

ADMINISTRATIVE PROCEDURE

DUE PROCESS HEARING PROCEDURE

Section 504 of the Rehabilitation Act of 1973 provides parents with the right to an impartial due process hearing to contest any action of Knox County Schools regarding a student's identification, evaluation, or placement. 34 CFR §104.36. The parent has the right to personally participate and to be represented by at the hearing by an attorney at the parent's expense.

REQUEST FOR DUE PROCESS

A parent who wishes to challenge the Knox County Schools' action or omission regarding the identification, evaluation or placement of a student who has or is believed to have a disability, shall make an oral or written request for a due process hearing to the Knox 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 for such purpose. The written request must clearly state that the parent is seeking a Section 504 due process hearing. Knox County Schools will not refuse a parent's due process hearing request. Knox County Schools cannot unilaterally determine whether a due process hearing is warranted, as such decisions are reserved to the impartial hearing officer.

HEARING OFFICER

Knox County Schools will appoint an impartial hearing officer to preside over the hearing and issue a decision. Such appointment shall be made within 15 school days of the date of receipt of a request for a due process hearing.¹ The hearing officer will be hired by Knox County Schools as an independent contractor at no expense to the parent. The hearing officer cannot be a current employee of Knox County Schools and cannot be related to any member of Knox County Schools' board of education. The hearing officer need not be an attorney but must be familiar with the requirements of Section 504 and Knox County Schools' hearing procedures. Knox 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 student.

If a parent disputes the impartiality of the hearing officer, the parent may raise such issue in a review of the hearing officer's written opinion by a court of competent jurisdiction or in a complaint to the 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.

¹ In the event there is reasonable cause for a delay in appointing a hearing office, Knox County Schools must appoint a hearing officer no later than 30 calendar days from the date of receipt of the request for the due process hearing.

SCHEDULING OF HEARING

The appointed hearing officer must issue a written order setting hearing date. This written order may take the form of an official order, letter or electronic correspondence. The date for the hearing must be within 30 calendar days of the date of the hearing officer's appointment. The order must set a mutually agreeable time and place for the hearing.

CONTINUANCES

Upon a showing of good cause, the hearing officer may grant a continuance of the hearing date and set a new hearing date.

COMPUTATION OF TIME

In determining any period of time prescribed by this procedure, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.

LEGAL REPRESENTATION AT HEARING

Knox County Schools and parent may be represented by an attorney at each party's expense.

PRE-HEARING CONFERENCE

At the his/her discretion, the hearing officer may order a pre-hearing conference during which the parent or the parent's attorney 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 teleconference.

DISMISSALS

If, following the pre-hearing conference, the hearing officer determines that the parent, as a matter of law, alleges no claims or issues within the jurisdiction of Section 504, the hearing officer may dismiss the hearing request and issue an order to that effect explaining the basis for such finding

HEARING

The hearing should be conducted in an informal manner. The hearing should be closed or open to the public at the parent's request. The hearing officer may reasonably limit testimony and introduction of documentary exhibits.

A. Recording

The due process hearing may be audio recorded. If the hearing is recorded, the parent may obtain a copy of the tape-recording. The parties and witnesses should introduce themselves at the beginning of their presentations. If a parent or Knox County Schools appeals the due process hearing decision to a court of competent

jurisdiction, the Knox County Schools will prepare a written transcript of the hearing for the court at no expense to the parent.

B. 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 will present its case first. Knox County Schools will present its case next. All of the preceding may be done either personally or through an attorney. At the conclusion of the Knox County Schools' case, the parent may offer a brief rebuttal.

C. Submission of Documentary Exhibits

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 discretion, reasonably limit the number of documents to be submitted for review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

Proposed exhibits must be provided to the other party no later than five (5) business days prior to the hearing.

D. Closing Argument/Briefs

The hearing officer may allow or request written briefs summarizing and characterizing the information presented at the hearing including legal authority in support of each party's position. The hearing officer will set time lines for the submission of briefs 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 parties, indicating what corrective action, if any, Knox County Schools must take. Formal findings of fact and conclusions of law are required. Any issue or claim raised by the parent that is left unaddressed by the hearing officer will be deemed to have been denied. The written decision must be issued within 20 calendar days of the date of the hearing.

REVIEW PROCEDURE/APPEAL

Parties not satisfied by the decision of the hearing officer may appeal the decision to state or federal court.

COMPLAINTS TO THE OFFICE FOR CIVIL RIGHTS (OCR)

A parent may file a complaint with the Office for Civil Rights (OCR) if the parent alleges that the Knox County Schools violated any provision or regulation of Section 504. The filing of a

complaint does not affect the hearing process or the timelines 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 should contact OCR or consult its Case Processing Manual concerning timeframes for filing OCR complaints.

The OCR office for Tennessee is:

Office for Civil Rights
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

The OCR National Headquarters is:

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