

## **WENTZVILLE SCHOOL DISTRICT'S**

### **SECTION 504/TITLE II PROCEDURAL SAFEGUARDS**

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) aim to eliminate discrimination based on disability. Section 504 states:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, 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. . . .

Similarly, Title II of the ADA provides:

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Under Section 504 and Title II, a disabled person is defined as anyone with a physical or mental impairment that substantially limits one or more major life activities.

According to federal regulations, any recipient of federal financial assistance operating a public elementary or secondary education program must establish and implement a system of procedural safeguards for actions related to the identification, evaluation, or educational placement of students with disabilities who need, or are believed to need, special instruction or related services.

This document outlines the procedural safeguards and rights provided by federal law to students with disabilities under Section 504 and Title II, as well as their parents or legal guardians. These safeguards also apply to students who are suspected of having a disability under these provisions. Parents or guardians of students identified with a disability under the Individuals with Disabilities Education Act (IDEA) receive IDEA procedural safeguards unless the student has a separately identified disability under Section 504 or Title II that is not addressed through an Individualized Education Program (IEP).

## **PARENT AND STUDENT RIGHTS UNDER SECTION 504/TITLE II:**

1. Parents, guardians, and students have the right to be informed by the School District of their rights under Section 504 and Title II. The purpose of these Procedural Safeguards is to advise you of those rights.
2. A student with a 504 and Title II disability has the right to a free appropriate public education (FAPE). An appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled person as adequately as the needs of nondisabled persons are met and are based upon adherence to 504 regulatory procedures. Although a student's disability status must be determined without regard to the ameliorative effect of mitigating measures, the use of mitigating measures remains relevant in evaluating a disabled student's need for special education or related services. If, as a result of a properly conducted evaluation, the district determines that a student does not need special education or related services, the district is not required to provide aides or services. The student is still a person with a disability and remains protected by the general nondiscrimination provisions of Section 504 and Title II. *Dear Colleague Letter* (OCR Jan. 19, 2012).
3. The provision of a free education is the provision of educational and related services without cost to the disabled person or to his or her parents or guardian, except for those fees that are imposed on nondisabled persons or their parents or guardian. Funds available from any public or private agency may be used to meet this requirement. Under the law, insurers and other third parties are not relieved from an otherwise valid obligation to provide or pay for services for a disabled student.
4. A child with a disability has the right to take part in, and receive benefits from, public education programs without discrimination because of his or her disability.
5. The parent or guardian of a child with a disability has the right to receive notice with respect to the identification, evaluation, or placement of the child.
6. A student with a disability has the right to receive services and be educated in facilities that are comparable to those provided to nondisabled students.
7. A student with a disability has the right to have evaluation, education and placement decisions made based on a variety of information sources, and by persons who know the student and are knowledgeable about the evaluation data

and placement options. The student also has the right to be periodically reevaluated.

8. A student with a disability has an equal opportunity to participate in nonacademic and extracurricular activities offered by the District.
9. A student with a disability has the right to have transportation provided to and from an alternative placement setting (if the setting is in a program not operated by the District) at no greater cost to the parent or guardian than would be incurred if the student were placed in a program operated by the District.
10. The parents or guardians of a student with a disability or an eligible student (over the age of 18) have the right to examine all relevant records relating to decisions regarding the student's identification, evaluation and placement.
11. The parents or guardians of a student with a disability, an eligible student with a disability, and the District have the right to request and participate in an impartial due process hearing relating to decisions or actions relating to the student's identification, evaluation, program or placement and the parents or guardian have the right to be represented by counsel in such hearings. All such parties also have the right to a review procedure involving such hearings. The procedures for requesting an impartial due process hearing and the relevant review procedures are described below.
12. The parents, guardians, and eligible students have the right to file a local grievance with the District for issues unrelated to the identification, evaluation, program or placement of the student. Regulation 2110 describes the procedures for filing a grievance and can be requested by contacting:

Ryan Bishop  
Section 504 Coordinator  
280 Interstate Drive  
Wentzville, MO 63385  
636.327.3800.

Persons who believe that the District is discriminating against eligible persons on the basis of disability may also file complaints with the District's Section 504 Coordinator and the Office for Civil Rights. For a list of regional OCR offices, see [www.ed.gov](http://www.ed.gov).

The District's Section 504 Coordinator is Ryan Bishop, Section 504/Title II Coordinator for Students and may be reached at 280 Interstate Drive, Wentzville, MO 63385, 636-327-3800.

## **DUE PROCESS APPEAL PROCEDURES:**

These procedures apply when a parent, legal guardian, or eligible student challenges or the District initiates actions under Section 504 and Title II regarding the identification, evaluation, programming (provision of FAPE), or placement of a student with a disability. By invoking these procedures, a due process hearing will be convened to resolve the dispute.

### **Definitions**

The following terms have their respective meanings for purposes of these Due Process Appeal Procedures:

- **“Due Process Hearing”** or **“DPH”** is a formal hearing process to resolve disputes regarding the identification, evaluation, programming, or placement of a student with a disability under Section 504 and Title II.
- **“FAPE”** means a free appropriate public education.
- **“Parent”** includes parents, legal guardians, or eligible students (students at least 18 years of age).
- **“Section 504”** refers to Section 504 of the Rehabilitation Act of 1973, which is a federal law that prohibits discrimination based on disability in programs and activities that receive federal financial assistance. It ensures that a child with a disability has equal access to education.
- **“Title II”** refers to Title II of the Americans with Disabilities Act, as amended, which is a federal law that prohibits discrimination based on disability by public entities, including public schools, regardless of whether they receive federal financial assistance.

### **Procedures**

1. **Filing a Request for Due Process Hearing.** If a parent intends to challenge the action proposed or refused by the District, the parent must file a written Request for Due Process Hearing no less than ninety (90) calendar days from the date of the District’s written notice of the proposed or refused action regarding the identification, evaluation, or accommodation of a student with a disability. A copy of this is accessible on the District’s Section 504/Title II webpage and linked in this Regulation. The Request for a Due Process Hearing should be filed with:

Ryan Bishop  
Section 504/Title II Coordinator for Students ("Section 504 Coordinator")  
280 Interstate Drive  
Wentzville, MO 63385  
(636) 327-3800

If the District intends to initiate a Due Process Hearing, the District's Section 504 Coordinator must complete the Request for a Due Process Hearing form within the same number of calendar days as specified above.

2. **Request Details.** The Request for a Due Process Hearing must state, at minimum, the following:
  - a. the specific circumstances, including all relevant facts, giving rise to the request for due process;
  - b. the specific issues to be decided at the impartial due process hearing; and
  - c. the relief being requested.
3. **Acknowledgments.**
  - a. The District will acknowledge, in writing, all parent requests for a Due Process Hearing within five business days of receipt.
  - b. If the District initiates the DPH, the District will inform the parent within five days of the District's decision to so initiate.
4. **Appointment of Impartial Hearing Officer.** The District will, within 15 business days of the Section 504 Coordinator's receipt or filing of the Request for a Due Process Hearing, appoint and retain a single impartial hearing officer to hear and decide the request. Determinations as to the timeliness of a request for a Section 504 impartial hearing shall be made solely by the impartial hearing officer, who shall have the discretion to grant a waiver of the filing deadline upon a showing of good cause by the requesting party. The impartial hearing officer retained by the District must have knowledge or training in Section 504 and Title II and may not be an employee of the District. The hearing officer may not have a personal or professional interest that would conflict with her or his objectivity in the hearing. The District is not required to consult with the parent with respect to the appointment of the hearing officer.
5. **Optional Informal Resolution.** Informal resolution processes, such as filing a grievance or mediation, may be pursued before the Due Process Hearing, but are not required and should not unduly delay the hearing.
6. **Rights of the Parties.** The parties to the hearing have the following rights:

- a. The right to inspect all relevant records, including personally identifiable records of the student in accordance with the standards established by the Family Educational Rights Privacy Act (FERPA);
- b. The right to participate in the hearing;
- c. The right to be represented and advised by an attorney;
- d. The right to present evidence and confront, cross-examine and compel the attendance of witnesses;
- e. The right to obtain a record of the hearing but at the cost of the party requesting the record;<sup>1</sup> and
- f. The right to obtain written findings of fact, conclusions of law, and decision.

## **7. Hearing Conduct.**

- a. Due Process Hearings will be closed. The parents or guardian may elect to have the student present at the DPH.
- b. The hearing officer must hold the Due Process Hearing within 30 days of his or her appointment as hearing officer. This timeline may be extended upon the request of one party or by agreement of both parties and the entry of an order by the hearing officer.
- c. Each hearing must be conducted at a time and place which is reasonably convenient to the District and the parents. The District's facilities will be presumed to be a reasonably convenient location unless challenged by the parent.

8. **Issues at Hearing.** The issues raised at the Due Process Hearing must be those addressed in the Request form unless otherwise agreed by the parties.

9. **Decision Timeline.** The hearing officer shall render a final, written decision no later than 15 days following the completion of the hearing. A decision may be rendered after 15 days, if either party requests an extension of this timeframe, and for good cause shown. The decision of the hearing officer is final and binding, subject to the procedures outlined below.

10. **Costs.** The District is responsible for costs directly attributable to the provision of administration hearings described in these procedures, including compensation of the hearing officer, and other related expenses. The District is not responsible for the cost of hearing transcripts requested by the parent. The District is not responsible for the costs of legal counsel or other representative of the parent or for the costs of producing or reproducing the evidence presented by the parent.

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<sup>1</sup> OCR has acknowledged that Section 504, unlike the IDEA, does not obligate districts to provide or pay for hearing transcripts to parents/guardians. See, e.g., *Miami-Dade County (FL) Sch. Dist.*, 52 IDELR 53 (OCR 2008).

11. **Extension of Timelines.** Any timelines specified herein may be extended by agreement of the District and parent or by order of the hearing officer.
12. **Appeals.** Any party aggrieved by the decision of the impartial hearing officer may appeal that decision to any court of competent jurisdiction.

**Request for an Impartial Due Process Hearing**  
**Under Section 504/Title II**

**Student's Name:** \_\_\_\_\_

**Parent/Guardian Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**I am in disagreement with the following decisions made by the District pertaining to my child's identification/evaluation/educational placement under Section 504/Title II:**

**Please describe the facts and circumstances giving rise to the disagreement: (Please state the background leading to the disagreement and why you disagree with the multidisciplinary team's decision(s)):**

**Please state the specific issues to be decided at the due process hearing:**

**Please describe the relief you are requesting through the due process hearing (what result you would like the hearing officer to provide if the hearing officer decides in your favor):**

\_\_\_\_\_  
**Signature of Parent/Guardian/Eligible Student**

\_\_\_\_\_  
**Date of Signature**