

SECTION 504/ADA – COMPLAINT AND DUE PROCESS PROCEDURES

If a person believes that s/he has been discriminated against on the basis of his/her disability, the person may utilize the following complaint procedures as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), parents and students will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation or misapplication of Section 504. In addition, students and their parents will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights. Finally, students and parents will be advised of their right to request a due process hearing before an Impartial Hearing Officer (IHO) regarding the identification, evaluation or educational placement of persons with disabilities, and their right to examine relevant education records.

The following person is designated as the District's Section 504/ADA Compliance Officer) ("District Compliance Officer"):

Susan Wooton
1059 Red Drive, Traverse City, MI 49686
(231) 421-5905
susan.wooton@greenspireschool.org

Building principals shall serve as Building Section 504/ADA Compliance Officers ("Building Compliance Officers").

Internal complaints and requests for due process hearings must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint or the request for a hearing, and offer possible solutions to the dispute. The complaint or request for due process hearing must be filed with a District Compliance Officer within the time limits specified below. The District's Compliance Officer is available to assist individuals in filing a complaint or request for due process hearing.

Procedural Information and Rights

In accordance with various Federal laws (including Section 504, the Americans with Disabilities Act of 1990, as amended ("ADA"), FERPA, and Title VII), the following procedural safeguards will be provided with respect to decisions or actions regarding the identification, evaluation, educational program or placement, or content of a Section 504 Plan of a student who is or may have a disability under Section 504, but does not also qualify under the IDEA:

- A. students with disabilities have the right to take part in, and receive benefits from, public education programs without discrimination because of their disabilities;
- B. parents have the right to be advised of their rights under Section 504;
- C. parents have the right to receive written notice of any decision regarding the identification, evaluation, or educational placement of their child;
- D. parents have the right to have their child receive a free appropriate public education ("FAPE");

This includes the right to be educated with students without disabilities 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 students without disabilities are met.

- E. parents have the right to have their child educated in facilities and receive services comparable to those provided to students without disabilities;
- F. 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;
- G. parents have the right to have their child transported in a non-discriminatory manner;

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

- H. parents have the right to place their child in a private school or alternative educational program;

However, if the District 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, the District is not required to pay for the student's education at the private school or alternative program, including costs associated with transportation.

- I. parents have the right to have their child given an equal opportunity to participate in nonacademic and extracurricular activities offered by the District;
- J. 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, and educational placement;
- K. parents have the right to obtain, at their own expense, an independent educational evaluation of their child;
- L. parents have the right to obtain copies of education records at a reasonable cost unless the fee would effectively deny the parents access to the records;
- M. parents have the right to a response from the District to reasonable requests for explanations and interpretations of their child's education records;
- N. parents have the right to receive all information in the parents' native language and mode of communication;
- O. parents have the right to periodic re-evaluations and an evaluation before any significant change in placement;
- P. 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 the District refuses to amend the record(s), the parents have the right to request a hearing and/or to attach to the record(s) a statement of why they disagree with the information it contains.

- Q. parents have the right to request mediation or an impartial due process hearing related to decisions or actions concerning their child's identification, evaluation, or educational placement;
- R. parents have the right to file an internal complaint;
- S. parents have the right to be represented at any point in the process by an attorney;
- T. parents have the right to recover reasonable attorney fees as authorized by law (i.e., if the parents are successful on their due process claim);
- U. parents have the right to be notified of their Section 504 rights:
 - 1. when evaluations are proposed or refused;
 - 2. when consent for an evaluation is withheld;
 - 3. when eligibility is determined;
 - 4. when a Section 504 Plan is proposed or refused;
 - 5. before there is significant change in the Section 504 Plan.

Internal Complaint Procedure

An internal complaint may be filed by a student parent, employee, or visitor when s/he/they believe that a violation, misapplication or misinterpretation of Section 504 has occurred. Additionally, the following procedure may be used for any disagreement on the part of a student or parent with respect to actions regarding the identification, evaluation, or educational program or placement of students who are identified as having a disability or believed to have a disability pursuant to Section 504, and are not eligible under the IDEA. Except in cases of alleged differential discipline on the basis of disability, if a manifestation determination has been conducted for a possible disciplinary change in placement and the determination is made that the misconduct in question was not caused by the student's disability or by a failure to implement the student's 504 plan, the internal complaint procedure may not be used to challenge application of the Student Code of Conduct to students with disabilities. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights or requesting a due process hearing.

Step 1 Investigation by the Building Compliance Officer: A student or parent may initiate an investigation by filing a written internal complaint with the Building Compliance Officer. (In the event the complaint is about a District level policy or action, or involves multiple buildings, the complaint should be filed with the District Compliance Officer, who will in turn assign the investigation to an appropriate Building Compliance Officer or program/policy designee. **See attached list of names, titles and contact information for Building Compliance Officers and the District Compliance Officer.**) The complaint should fully describe the circumstances giving rise to the dispute and how the child is adversely affected. The complaint must be filed as soon as possible, but not longer than thirty (30) calendar days after disclosure of the facts giving rise to the complaint. The Building Compliance Officer shall conduct an impartial investigation of the complaint. As part of the investigation, the Building Compliance Officer shall give both the complainant and any party(ies) against whom the complaint has been lodged the opportunity to identify witnesses and offer other evidence regarding the complaint. The investigation shall be completed within fifteen (15) school days of the written complaint being filed. The Building Compliance Officer will notify all parties in writing of his/her decision and forward the decision to the District Compliance Officer.

Step 2 Appeal to the District Compliance Officer: If the complaint is not resolved satisfactorily at Step 1, the student or parent may appeal the Building Compliance Officer's decision in writing to the District Compliance Officer. The appeal must be made within five (5) school days following receipt of the Building Compliance Officer's decision. The District Compliance Officer will review the case, and may conduct an informal hearing (Note: There may be situations in which it might be inappropriate to have the parties present at the same time, such as having an alleged victim of harassment meet with the alleged harasser). The District Compliance Officer will notify all parties in writing of his/her decision within ten (10) school days of receiving the appeal.

If the internal complaint procedure concludes with a finding of discrimination on the basis of disability the District Compliance Officer will be responsible for carrying out any steps necessary to redress any discrimination found to have occurred and to prevent its recurrence, including steps to remedy its effects on the complainant and others as appropriate.

Step 3 If the complaint is not resolved satisfactorily at Step 2, the student or parent may request a due process hearing, provided the complaint involves an issue related to the identification, evaluation, or placement of the student (see below).

Due Process Hearing

- A. A due process hearing may be requested within two (2) years from the date the parent knew or should have known of the alleged violation. When a request for a due process hearing is received, the aggrieved party will have the opportunity to receive a hearing conducted by an impartial hearing officer (“IHO”) (i.e., by a person not employed by the Board of Education or the ISD in which the District is located, 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. The District will maintain a list of trained IHOs that may include IDEA hearing officers, attorneys, and Directors of Special Education outside the District. The District Compliance Officer will appoint an IHO from that list, and the costs of the hearing shall be borne by the District. 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:
 - 1. 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;
 - 2. the right to present evidence, and confront, cross-examine and compel the attendance of witnesses;
 - 3. the right to a written or electronic verbatim record of such hearing; and
 - 4. the right to written findings of fact and the reasons for the decision.
- D. The IHO shall conduct the due process hearing within a reasonable period of time (i.e., not to exceed ninety (90) calendar days of 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:
 - 1. a statement of time, place and nature of the hearing;
 - 2. a statement of the legal authority and jurisdiction under which the hearing is being held;
 - 3. a reference to the particular section of the statutes and rules involved;
 - 4. a statement of the availability of relevant records for examination;
 - 5. a short and plain statement of the matters asserted; and
 - 6. 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.

OCR Complaint

At any time, if a student or parent believes that s/he has been subjected to discrimination based upon his/her disability in violation of Section 504 or the Americans with Disabilities Act of 1990, as amended ("ADA"), the individual may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The OCR can be reached at:

U.S. Department of Education
Office for Civil Rights
Cleveland Office
600 Superior Ave. East, Suite 750
Cleveland, Ohio 44114-2611
(216) 522-4970
FAX: (216) 522-2573
TDD: (216) 522-4944
E-mail: OCR.Cleveland@ed.gov
Web: <http://www.ed.gov/ocr>

Except in extraordinary circumstances, the OCR does not review the result of individual placement and other educational decisions, so long as the District complies with the "process" requirements of Subpart D of Section 504.

Prohibition Against Retaliation

The Board will not discriminate 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 Section 504 or the ADA, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by Section 504 or the ADA.