employees and citizens that it will not discriminate against any individual on the basis of disabilities. These guidelines comply with the Board's directive to establish a grievance procedure as a means of reaching, at the lowest possible administrative level, a fair and equitable settlement of differences and issues relating to alleged discrimination under Section 504 and the Americans with Disabilities Act (ADA). As directed by the Board, the Superintendent has established procedural safeguards for the identification, evaluation, and educational programming of students with disabilities.

Parents, students, employees and the public have the right to file an internal grievance complaint regarding an alleged violation, misinterpretation or misapplication of Section 504, ADA and their implementing regulations or Board Policy and these Administrative Guidelines. In addition, students and their parents and the District have the right to request a due process hearing before an impartial hearing officer (IHO) regarding the identification, evaluation or educational placement of persons with disabilities, and the right to examine educational records.

Section 504 of the Rehabilitation Act of 1973 ("Section 504") prohibits discrimination against persons with a disability in any program receiving Federal financial assistance. The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in public accommodations and employment. A person with a disability is an otherwise qualified person who:

1. **Has** a physical or mental impairment, which substantially limits one or more major life activities;
2. **Has a record of** a physical or mental impairment which substantially limits one or more major life activities; or
3. **Is regarded as having** a physical or mental impairment, which substantially limits one or more major life activities.

**Major life activities** include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

**Physical or mental impairment** means (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The following physical and/or mental impairments do not qualify an individual as disabled: substance abuse disorders resulting from illegal use of drugs; kleptomania; pyromania; exhibitionism; voyeurism; gender identity disorders not resulting from physical impairment; other sexual disorders/differences.

In order to fulfill its obligation under Section 504 and ADA, the Board of Education of the Shaker Heights City School District recognizes its responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability will be permitted knowingly in any of the programs and practices in this District.

The Board of Education has specific responsibilities under Section 504, which include the responsibility to identify, evaluate, and, if the child is determined to be eligible under Section 504, to afford access to appropriate educational services. In other words, the Board will not discriminate against otherwise qualified students with disabilities (i.e. students who otherwise meet eligibility criteria – e.g., age – for participation in the educational program and/or activities) in the provision of its educational programs and activities. The Board will make reasonable modifications to its programs and activities to accommodate otherwise qualified students with disabilities, unless such modifications/accommodations would impose an undue burden on the operation of the particular program, or would alter the fundamental nature or purpose of the program. In addition to its provision of educational services, the Board will not discriminate against otherwise qualified students with disabilities in its provision of non-educational programs, services and activities such as counseling, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies, and employment.

If a student's parents disagree with a determination made by the professional staff of the District, they may file a grievance or request a hearing before an impartial hearing officer. The Superintendent shall develop administrative guidelines ensuring that the procedural safeguards available to persons alleging discrimination under Section 504 and ADA are provided and appropriate complaint procedures are in place.

*District Compliance Officer*

The District's Compliance Officer is Timothy Gesing, M.Ed. He can be reached at Shaker Heights City Schools, 15600 Parkland Rd., Shaker Heights, Ohio 44120.

### Parent or Student Submission of Complaints or Request for Due Process Hearing

Complaints and requests for due process hearings must be put in writing and must identify the specific circumstances or areas of dispute which have given rise to the complaint or the request for a hearing, and offer possible solutions to the dispute. The complaint or request for due process hearing must be filed with the Compliance Officer at the address cited above, and within the time limits specified below.

### Procedural Rights & Safeguards – Students & Parents

The following procedural safeguards are available to students and parents who dispute any Board or administrative actions regarding the identification, evaluation, or educational placement of their child who, because of a disability, needs, or is believed to need, special instruction or related services:

1. Students have the right to take part in, and receive benefits from, public education programs without discrimination because of the child's disability;
2. Parents have the right to be advised of their rights under federal and state law.
3. A parent has the right to receive written notice prior to any decision regarding the identification, evaluation, or educational placement of his/her child;
4. A parent has the right to have his/her child receive a free appropriate public education. This includes the right to be educated with students who are not disabled to the maximum extent appropriate (i.e. the student's education will be provided in the regular education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily). It also includes the right to have the District make reasonable accommodations to allow the child an equal opportunity to participate in school and in school-related activities. Your child has the right to a free and appropriate public education (FAPE), except for those fees that are imposed on non-disabled students or their parents/guardians. Insurers and similar third parties are not relieved from their obligation to provide services to a disabled student.
5. A parent has the right to have the child educated in facilities and receive services comparable to those provided to students without disabilities;
6. A parent has the right to have the child receive accommodations if the child is found to be eligible under the Section 504 of the Rehabilitation Act of 1973 ("Section 504");
7. A parent has the right to have evaluation and educational placement decisions made based upon a variety of informational sources, and by persons who know the student, the evaluation data, and placement options. If qualified as disabled under Section 504, your child has a right to periodic reevaluations, generally every three (3) years.

8. A parent has the right to have the child transported in a non-discriminatory manner. However, if the District has made available a free appropriate education to the student which conforms to the requirements of Section 504 and nevertheless the parents choose to place the student elsewhere, the District is not obligated to pay for any costs incurred in transporting the student to that alternative school/program;
9. A parent has the right to have the child given an equal opportunity to participate in nonacademic and extracurricular activities offered by the District;
10. A parent has the right to examine all relevant records, including, but not limited to, those documents related to decisions regarding the child's identification, evaluation, educational program and placement;
11. A parent has the right to obtain copies of educational records at a reasonable cost unless the fee would effectively deny the parents access to the records;
12. A parent has the right to a response from the School District to reasonable requests for explanations and interpretations of their child's records;
13. A parent has the right to receive all information in the parent's native language and mode of communication;
14. A parent has the right to request periodic re-evaluations and/or an evaluation before any significant change in program/service modifications;
15. A parent has the right to request amendments of the child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of the child. If the School District refuses this request for amendment, it shall notify the parent within a reasonable amount of time, and advise the parent of the right to a hearing;
16. A parent has the right to request mediation or an impartial due process hearing related to decisions or actions concerning their child's identification, evaluation, educational program or placement;
17. A parent has the right to file an internal grievance;
18. A parent has the right to be represented at any point in the process by an attorney; and
19. Parents may have the right to reasonable attorney fees as authorized by law (i.e. if the parents are successful on their due process claim).
20. Parents have the right to be notified of their Section 504 rights when evaluations are conducted, when eligibility is determined, when an accommodation plan is developed; and before there is a significant change in the plan for services.

Grievance Procedure – Students

A “grievance” is a complaint by a student or parent. This grievance procedure may be used for any disagreement with respect to actions regarding the identification, evaluation, educational services or educational program of students who are believed to be disabled within the definition of Section 504/ADA. A student or parent may initiate the procedure when they believe that a violation, misapplication or misinterpretation of Board policy, or state or federal law or regulation has occurred.

- Step 1 – Principal Conference: A student or parent may initiate a grievance by making a written request for a conference with the building principal to discuss the complaint and seek resolution. The request shall fully describe the grievance, and be filed as soon as possible, but not longer than thirty (30) days after disclosure of the facts giving rise to the grievance. The principal shall conduct the conference within five (5) school days following receipt of the request. The principal will state in writing his/her decision to the individual within five (5) school days following the conference.
- Step 2 – Appeal to the District’s Compliance Officer: If the grievance is not resolved satisfactorily at Step 1, the student or parent may appeal the principal’s decision in writing to the District’s Compliance Officer. The appeal must be made within five (5) school days following receipt of the principal’s decision. The District’s Compliance Officer will review the case, may conduct an informal hearing, and will notify all parties in writing of his/her decision within ten (10) school days of receiving the appeal.
- Step 3 – Further Appeal: If the grievance is not resolved satisfactorily at Step 2, the student or parent may appeal for an independent due process hearing (see below) or may take the matter directly to the U.S. Department of Education’s Office for Civil Rights. A parent or student may bypass the grievance procedure and take the matter directly to the United States Department of Education’s Office for Civil Rights or submit a request for a due process hearing. The request for due process should be made in writing to the District’s Compliance Officer. Nothing in this procedure prohibits the student or parent from submitting the complaint directly to the U.S. Department of Education’s Office for Civil Rights.

#### Due Process Hearing – Students

1. When a request for a due process hearing is received, the aggrieved party will have the opportunity to receive a hearing conducted by an impartial hearing officer (“IHO”) (i.e. by a person not employed by the board of education, not involved in the education or care of the child, and not having a personal or professional interest which would conflict with his/her objectivity in the hearing).
2. The School District will maintain a list of trained IHOs, which may include IDEA hearing officers, attorneys, and Directors of Special Education outside the District. The District’s Compliance Officer will appoint an IHO from that list, and the costs of the hearing shall be borne by the Shaker Heights City School District. The appointment of an IHO will be made within fifteen (15) school days after the request for a due process hearing is received.
3. A party to such a due process hearing shall have:

- a. The right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
  - b. The right to present evidence and confront, cross-examine and compel the attendance of witnesses;
  - c. The right to a written or electronic verbatim record of such hearing; and
  - d. The right to written findings of fact and decisions.
4. The IHO shall conduct the due process hearing within a reasonable period of time (i.e. not to exceed ninety [90] days of the request for such a hearing, unless this time-frame is mutually waived by the parties or is determined by the IHO to be impossible to comply with due to extenuating circumstances).
5. The IHO will give the parent and/or student written notice of the date, time and place of the hearing. Notice will be given no less than twenty-one (21) days prior to the date of the hearing, unless otherwise agreed to by the parent and/or student. The notice shall include:
  - a. A statement of time, place and nature of the hearing;
  - b. A statement of the legal authority and jurisdiction under which the hearing is being held;
  - c. A reference to the particular section of the statutes and rules involved;
  - d. A statement of the availability of relevant records for examination;
  - e. A short and plain statement of the matters asserted; and
  - f. A statement of the right to be represented by counsel.
6. The IHO shall conduct the hearing in a manner that will afford all parties a full and fair opportunity to present evidence and to otherwise be heard. The parent and/or student may be represented by another person of his/her choice, including an attorney.
7. The IHO shall make a full and complete record of the proceedings.
8. The IHO shall render a decision in writing to the parties within thirty (30) days following the conclusion of the hearing. The decision will include findings of fact and will address whether or not the administration has met all procedural aspects of the student's educational plan, including that:
  - a. The procedures utilized in determining the student's needs have been appropriate in nature and degree;
  - b. The student's rights have been fully observed; and

- c. The provision of aids, services or programs (i.e. accommodations) to the student affords a free appropriate public education.

The notification shall include a statement that either party may appeal the decision.

9. Appeal of the IHO's decision may be made to a federal court of competent jurisdiction.

## **DUE PROCESS HEARING – DISTRICT**

The District may initiate a due process hearing by providing the student and his/her parents with notice that the District has initiated the hearing. All hearing procedures/rights shall be the same as described under **Due Process Hearings – Students**. The District shall not be required to file due process under any circumstances.

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