

SERIES 2000-2001  
**REISSUE**

CIRCULAR LETTER: C-9

TO: Superintendents of Schools

FROM: Theodore S. Sergi, Commissioner of Education

DATE: November 3, 2000

SUBJECT: Section 504 of the Rehabilitation Act of 1973: Procedural Safeguards

Over the years, the overlapping requirements of the federal special education law (The Individuals with Disabilities Education Act, IDEA) and Section 504 of the Rehabilitation Act of 1973 have obscured the definitive requirements for procedural safeguards found in each respective law. Specifically, we have found that some districts have confused the Section 504 hearing requirements with IDEA hearing requirements. These systems of due process are unique and independent of each other. The purpose of this letter is to discuss how the procedural safeguards that are required by Section 504 should be implemented by Connecticut school districts.

Section 504 is a federal civil rights statute that protects the rights of persons with disabilities in programs and activities that receive Federal financial assistance. Section 504 states in part, “No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”. Public school districts are impacted on several levels by the provisions of Section 504, including the employment of persons with disabilities, providing physical access to programs and services offered by the district to persons with disabilities, and providing a free appropriate public education (FAPE) to persons with disabilities who attend public schools of the district’s jurisdiction. It is the offering of FAPE to elementary and secondary school persons with disabilities that this Circular Letter addresses.

34 CFR 104.36 states the following regarding procedural safeguards for public elementary and secondary schools:

A recipient<sup>1</sup> that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or education placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person’s parent or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

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<sup>1</sup> A “recipient” means a recipient of federal financial assistance.

## GENERAL SCHOOL DISTRICT OBLIGATIONS

The school district has a responsibility to:

- Undertake annually to identify and locate all unserved children with disabilities residing in the district;
- Provide a free appropriate public education to each person with a disability, regardless of the nature or severity of the disability. This means providing regular or special education and related aids and services designed to meet the individual education needs of persons with disabilities as adequately as the needs of non-disabled persons are met;
- Ensure that each person with a disability is educated with nondisabled persons to the maximum extent appropriate to the needs of the person with a disability;
- Establish nondiscriminatory evaluation and placement procedures to avoid the inappropriate education that may result from the misclassification or misplacement of students;
- Establish procedural safeguards to enable parents and guardians to participate meaningfully in decisions regarding the evaluation and placement of their children; and,
- Afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities.

Parents or guardians of students with disabilities under Section 504 have the right to an impartial hearing concerning the identification, evaluation or education placement of a student with a disability. The Connecticut State Department of Education does not conduct these hearings<sup>2</sup>; these hearings are the responsibility of the local school district and as such, each district is required to have procedures in place to guarantee a due process hearing before an impartial hearing officer. The impartial hearing requirement found at 34 CFR 104.36 is not the same as the grievance procedure requirement found at 34 CFR 104.7(b). You must have both procedures in place in your district.

To effectively meet the obligations under Section 504 with regard to due process hearings, the following procedures are required:

- The school district selects an impartial hearing officer who is knowledgeable about not only Section 504/ADA claims, but also the differences that may exist between Section 504/ADA and the regulations and requirements of the Individuals with Disabilities Education Act (IDEA).
- The school district has prompt and equitable procedures in place, to guarantee compliance with Section 504/ADA regulations. To ensure fundamental

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<sup>2</sup> The IDEA hearing officers maintained by the State have very limited Section 504 jurisdiction defined by the provisions of the Mrs. L. consent decree. The IDEA hearing officers have the authority to hear systemic and procedural claims under both IDEA and Section 504 “provided that a determination of the issues is necessary to ensure that the substantive and procedural rights of the particular child or parent or guardian who initiated due process are being complied with and/or will be complied with in the future and that the other requirements of ripeness and standing are satisfied.” These hearing officers will not hear what is commonly referred to as “Section 504 only cases”, but will do a review of Section 504 claims if the Mrs. L. requirements are met, i.e., that a determination of a Section 504 claim is necessary to the resolution of the issues.

fairness, the child's current agreed-upon placement should be maintained while a Section 504 hearing is pending.

- The school district designates a Section 504/ADA Coordinator, along with the telephone number where this person can be reached, who is familiar with the federal Section 504/ADA regulations and requirements. It is recommended that this individual be someone other than the Director/Supervisor of Special Education, for instance, a regular education administrator.

A Section 504 hearing is not an IDEA hearing: the requirements for what constitutes due process under Section 504 are narrower and significantly less burdensome than that required under IDEA. In Appendix A to the Section 504 Regulations, the following statement is made: *“Because the due process procedures of the EHA (Education of the Handicapped Act, renamed the IDEA), incorporated by reference in the proposed section 504 regulation are inappropriate for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the due process requirements, however, and are recommended to recipients as a model”* (emphasis added) See pages 30952-30953 Federal Register, May 9, 1980.

The Section 504 requirements specify that parents must have the opportunity to participate and be represented by counsel and that there must be a “review procedure”. The ADA regulations do not add any specifications. OCR adheres to a “standard of fundamental fairness and looks to case law and other decisions under the IDEA for guidance in interpreting what is reasonable”<sup>3</sup>. Several OCR opinions provide guidance on the parameters of a Section 504 hearing:<sup>4</sup>

1. The hearing officer may not be<sup>5</sup>:

- A person who is an employee of a public agency which is involved in the education or care of the student;
- Any person having a personal or professional interest which would conflict with his or her objectivity in the impartial due process hearing;
- An elected member of a local school board in which the dispute has arisen; or,
- A person who participates in the formulation of state policy affecting students with disabilities.

2. There is no requirement that cross-examination is allowed or that a court reporter is provided at Section 504 hearings.<sup>6</sup>

3. The hearing officer may only review issues related to the identification, evaluation or placement of a child with a disability. A Section 504 hearing officer does not have jurisdiction to hear claims alleging discrimination, harassment or retaliation unless such a

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<sup>3</sup> 18 IDELR 230 (OCR 1991).

<sup>4</sup> Citations are to the Individuals with Disabilities Education Law Reporter and the Education for the Handicapped Law Reporter.

<sup>5</sup> 18 IDELR 230 (OCR 1991); EHLR 353:57 (OCR 1986); EHLR 352:17 (OCR 1985).

<sup>6</sup> 25 IDELR 163 (OCR 1996).

claim is directly related to the failure of the school district to provide the student with a free appropriate public education. In other words, a Section 504 hearing officer may not hear discrimination, harassment or retaliation claims only.

The Boston Regional Office of OCR provided this agency with a copy of parental statement of rights found by the Office to meet the requirements of Section 504. I am including it for your review to assist you in revising your current policies and procedures.

Please note: if any district is utilizing the current IDEA procedural safeguards to meet the Section 504 requirements, you must eliminate the reference to state mediation, state advisory opinion, state hearing and the complaint resolution procedures from the due process section of the safeguards. These procedures are not available in Section 504 cases. The Section 504 safeguards provided by your district should state clearly that a hearing to resolve disputes regarding Section 504 is available from the school district.

I hope this information is helpful. As you are aware, many more students and parents are claiming protection and services under Section 504 if the student is not found eligible for services under the IDEA. It is imperative that district staff understands that modifications and accommodations are available in the regular education classroom for these students and that Section 504 plans must be implemented. School district staff, particularly regular education staff, must be knowledgeable about Section 504 in view of the fact that many of the services to be provided to students protected by Section 504 are the responsibility of the regular classroom teacher.

Please contact Theresa C. DeFrancis at (860) 807-2018 if you have any questions. A copy of Section 504 of the Rehabilitation Act of 1973 is available through the Special Education Resource Center at (860) 632-1485.

TSS:tcd  
Attachments: Model Statement of Rights

(School District Name)

### Section 504 Parental Rights

Section 504 of the Rehabilitation Act provides services for students identified as having a disability as defined by the Act, which substantially limits a major life activity. You have the following rights:

1. The right to be informed of your rights under Section 504 of the Rehabilitation Act.
2. The right for your child to have equal opportunities to participate in academic, nonacademic and extracurricular activities in your school.
3. The right to be notified about referral, evaluation and programs for your child.
4. The right for your child to be evaluated fairly.
5. The right, if eligible for services under Section 504, for your child to receive accommodations, modifications, and related services that will meet the child's needs as well as the needs of students without disabilities are met.
6. The right for your child to be educated with peers who do not have disabilities as much as possible.
7. The right to an impartial hearing if you disagree with the school regarding your child's educational program.
8. The right to review and obtain copies of your child's records.
9. The right to request attorney fees related to securing your rights under Section 504.
10. The right to request changes in the educational program of your child.