


ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

DECEMBER 6, 2007

TO: Rhonda Gardner, Assistant Superintendent of Instruction
Mike Henry, Executive Director, High School Education
Leslie Vandergaw, Executive Director, Middle School Education
Patricia McRae, Executive Director, Elementary School Education
Burl Oliver, Compliance Coordinator
School Principals
Section 504 Coordinators
School Counselors

FROM: JERRY SJOLANDER, EXECUTIVE DIRECTOR
SPECIAL EDUCATION



SUBJECT: Due Process Hearings for Students Served Under Section 504

To resolve disputes between parents and school districts regarding Section 504, both parties have the right to an impartial due process hearing. A due process hearing may be requested by a parent or by a student who is at least 18 years old but less than 22 years old. A hearing can be sought because of a disagreement concerning certain aspects of the student's educational program – that is, if the district proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education. Hearing procedures are also available to parents and students who believe that they've been discriminated against on the basis of a disability.

Complaints must allege violations that occurred not more than one year prior to the filing of the complaint, unless the violation is continuing or the parent is requesting compensatory services for a violation that occurred not more than three years ago.

The request for a due process hearing must be made in writing and **signed**. Send the request to the district special education administrator or Compliance Coordinator Burl Oliver at 5530 E. Northern Lights Blvd., Anchorage, AK 99504; fax 742-4289.

A model form is included with this notice.

A hearing request must include:

- the child's name and address and the name of the school the child is attending;
- a description of the problem, including specific facts about the problem;
- any suggestions the party has for solving the problem, to the extent known at the time; and
- the request must be signed.

Note: The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed unless the other party agrees.

Following are some reasons a party might seek a hearing:

1. The district refuses to identify, evaluate or appropriately serve a child.
2. Disagreement with a proposed 504 Plan.
3. Objection to the termination of a child's 504 Plan.
4. Belief that the district's proposed plan will not meet the child's needs.
5. Belief that a placement is not in the least restrictive environment necessary to meet the child's needs.
6. Disagreement with a proposed change of placement.
7. Disagreement with the decision about the relationship between the child's disability and the behavior that resulted in disciplinary action.

If the due process notice is found to be insufficient by any party, the following procedures must be followed:

- The receiving party should notify the hearing officer and the complainant, within 15 days of the receipt, that the notice does not meet the required content requirements.
- The agency must provide prior written notice within 10 days if the agency has not provided prior written notice about the issues in the due process hearing notice.
- The non-complaining party must respond within 10 days specifically addressing the issues in the due process hearing notice.
- The hearing officer will make a determination about the sufficiency of the due process hearing notice within 5 days.
- The due process hearing notice may be amended with the written consent of the other party or through a resolution meeting.
- The hearing officer can grant permission to amend a due process hearing notice, but not within 5 days of the due process hearing.
- The due process hearing timelines will recommence upon the filing of an amended notice.

A person known as an impartial hearing officer conducts the hearing. This person has knowledge of the law pertaining to children with disabilities and has received training on conducting a due process hearing. The hearing officer will be appointed from a list maintained by the District. Within 5 business days after receipt of the request, the District will provide the parent a notice of

appointment, including the name and a statement of the qualifications of the hearing officer.

Immediately following his/her appointment, the hearing officer shall inform the parties of the availability of mediation and encourage use of that process to attempt to resolve the disagreement between the parent and the school district. However, the hearing officer may not act as a mediator to the dispute.

A hearing officer cannot be an employee of the Alaska Department of Education & Early Development (EED) or the Anchorage School District. The due process hearing and any oral argument will be conducted at a time and place that is convenient to parent and the child, who may be present. The hearing officer will open the hearing to the public at parent's request; otherwise the hearing is closed to the public.

A party to a hearing has certain rights, including:

- the right to be accompanied and advised by an attorney;
- the right to bring one or more individuals who have knowledge or training about children with disabilities;
- the right to present evidence and confront, cross-examine, and require witnesses to be present;
- the right to prohibit the introduction of any evidence that was not disclosed at least 5 days prior to the hearing;
- the right to a written, or, at the option of the parents, an electronic verbatim record of the hearing; and,
- the right to written, or, at the option of the parents, electronic findings of fact and decisions.

The hearing must be conducted and a copy of the hearing officer's decision must be mailed to both parties no more than 45 calendar days after the hearing was requested. However, this date may be delayed if the hearing officer has granted a specific extension of time following the request of either party. The hearing officer must reach a decision and provide a copy of a written, or at the parties' option, electronic findings of fact and decisions to each of the parties. The due process hearing decision is final unless either party appeals the decision to state or federal court for review.

Disclosure of Evidence before Hearing. At least 5 business days before the hearing, each party is required to disclose to the other any evidence it intends to introduce at the hearing; either party can prohibit the use of any evidence that is not so disclosed. At least 5 business days before a hearing, school districts and parents must disclose to each other all evaluations of the student completed by that date and recommendations based on those evaluations that are intended to be used at the hearing. A hearing officer may bar any party that fails to comply with this rule from introducing the undisclosed evaluations or recommendations at the hearing without the consent of the other party.

Child's Placement During Proceedings. During the process of hearing or judicial review, the child remains in his or her current educational placement. This "stay put" rule applies unless:

- The parents and the school district agree to another placement;
- The child is applying for initial admission to a public school and the parents consent to the child's placement in the public school program; or
- School personnel or a hearing officer removes the child to an interim alternative educational setting.

Expedited Hearings. If school personnel believe that it is dangerous for a child to be in the current placement (i.e., placement prior to removal to the interim alternative education setting) during the pendency (period of time between the request for and the completion of the hearing) of the due process proceedings, the District may request an expedited due process hearing. The hearing shall occur within 20 school days of the request. The hearing officer's written decision must be mailed to the parties within 10 days of the hearing, without exceptions or extensions. The hearing officer's decision is final, except that any party involved in the hearing may appeal the decision to state or district court.

Appeal for Judicial Review. The decision by the impartial hearing officer is final unless the parent or the district appeals the decision to the appropriate state or federal court. Appellate Rule 602 requires that the appeal be made within 30 days of the final order.

NOTICE OF REQUEST FOR 504 DUE PROCESS HEARING

Information that is requested in all shaded boxes must be provided. This form may be completed by the parent of the child with a disability or, if appropriate, the attorney representing the child. This form needs to be returned to ASD 504 Compliance Coordinator via fax at 742-4289 or ASD Education Center 5530 E. Northern Lights Blvd. 2nd Floor within 1 calendar year of the decision with which the parent disagrees.

1. CHILD		
CHILD'S NAME	CHILD'S ADDRESS	CHILD'S DATE OF BIRTH
SCHOOL OR PROGRAM ATTENDED	SCHOOL / PROGRAM ADDRESS	SCHOOL CONTACT NAME & NUMBER
PARENT OR GUARDIAN	PARENT / GUARDIAN ADDRESS (IF DIFFERENT)	PARENT / GUARDIAN PHONE
ATTORNEY OR LEGAL REPRESENTATIVE	ADDRESS	PHONE / FAX NUMBERS
	MAIL TO: [enter district contact here]	

Parent/Guardian Signature: _____

Date: _____

2.

PROBLEM

PARENTS CAN REQUEST A HEARING IF THEY DISAGREE WITH THE IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT OR PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) TO THEIR CHILD.

DESCRIBE THE PROBLEM WITH YOUR CHILD'S SPECIAL EDUCATION PROGRAM, AND THE SPECIFIC ACTIONS THAT THE SCHOOL DISTRICT HAS TAKEN OR REFUSED TO TAKE. INCLUDE FACTS ABOUT THE PROBLEM.

3. PROPOSED SOLUTION

DESCRIBE WHAT YOU THINK NEEDS TO BE DONE TO SOLVE THE PROBLEM, IF YOU KNOW OR HAVE ANY SPECIFIC IDEAS AT THIS TIME.