

Tift County Public Schools

Adam Hathaway, Superintendent

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Section 504 Procedural Safeguards

1. **Overview:** Any student or parent or guardian (“grievant”) may request an impartial hearing due to the school system’s actions or inactions regarding your child’s identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the school system’s Section 504 Coordinator; however, a grievant’s failure to request a hearing in writing does not alleviate the school system’s obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school system’s Section 504 Coordinator. The school system’s Section 504 Coordinator will assist the grievant in completing the written Request for Hearing.
2. **Hearing Request:** The 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 that is the subject of the hearing.
 - e. The requested reasons for review.
 - f. The proposed remedy sought by the grievant.
 - g. The name and contact information of the grievant.

Within 10 business days from receiving the grievant’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 grievant of the specific information needed to complete the request. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above.

3. **Mediation:** The school system may offer mediation to resolve the issues detailed by the grievant in his or her Request for Hearing. Mediation is voluntary and both the grievant and school system must agree to participate. The grievant may terminate the mediation at any time. If the mediation is terminated without an agreement, the school system will follow the procedures for conducting an impartial hearing without an additional Request for Hearing.
4. **Hearing Procedures:**
 - a. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant’s Request for Hearing unless agreed to otherwise by the grievant or a continuance is granted by the impartial review official.

- b. Upon a showing of good cause by the grievant or school system, the impartial review official, at 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 grievant will have an opportunity to examine the child's educational records prior to the hearing.
- d. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant 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 grievant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the impartial 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 system, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.
- f. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings. The impartial review official 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.
- g. The impartial review official 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 or oral request for the hearing.
Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.
- k. Testimony shall be recorded by court reporting or audio recording at the expense of the recipient. All documentation related to the hearing shall be retained by the recipient.
- l. Unless otherwise required by law, the impartial review official shall uphold the action of school system unless the grievant can prove that a preponderance of the evidence supports his or her claim.

- m. Failure of the grievant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the impartial review official or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.
5. **Decision:** The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.
6. **Review:** If not satisfied with the decision of the impartial review official, 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.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

School personnel may, for not more than ten school days in a row, remove a child with a disability who violates the code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension without consulting the student's IEP team. School personnel may also impose additional removals of not more than ten days for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

Once a child has been removed from his or her current placement for a total of ten, consecutive or not consecutive, school days in the same school year, the school system must, during any subsequent days of removal in that school year, provide services that enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is less than ten school days and is not a change in placement), the school system, the parent and relevant members of the IEP team must review all relevant information in the student's file, in the IEP, any teacher observations and any relevant information provided by the parent to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- b. If the conduct in question was direct result of the school systems failure to implement the child's IEP.

If the relevant members of the IEP team determine that either of these conditions was met, the conduct must be determined to be a manifestation of the child's disability. If the conduct was the result of the school system's failure to implement the IEP, the school system must take immediate action to remedy those deficiencies.

When the conduct is a manifestation of the student's disability the IEP team must conduct (or review if already in place) the Functional Behavioral Assessment (FBA) and develop and implement (or review and modify) a behavioral intervention plan (BIP) for the student to address the behavior so as to prevent it from occurring in the future.

1. If your child carries a weapon to school or to a school function; if your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or if your child inflicts serious bodily injury on another person while at school, on school premises or at a school sponsored function, school system personnel may order a change in placement of your child to (a) an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities), or to (b) an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days without regard to whether or not the behavior was a manifestation of disability. The alternative education setting shall be determined by the IEP team.
2. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate.
3. An ALJ/hearing officer may order a change in placement of your child to the IEP-determined appropriate interim alternative educational setting for not more than 45 days if the ALJ/hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others; and determines that the interim alternative educational setting meets the requirements of paragraph (5).
4. Any interim alternative educational setting in which your child is placed pursuant to paragraph (1) or paragraph (4) in this section shall: (a) be selected so as to enable your child to continue to receive educational services in order to participate in the general curriculum, although in another setting, and to continue to progress toward the goals set out in the IEP; and (b) receive the services and modifications of a functional behavioral assessment and behavior intervention plan designed to address the behavior so that it does not recur.
5. If a disciplinary action is contemplated as described in paragraph (1) or paragraph (4) of this section for the behavior of your child, you shall be notified of that decision and of all procedural safeguards accorded under this section no later than the date on which the decision to take that action is made, and immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the school system, the parent and relevant members of the IEP team shall conduct a review of the relationship between your child's disability and the behavior subject to the disciplinary action.
6. In carrying out a review described in paragraph (6) of this section, the school system, the parent and relevant members of the IEP team (as determined by the parent and the school system) shall review all relevant information in the student's file, including the child's IEP, and teacher observations, and any relevant information provided by the parents to determine (1) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or (2) if the conduct in question was the direct result of the school systems failure to implement the IEP. When the school system, the

parent and the relevant members of the IEP determine that either (a) or (b) is applicable, the conduct is a manifestation of the disability.

7. If the determination is that the behavior of your child was not a manifestation of his or her disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to your child in the same manner in which they would be applied to children without disabilities except that the child: (a) must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child's IEP; and (b) receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
8. If the determination is made that the conduct was a manifestation of the disability, then the IEP team shall conduct a functional behavioral assessment and implement the behavior intervention plan or review such and revise as necessary if already in place. The child shall be returned to the placement from which he or she was removed, unless the parent and the school system agree to a change of placement as part of the modification of the behavioral intervention plan. For circumstances described in paragraph (1) or (4) an interim alternative setting may be used as determined by the IEP team.
9. If you request an expedited due process hearing regarding a disciplinary action described in paragraph (1)(b) or paragraph (3) to challenge the interim alternative educational setting or the manifestation determination, your child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period provided for in paragraph (1)(b) or paragraph (3), whichever occurs first, unless you and the State or the school system agree otherwise. Such expedited due process hearing must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing; a resolution session meeting must occur within seven days of the date the hearing is requested and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request. The decision of an expedited due process hearing may be appealed.
10. When an expedited due process hearing has been requested regarding placement as a result of a violation of code of conduct, the child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period defined, whichever occurs first, unless the parent and the State or local agency agree otherwise.
11. If a child has not been determined eligible for special education and related services and violated a code of student conduct, but the school system had knowledge before the behavior occurred that the child may be a child with a disability, then the child may assert the protections described in this notice. A school system has knowledge that the child may be a child with a disability if:

NOTICE

Search & Seizure Warning

All Persons, Vehicles and Personal
Belongings on School Property Are
Subject to Search by
School Administrators
and/or
School Resource
Officers.

**If You Suspect a Weapon
in Your School, Call
1-877-SAY STOP
(1-877-729-7867)**

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