

Sumner County Schools



A Parent/Guardian's Guide to Section 504 of the Rehabilitation Act

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What is Section 504?

Section 504 is the part of the Rehabilitation Act of 1973 which applies to persons with disabilities. Section 504 is a civil rights act protecting civil and constitutional rights of persons with disabilities.

Section 504 states "No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to any discrimination under any program or activity receiving federal financial assistance."

Sumner County Schools receives federal financial assistance; thus, individuals with disabilities may not be excluded from participating in district programs or denied the benefits of district programs. If a student is disabled under Section 504, the district must provide reasonable accommodations to ensure that the student receives a commensurate education, that is, the student must be served as adequately as non-disabled students. Unless the student also qualifies for special education, the accommodations may not include special education services.

To Whom and How Does Section 504 Apply?

A three-step analysis helps answer the questions: "To whom does Section 504 apply?" and "How does Section 504 apply?"

1. Does the student have a disability?
2. If yes to (1), is the disability impacting the student's education or educational opportunity?
3. If yes to (1) and (2), can the disability be factored out of the educational equation so the student may receive a commensurate education?

To answer these questions, the following information must be considered:

1. Does the student have a disability?

Disability-Section 504 protects persons with disability status. A person is disabled if he or she: "has a mental or physical impairment which substantially limits one or more of a person's major life activities as compared to the average person in the general population and is not countered by mitigating measures." Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. When a condition does not substantially limit a major life activity, the individual does not qualify under Section 504.

Eligibility-If a school has reason to believe that a student may need accommodations in order to receive a commensurate education because of a disability as defined under Section 504, then the student must be evaluated. The evaluation must be sufficient to determine whether or not the student is disabled. If the evaluation reveals that a student is disabled, the school should proceed to the next step of the analysis.

2. Is the disability impacting the student's education or educational opportunity? Once it is established that a student has a disability, the school must determine whether a connection exists between the disability and the student's education or educational opportunity. If such a connection is determined, the school should proceed to the final analysis step.

3. How can the disability be factored out of the education equation so the student can receive a commensurate education?
A commensurate education is an education comparable to that which an average student in the district is receiving. Specifically, accommodations must be made to make up the difference in opportunity between an identified disabled student and an average student in the system.

Accommodations are adjustments made by classroom teachers and other school staff to help students receive a commensurate education. Accommodations need to take into account both the functional limitations of individuals and alternative methods of performing tasks or activities which do not jeopardize curricular or educational outcomes and objectives. However, adjustments in academic requirements and expectations may be necessary to accommodate the needs of an individual student with a disability to enable the student to participate in the general education program.

These questions may be asked: "What is the curricular objective of this activity?" and then "How might the objective be met in light of this specific limitation from the disabling condition?" With those questions in mind, the following guidelines apply:

- a. Accommodations must be individualized.
- b. The individual needs of a student with a disability should be met to the same extent as the needs of a student without disabilities.
- c. Accommodations may be made to the school and classroom programs.
- d. Accommodations should place students with disabilities at equal starting levels with non-disabled students.

The determination of what accommodations are needed must be made by a group of people knowledgeable about the student. The parent must be involved whenever possible. The group must review the three qualifying questions and analysis periodically and the decisions must be documented.

Sumner County Board of Education

Procedural Safeguards available to Parents and Students under Section 504/ADA

The Rehabilitation Act of 1973, commonly referred to as Section 504, is a federal nondiscrimination statute. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to nondisabled students. The purpose of this notice is to outline and inform you of the rights assured by Section 504. The enabling regulations for Section 504 at 34 CFR Part 104, entitle students to the following rights:

1. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of nondisabled students are met. 34 CFR 104.33.
2. Your child has the right to free educational services except for those fees that are imposed on nondisabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.
3. Your child has a right to placement in the least restrictive environment. 34 CFR 104.34.
4. Your child has a right to facilities, services, and activities that are comparable to those provided for nondisabled students. 34 CFR 104.34.
5. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent change in placement. 34 CFR 104.35.
6. Testing and other evaluation procedures must conform to the requirement of 34 CFR 104.35 as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, anecdotal reports, and assessment scores. 34 CFR 104.35.
7. Placement decisions must be made by a group of persons (i.e., Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.
8. If eligible under Section 504, your child has a right to periodic reevaluations, generally every three years. 34 CFR 104.35.
9. You have the right to notice prior to any action by the district in regard to the identification, evaluation, or placement of your child. 34 CFR 104.36.
10. You have the right to examine relevant records. 34 CFR 104.36.
11. You have the right to an impartial hearing with respect to the district's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. 34 CFR 104.36.
12. If you wish to challenge the actions of the district's Section 504 Committee in regard to your child's identification, evaluation, or educational placement, you should file a written request for a due process hearing with the district's Section 504 Coordinator.
13. If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction. 34 CFR 104.36.
14. You also have a right to file a complaint with the Office of Civil Rights. The address of the Regional Office, which covers Tennessee, is: Office for Civil Rights, 61 Forsythe Street, SW, Suite 19T10, Atlanta, GA 30323. Phone: (404) 974-9406.

The person in this district who is responsible for ensuring that the district complies with Section 504, Brandi Ubelhor, SCS Section 504 District Supervisor. You may contact her at 615-451-5417 or Brandi.ubelhor@sumnerschools.org

School Responsibilities under Section 504

Section 504 is managed by the general education program which also is referred to as the regular school program. To comply with Section 504, schools must:

1. Provide written assurance of nondiscrimination.
2. Provide notice of nondiscrimination in admission or access to programs or activities.
3. Designate a school 504 coordinator.
4. Provide complaint procedures (District Compliance Policy).
5. Identify qualified students with disabilities.

The Role of the School 504 Designee: In each school, a school 504 designee is assigned to provide resources and help other educators in the school fulfill their responsibilities under Section 504. The 504 designee facilitates Section 504 meetings and provide families with a copy of the district's procedural safeguards. He/She will aid in the development and implementation of appropriate 504 EEOP/Accommodation Plans as well.

Differences between Section 504 and Special Education	Section 504	Special Education
Type of Act	Civil Rights Act	Education Act
Funding	Local Funding	State, Federal, Local Funding
Administration	Section 504 Designee	Special Education Director
Service Tool	Accommodations	Individualized Education Plan (IEP)
Disabilities	All disabilities if eligible	13 federal disabilities
Parents	Should be involved in all meetings	Must be involved in all meetings
Evaluation and Eligibility	Evaluation is necessary to determine eligibility for Section 504	Evaluation is necessary to determine eligibility for Special Education.

Sumner County School District does not discriminate on basis of disability. Concerns regarding Section 504 should be referred to the school's principal or the Section 504 District Supervisor. If concerns cannot be resolved at the school or district level, complaints may be filed with the US Department of Education, Office of Civil Rights, Atlanta Office, Southern Division, 61 Forsythe ST. SW, Suite 19T10, Atlanta, GA, 30323.

Section 504 Due Process Hearing Procedures

Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent wishes to contest any action of the school system with regard to a child's identification, evaluation, and placement under Section 504. If a parent/guardian requests a Section 504 hearing, the parent/guardian has the right to personally participate and to be represented at the hearing by an attorney or advocate at the parent's expense. Contested actions or omissions that are appropriate for a Section 504 hearing should involve identification, evaluation, or placement issues involving a child who has or is believed to have a disability.

Oral/Written Request for Hearing

A parent/guardian who wishes to challenge an action or omission with regard to the identification, evaluation, or placement of a student who has or is believed to have a disability as defined by Section 504 shall make an oral or written request for a due process hearing to the Section 504 District Supervisor. There is a written request form provided through the Central Office. It is included at the end of this guide.

Impartial Hearing Officer

The director of schools or his/her designee shall appoint an impartial hearing officer to preside over the hearing and issue a decision. Such appointment will be made within fifteen (15) days of the date of receipt of a request for a due process hearing. The hearing officer will be hired as an independent contractor at no expense to the parent. The hearing officer that is appointed shall not be a current employee of the school system and shall not be related to any member of the Sumner County Board of Education. The hearing officer need not be an attorney but shall be familiar with the requirements of Section 504 and the hearing procedures under Section 504. The 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 disabled child under Section 504. If a parent/guardian disputes the impartiality of the appointed hearing officer, he/she may raise such issue in a review of the hearing officer's opinion by a court of competent jurisdiction or in a complaint to the Office for Civil Rights.

Office for Civil Rights
US Department of Education
61 Forsyth St. S.W., Suite 19T10
Atlanta, GA 30303-8927
Telephone: 404-974-9406; TDD: 877-521-2172
Email: OCR.Atlanta@ed.gov

Scheduling of Hearing

The appointed hearing officer shall set a date for the hearing within fifteen (15) days of his/her appointment and provide this information in writing to the parent/guardian and the Section 504 Supervisor. The hearing shall take place at a mutually agreeable time and place.

Continuances

Upon a showing of good cause, the hearing officer, at his/her discretion, may grant a continuance of the hearing date and set a new hearing date.

Legal Representation at Hearing

If a parent/guardian is represented by a licensed attorney at the due process hearing, he/she must inform the Section 504 District Supervisor and the appointed hearing officer of that fact, in writing, at least seven (7) calendar days prior to the hearing date or the hearing can be continued upon the coordinator's request. The school system shall not have legal representation at the hearing unless the parent provides notice that he/she will have legal representation.

Pre-Hearing Conference

The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her representative 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 in person depending on the hearing officer's decision based on the convenience to both parties.

Dismissals

If, after the Pre-Hearing Conference, the hearing officer finds that the parent/guardian, as a matter of law, alleges and/or raises no factual claims or legal issues that come within his/her jurisdiction as a Section 504 hearing officer, he/she may dismiss the hearing and issue an order to that effect explaining the basis for such finding.

Hearing

The hearing shall be conducted in an informal, non-adversarial manner. The hearing shall be closed to the public unless the parent/guardian requests an open hearing. Within reason, the hearing officer may limit testimony and introduction of exhibits for reasons of relevance.

Recording

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be recorded by video. The school system shall provide a copy of the recording to the parent/guardian upon request. In order for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations. If a parent/guardian appeals the decision of the hearing officer to a court of competent jurisdiction, the school system shall prepare a written transcript of the hearing to be offered to the court as an exhibit.

Witnesses

Witnesses will present their information in narrative form without the traditional question and answer format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the hearing officer, at his/her discretion, ask a witness a certain question.

Format of Presentation

Each side will have an equal amount of time to present its position as determined by the hearing officer. The parent/guardian will present his/her case first by making an opening statement outlining the issues, calling witnesses, and making a closing argument. The school system will present its side next. At the end of the school system's presentation, the parent/guardian may offer a short response. Each side may present personally or through their representatives.

Submission of Exhibits

As part of their presentations and at the discretion of the hearing officer, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions. Exhibits submitted to the hearing officer by either party must be marked. In the exercise of his/her discretion, the hearing officer may limit within reason the number of documents to be submitted for his/her review as well as the number of witnesses and the length and/or scope of their presentations or statements.

Closing Arguments

The hearing officer may allow or request written closing arguments summarizing and characterizing the information presented at the hearing.

Decision

The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement and issue a written opinion. Such decision shall address all of the issues raised by the parent/guardian as well as any corrective actions, if any, the school system must take. Any issue or claim raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision will be deemed to be denied. The decision must be issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district. The hearing officer may not award attorneys' fees as a part of the relief granted to a parent/guardian or the district.

Review Procedure/Appeal

If the parent/guardian is not satisfied by the decision of the hearing officer, he/she may seek review of the decision in a court of competent jurisdiction.

**Sumner County Board of Education
504 Due Process Request Form**

Information is to be completed by parent/guardian & returned to the 504 District Coordinator for processing.

Name of Child: _____

Child's Date of Birth: _____

Name of Parent/Guardian: _____

Child/Parent/Guardian Address: _____

City: _____ Zip: _____ Phone Number: _____

Do you plan to hire an attorney? _____ No _____ Yes

If yes, Attorney for Child/Parent/Guardian _____

Attorney's Address: _____

City: _____ Zip: _____ Phone Number: _____

Hearings are typically closed. Do you prefer the hearing to be: _____ Open _____ Closed?

Complete description of the nature of the problem of the child relating to identification, evaluation, placement or the provision of a free appropriate public education (FAPE).

Please provide a proposed resolution of the problem to the extent known and available to the parents.

To be completed by SCBOE 504 District Supervisor

LEA: _____ 504 District Supervisor: _____

School attended: _____ Disability: _____

If parent has an attorney – attorney for LEA: _____

Attorney's Address: _____

City: _____ Zip: _____ Phone Number: _____

Date Request Received by LEA: _____ Place Hearing to be held: _____

Hearing Officer Assigned to case: _____

Date of Hearing: _____ Time: _____