

WENTZVILLE SCHOOL DISTRICT'S

SECTION 504/TITLE II PROCEDURAL SAFEGUARDS

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act were designed to eliminate discrimination on the basis of disability. To that end, Section 504 provides, in pertinent part, as follows:

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 that:

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.

A disabled person under Section 504/Title II is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities.

Pursuant to Subpart D of the 504 federal regulations, a recipient of federal financial assistance that operates a public elementary or secondary education program must establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards. The following is a description of the procedural safeguards or rights granted by federal law to students with 504/Title II disabilities and/or their parents or legal guardians and to those students who are suspected of having a 504/Title II disability and/or their parents or legal guardians. Parents/guardians of students who are suspected of or identified with a disability under the Individuals with Disabilities Education Act are provided with copies of the IDEA procedural safeguards unless those students have a separately identified 504/Title II disability that is not addressed through an 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/Title II. The purpose of these Procedural Safeguards is to advise you of those rights.
2. A student with a 504/Title II disability has the right to a free appropriate public education. 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 aids 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/her disability.
5. The parent(s) 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/guardian than would be incurred if the student were placed in a program operated by the District.

10. The parents/guardian 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/guardian of a student with a disability or an eligible student and/or 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. The parents or guardian or eligible student and/or the District 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/guardian of a student with a disability or an eligible student 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: Doug Cuneio, 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/or the Office for Civil Rights. For a list of regional OCR offices, see www.ed.gov.

The District's Section 504 Coordinator is Doug Cuneio, 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:

This procedure should be used if the parent(s), legal guardian or eligible student intends to challenge actions the District proposes or refuses under 504/Title II regarding the identification, evaluation, programming (provision of FAPE) or placement of a student with a disability. The District also has the right to initiate a 504/Title II due process hearing regarding these same matters.

1. If a parent, legal guardian or eligible student intends to challenge the action proposed or refused by the District, the parent/guardian or eligible student must file a written Request for 504/Title II Due Process Hearing within 90 calendar days from the date of the District's written notice of the proposed or refused action. A copy of this form is attached to these Procedural Safeguards. The Request for 504/Title II Due Process Hearing should be filed with:

Section 504/Title II Coordinator for Students

Doug Cuneio
Wentzville R-IV School District
280 Interstate Drive
Wentzville, MO 63385
636-327-3800

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

2. The Request for a 504/Title II Due Process Hearing must state the specific circumstances, including all relevant facts, giving rise to the request for due process; the specific issues to be decided at the impartial due process hearing; and the relief being requested. The District will acknowledge, in writing, all parent/guardian requests for a due process hearing within five (5) business days of receipt. If the District initiates the due process hearing, the District will inform the parent or guardian within five (5) days of the District's decision to so initiate.

3. The District will, within fifteen (15) business days of the District's or parent/guardian's receipt of the Request for a 504/Title II Due Process Hearing, appoint and retain a single impartial hearing officer to hear and decide the due process 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 hearing officer must have knowledge or training in Section 504/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 his/her objectivity in the hearing. The District is not required to consult with the parent/guardian or eligible student with respect to the hearing officer appointment.

4. Although nothing prohibits or discourages the District from having an informal resolution process (including but not limited to filing a grievance or submitting to mediation) prior to the hearing, such informal steps cannot be required prior to the hearing and cannot operate in such a manner as to unduly delay the hearing.
5. The parties to the hearing have the following rights:
 - a. The right to inspect all relevant records, including personally identifiable records of the student. The range of records reviewable is the same as under 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;¹ and
 - f. The right to obtain written findings of fact, conclusions of law, and decision.
6. Section 504/Title II due process hearings will be closed. The parents or guardian may elect to have the student present at the hearing.
7. The hearing officer must hold the hearing within 30 days of his/her appointment as hearing officer. This timeline may be extended upon the request of the party or parties and by agreement and order of the hearing officer.
8. Each hearing must be conducted at a time and place which is reasonably convenient to the District and the parents or guardian. The District's facilities will be presumed to be a reasonably convenient location but the parents or guardian may challenge this presumption with the hearing officer.
9. The party that requested the due process hearing may not raise issues at the due process hearing that were not addressed in the Request for a 504/Title II Due Process Hearing unless the other party agrees.
10. 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 is final and binding, subject to the procedures outlined below.

¹ 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. The Wentzville R-IV School 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 representatives of the parent/guardian or eligible student or for the costs of producing or reproducing the evidence presented by the parent/guardian or eligible student.

12. Any timelines specified herein may be extended by agreement of the District and parent/guardian or eligible student or by order of the hearing officer.

13. Any party aggrieved by the decision of the impartial hearing officer may appeal that decision to any court of competent jurisdiction.

¹ 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).

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

Student's Name: _____

Parent/Guardian Name: _____

Address: _____

Phone Number: _____ E-Mail: _____

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