

WCPSS-SECTION 504 DUE PROCESS HEARING PROCEDURES

Right to Due Process. In the event a parent or guardian [hereinafter “parent”] disagrees with an identification, evaluation, or placement decision under Section 504, the parent has a right to an impartial hearing before an impartial Hearing Officer.

Requesting a Due Process Hearing. To seek a due process hearing with regard to an identification, evaluation, or placement decision, the parent must submit a written request to the District 504 Coordinator. The written request may be made on the form provided by WCPSS for that purpose. If the parent’s intent to seek a due process hearing under Section 504 is not clear from the face of the request, the District 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 Designee may also assist the parent in clarifying any questions regarding due process rights under Section 504.

Hearing Officer and Hearing Costs. WCPSS will appoint a Hearing Officer who is not an employee of WCPSS to preside over the hearing and issue a decision. The Hearing Officer shall be familiar with the requirements of Section 504, and the Americans with Disabilities Act. The District is responsible for the compensation of the Hearing Officer. The District is not responsible for the costs of parent/guardian’s legal counsel or any other parent representative or parent secured witness.

Parent Participation & Representation. A parent has the right to participate, speak, and present information at the due process hearing, and to be represented by legal counsel or any other type of advocate or representative of their choice at their expense. If a parent is to be represented by an attorney at the due process hearing, he or she must inform the District 504 Coordinator and the appointed Hearing Officer of that fact in writing at least ten (10) calendar days prior to the hearing date. Failure to notify the District 504 Coordinator and the appointed Hearing Officer of that fact in writing may cause the hearing date to be delayed.

Scheduling and Pre-Hearing Procedures. The appointed Hearing Officer shall schedule a Hearing date in writing at his or her earliest opportunity at a mutually agreeable time. The Hearing Officer shall attempt to schedule the hearing within 45 days of the parent’s request for a hearing. The Hearing Officer may conduct a pre-hearing telephone conference to identify and, if disputed, resolve the issues for hearing. The Hearing Officer will also identify the date the parties will exchange witness lists and proposed exhibits. This exchange shall occur no later than five business days prior to the hearing.

Conduct of Hearing. The hearing shall be conducted in an informal, non-adversarial manner. Formal rules of evidence and civil procedure do not apply. The Hearing Officer is not required to entertain any legal evidentiary objections to the admissibility, authenticity, or probative value of either oral testimony or documentary exhibits offered at the hearing. In the exercise of his or her discretion, however, the Hearing Officer may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. The Hearing Officer may consider any relevant evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious matters. The hearing shall be limited to issues raised in the hearing request and the Hearing Officer shall exclude any issues that are not related to identification, evaluation, and placement under Section 504.

Recording. The entire due process hearing will be audio recorded. The parent may obtain a copy of the recording at his or her request. The parent may also make his or her own audio recording of the hearing.

Format for Presentations. Each party will be afforded up to two and a half hours to present their case, including presentation, direct examination, cross examination, and argument. The parties may also submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions and that the Hearing Officer will admit at his or her discretion. The party seeking relief bears the burden of persuasion and the burden of proof.

- The Hearing Officer will begin the hearing with introductory remarks, addressing the purpose for the hearing, determining whether parties have complied with disclosure requirements, identifying

any stipulations on the record, identifying the issue for the hearing on the record, and reminding the parties of time limits.

- The Hearing Officer will provide an opportunity for each party to present evidence through calling witnesses and referencing exhibits. In his or her discretion, the Hearing Officer may ask questions of a witness. The party requesting the hearing will present his or her evidence first, followed by the responding party. A party may choose to reserve a portion of its time for closing or rebuttal.
- After all evidence has been presented, the Hearing Officer may ask for closing statements. The Hearing Officer may, in his or her discretion, request that the parties submit written closing statements within a specified number of days after the hearing.
- The Hearing Officer will conclude the hearing, addressing the timeline for a decision and a statement on the record that the hearing is concluded.

Hearing Officer Decision. Within thirty (30) days of the conclusion of the hearing, the Hearing Officer will issue a written decision with findings of fact and conclusions of law. The Hearing Officer must confine his or her orders and rulings to those matters that involve identification, evaluation, or placement of children under Section 504 and to the provisions of the regulations implementing Section 504. A Hearing Officer may not award attorneys' fees or reimbursement as a part of relief granted to a parent. The Hearing Officer also issues recommendations to the Superintendent regarding the issues raised and recommending what corrective action, if any, the District should take. The decision of the Hearing Officer is binding on all parties.

Review Procedure. If not satisfied by the final decision, a parent may seek review of the hearing decision from a second independent hearing officer within thirty (30) days. The second independent hearing officer's decision will be a review on the record, which will include the written request for the hearing, the hearing transcript, any hearing exhibits, the Hearing Officer's decision, the District's Procedures for Section 504 Due Process Hearings, any written argument provided by the Parent regarding the decision, and any additional written argument submitted by the District regarding the decision. The second independent hearing officer may reverse the Hearing Officer's decision if there was an error in the application of Section 504, an error of procedure that prejudiced the outcome of the hearing, the decision was arbitrary and capricious, or the decision was not supported by substantial evidence in view of the entire record. Substantial evidence refers to relevant evidence as a reasonable mind might accept as adequate to support a conclusion.