

**SECTION 504/ADA PARENTS' PROCEDURAL RIGHTS,
INCLUDING DUE PROCESS HEARING**

I. PROCEDURAL RIGHTS AND SAFEGUARDS – STUDENTS AND PARENTS.

In accordance with various Federal laws [including Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990, as amended (ADA), Family Educational Rights and Privacy Act (FERPA), and Title VII of the Civil Rights Act of 1964, as amended], the following procedural safeguards will be provided with respect to decisions or actions regarding the identification, evaluation, or placement, or content of a 504 Plan of a student who is or may be disabled under Section 504, but not also disabled under the Individuals with Disabilities Education Improvement Act (IDEIA or IDEA 2004):

1. students with disabilities have the right to take part in, and receive benefits from, public education programs without discrimination because of their disabilities;
2. parents have the right to be advised of their rights under Section 504;
3. parents have the right to receive written notice of any decision regarding the identification, evaluation, or educational placement of their child;
4. parents have the right to have their child receive a free appropriate public education (FAPE) if the child has a physical or mental impairment that substantially limits one or more major life activities;

This includes the right to be educated with students who are not disabled to the maximum extent appropriate (i.e., the student's education will be provided in the regular education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily and to receive regular or special education and related aids/services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met.

5. parents have the right to have their child educated in facilities and receive services comparable to those provided to students without disabilities;
6. parents have the right to have evaluation and educational placement decisions made based upon a variety of informational sources, and by persons who know the student, and are knowledgeable about the evaluation data and placement options;

If Raleigh County Schools refers a student for aids, benefits, or services outside Raleigh County, Raleigh County Schools will ensure that adequate transportation is provided at no greater cost to the parents than if the aids, benefits, or services were provided within Raleigh County.

7. parents have the right to have their child transported in a non-discriminatory manner;

However, if Raleigh County Schools makes a FAPE available to the student that conforms to the requirements of Section 504 and nevertheless the parents choose to place the student elsewhere, Raleigh County Schools is not required to pay for the student's education at the private or alternative program, including costs associated with transportation.

8. parents have the right to have their child given an equal opportunity to participate in nonacademic and extracurricular activities offered by Raleigh County Schools;

9. parents have the right to examine all relevant education records, including, but not limited to, those documents related to decisions regarding their child's identification, evaluation, educational program and placement;
10. parents have the right to obtain, at their own expense, an independent educational evaluation of their child;
11. parents have the right to obtain copies of educational records at a reasonable cost unless the fee would effectively deny the parents access to the records;
12. parents have the right to a response from Raleigh County Schools to reasonable requests for explanations and interpretations of their child's education records;
13. parents have the right to receive all information in the parents' native language and mode of communication;
14. parents have the right to periodic reevaluations and an evaluation before any significant change in program/service modifications;
15. parents have the right to request amendments of their child's education record(s) if there is reasonable cause to believe that information contained in the record(s) is inaccurate, misleading or otherwise in violation of the privacy rights of their child;

If Raleigh County Schools refuses to amend the record(s), the parents have the right to request a hearing and/or to attach to the record a statement of why they disagree with the information it contains.

16. parents have the right to request mediation or an impartial due process hearing related to decisions or actions concerning their child's identification, evaluation, educational program or placement;
17. parents have the right to file an internal complaint;
18. parents have the right to be represented at any point in the process by an attorney at their own expense;
19. parents have the right to reasonable attorney fees as authorized by law (i.e., if the parents are successful on their due process claim);
20. parents have the right to be notified of their Section 504 rights:
 - a. when evaluations are conducted;
 - b. when consent for an evaluation is withheld;
 - c. when eligibility is determined;
 - d. when a Section 504 Plan is developed; and
 - e. before there is significant change in the Section 504 Plan.

II. DUE PROCESS HEARING.

- A. Students and their parents will be advised of their right to request a due process hearing before an Impartial Hearing Officer (IHO) regarding the identification, evaluation, or education placement of persons with disabilities, including the right to participation by the student's parents or guardian and representation of counsel, and their right to examine relevant education records.

When a request for a due process hearing is received, the aggrieved party will have the opportunity to receive a hearing conducted by an IHO (i.e., by a person not employed by the Board of Education, not involved in the education or care of the child, and not having a personal or professional interest that would conflict with his/her objectivity in the hearing).

- B. Raleigh County Schools will maintain a list of trained IHOs that may include IDEIA hearing officers, attorneys, and Directors of Special Education outside Raleigh County. The Superintendent of Raleigh County Schools, or designee, will appoint an IHO from that list, and the costs of the hearing shall be borne by Raleigh County Schools. The appointment of an IHO will be made within fifteen (15) school days after the request for a due process hearing is received.
- C. A party to such a due process hearing shall have:
- a. the right, at his/her/their own cost, to be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - b. the right to present evidence, and confront, cross-examine and compel the attendance of witnesses;
 - c. the right to a written or electronic verbatim record of such hearing; and
 - d. the right to written findings of fact and decisions.
- D. The IHO shall conduct the due process hearing within a reasonable period of time (i.e., not to exceed ninety (90) calendar days from the request for such a hearing, unless this time-frame is mutually waived by the parties or is determined by the IHO to be impossible to comply with due to extenuating circumstances).
- E. The IHO will give the parent and/or student written notice of the date, time and place of the hearing. Notice will be given no less than twenty-one (21) calendar days prior to the date of the hearing, unless otherwise agreed to by the parent and/or student. The notice shall include:
- a. a statement of time, place and nature of the hearing;
 - b. a statement of the legal authority and jurisdiction under which the hearing is being held;
 - c. a reference to the particular section of the statutes and rules involved;
 - d. a statement of the availability of relevant records for examination;
 - e. a short and plain statement of the matters asserted; and
 - f. a statement of the right to be represented by counsel.
- F. The IHO shall conduct the hearing in a manner that will afford all parties a full and fair opportunity to present evidence and to otherwise be heard. The parent and/or student may be represented by another person of his/her choice, including an attorney.
- G. The IHO shall make a full and complete record of the proceedings.
- H. The IHO shall render a decision in writing to the parties within thirty (30) calendar days following the conclusion of the hearing. The decision will be based solely on the testimony and demonstrative evidence presented at the hearing and include a summary of the evidence (i.e., findings of fact) and the reason for the decision.
- The notification shall include a statement that either party may appeal the decision.
- I. Appeal of the IHO's decision may be made to a Federal court of competent jurisdiction.

III. OFFICE FOR CIVIL RIGHTS.

At any time, parents have the right to file a formal complaint with the Regional Office for Civil Rights when they believe their child's rights have been violated:

Regional Manager, Mid-Atlantic Region
Office for Civil Rights
US Department of Health and Human Services
150 S. Independence Mall West

Suite 372, Public Ledge Building
Philadelphia, PA 19106-9111
Phone: 800.368.1019

IV. RETALIATION.

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, retaliation, or participation as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

V. SEVERABILITY.

If any provision of this policy or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

APPROVED: April 24, 2018