



## **Section 504 Hearings**

A Section 504 Hearing is a hearing that parents can request under Section 504 of the Rehabilitation Act, which is a civil rights law, to have a hearing officer determine whether his or her child who needs disability accommodations is receiving an appropriate education with the necessary accommodations. This is very different than a Educational Due Process Hearing and involves very different rights and requirements. The main thrust of Section 504 is whether the child's disabilities are being appropriately accommodated for his or her needs.

Education law varies from state to state and in Indiana disciplinary procedures can vary from district to district. The information below will provide you with some very basic information and help answer some frequently asked questions, but the information on this website is not legal advice and is not meant to be a substitution for seeking the advice of competent legal counsel. Your case is unique and you need legal advice that is specifically tailored to fit your needs. Our Hollingsworth & Zivitz, PC education team is here to provide you with the advice you need to make decisions that will have a lasting impact on your child's life.

### **SECTION 504 – General Information**

Under Section 504 of the Rehabilitation Act, which is a federal civil rights law, parents of children with special needs, which range from ADHD to paralysis, are entitled to challenge their child's accommodations if they believe it is inappropriate to meet their child's needs.

In situations where a parent has been unable to work with a school to get appropriate accommodations for their child, a parent has the right to request a hearing to resolve the disagreement with the school regarding the child's disability, identification, evaluation, eligibility, placement, accommodations, services, or reimbursement of services.

### **SECTION 504 HEARING – FAQs**

#### **Should I retain an attorney for a Section 504 hearing?**

The law does not require parents to hire an attorney to pursue a due process case and many parents try to navigate this system on their own. However, it may be wise to consider hiring an attorney experienced in this area. Federal education law is a very complex field with both federal and state laws that may effect a hearing officer's decision. An attorney trained in education law can be very helpful in guiding parents through the minefield of statutes, regulations, and case law that surrounds this field. However, it is very important that the attorney that is hired is one who is trained in education law and has worked in the area of special education. We advise that you ask whomever you retain about their background and whether or not they have pursued Section 504 Hearings, and how many, on behalf on parents and children in the past.

**I have heard you can get attorneys fees if successful, is this true?**

Under Section 504 a parent represented by legal counsel during the proceedings of a Section 504 hearing, appeal or civil court action is entitled to reimbursement of legal fees if the parent ultimately prevails. When there are a number of issues in a case and the parent only prevails on a few of those issues there are situations where schools argue for a reduction in the payment of the attorney fees, given that the Plaintiffs often do not win on every single issue in litigation.

**How do I request a Section 504 Hearing?**

A Section 504 Hearing request is submitted in the form of a formal letter written by either you or your attorney stating the statutes violated and the issues to which the Hearing Officer will be asked to decide. This letter is provided to your school's principal and then an Hearing Officer is appointed by the school district.

**What happens after a request is made and the Hearing Officer is appointed?**

The hearing officer will contact the school and your attorney to set up a time for a pre-hearing conference, most often this is done in the form of a conference call. At that conference the issues are clarified and formalized and dates for discovery and the hearing are set. The conference call includes all the parties involved in the due process matter, the parent(s), school's representative(s), school's attorney, your own attorney and the hearing officer.

After the conference call both the parents and the school will prepare their case for hearing. My office will give you "homework assignments" to help me prepare your case for hearing. This is helpful to me, as no one will know your case and the facts better than you do, and it helps keep your legal fees lower.

**What is mediation and is it an option?**

Mediation can be good in complex education situations involving multiple issues or litigation. It is a process in which the parties with or without their attorneys sit down with a neutral party (the mediator) to discuss the disagreements between the parents and the school regarding the child's disabilities.

**Do we need witnesses or experts?**

Generally yes. While the parents have the most in-depth knowledge of their child's case, in most situations the debate is over your child's medical, physical, psychological, and intellectual needs. For instance, if your child has a bi-polar disorder and the school is failing to provide adequate programming, a good behavior modification plan and accommodations – it is important that you have a pediatrician, psychiatrist, or other professional that is aware of your child's needs and can help advise the hearing officer as to what is needed and what is appropriate. If you have a child with autism, who is 4 or 5 year old, and you are requesting that ABA therapy be part of his or her education, it is essential to be able to have supporting experts to testify as to your child's specific and individual needs.

**How far back can we go with my child's records when showing the school's history of failure?**

Section 504 has no statute of limitations, however State law places a 10 year statute of limitations on federal laws with no time limitation.

**What happens at the Section 504 Hearing?**

A Due Process Hearing is like a "mini-trial." Each side presents an opening statement and calls witnesses. The witnesses include school personnel, administrators, physicians or psychologists, therapists, and parents. Each side calls their own witnesses and illustrates to the hearing officer their view of the case.

**What happens after the hearing?**

At the end of the hearing, the hearing officer will state when the decision will be made and state that it will be mailed to the attorneys for both sides. Once we receive the decision we will notify you. Each party has a right to appeal the decision. Any appeal must be filed in Federal Court within 20 days. A successful appeal will have to show that the hearing officer's decision was one of the following:

- (1) Arbitrary and capricious;

- (2) An abuse of discretion;
- (3) Contrary to law, contrary to a constitutional right, power, privilege or immunity;
- (4) In excess of the jurisdiction of the independent hearing officer;
- (5) Reached in violation of an established procedure, [or]
- (6) Unsupported by substantial evidence.