



# YI HWANG ACADEMY *of* LANGUAGE EXCELLENCE

## **504 Policy for YHALE**

### Section 504 Policy

It is the intent of YHALE to ensure that students who are disabled according to the definition in Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be considered disabled under this policy even if they do not require services pursuant to the Individuals with Disabilities Education Act (Exceptional Student Education).

Tomiko Park is the building level coordinator of Section 504 and is responsible for monitoring compliance of all Section 504 requirements.

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### I. Overview

A. Definition: A 504 plan is a school-created plan that provides support and services for students with disabilities in Georgia. The plan is based on Section 504 of the Rehabilitation Act of 1973, a civil rights law which protects students with disabilities from discrimination and ensures they have equal access to education in public and private programs and activities that receive financial assistance from the federal government. Section 504 guarantees students with disabilities a free and appropriate public education (FAPE). Compliance for Section 504 is overseen by the U.S. Department of Education Office for Civil Rights (OCR).

### B. Whom Does Section 504 Protect?

Section 504 protects a student or individual with a disability. Section 504 defines a student with a disability as a student who:

- 1)has a physical or mental impairment that substantially limits a major life activity.
- 2)has record of such an impairment; or
- 3)is regarded as having such an impairment.

This includes any mental or physical impairment that substantially limits one or more major life activities including:

- \*caring for one's self
- \*performing manual tasks
- \*walking
- \*seeing
- \*hearing
- \*breathing
- \*working
- \*learning

A child has the right to a 504 plan if:

- They have any disability, have a record of a disability, or are regarded as having a disability, AND
- The disability interferes with their ability to learn in a general education classroom.

#### C. What Ages Does Section 504 Cover?

“With respect to public preschool, elementary, secondary, or adult educational services, a disabled person is qualified for protection under Section 504 if he or she is (i) of an age during which nondisabled persons are provided with such services; or (ii) of any age during which it is mandatory under state or federal law to provide such services to a disabled person within the public school system.” [34CFR 104.3 (k) (2)]

#### D. Purpose of Section 504 At School: “Leveling the Playing Field”

The goal of Section 504 is to “level the playing field” ensuring that students with a disability have the opportunity to participate in and access the general education curriculum and extracurricular activities to the same extent as an average, non-disabled, peer. The law prohibits the discrimination (e.g. denial of participation or enjoyment of the benefits offered by public school programs) because of a child’s disability.

For nondiscrimination to occur, students with a Section 504 Plan must receive appropriate accommodations that level the playing field and ensure equal access to the general education curriculum. Accommodations provided have a direct relationship to evaluation data demonstrating disability-related need so that over-or-under accommodating does not occur, as the goal is to “level the playing field.” A student with a disability, who is covered solely under Section 504, and not IDEA, is entitled to appropriate accommodations, aids, benefits and services. If evaluation data reveal that a student is eligible for a Section 504 Accommodation Plan, “placement” on a Section 504 Plan typically means that instruction will continue in the regular education classroom with individually planned accommodations. Furthermore, there is generally no modification of curriculum for Section 504 students.

## II. General Guidelines

The Office of Civil Rights (OCR) has stated that the decision of whether a particular impairment substantially limits a major life activity for a child is a determination that is to be made by a school district not OCR.

Measuring learning success is a difficult task. OCR establishes that the standard for substantial limitation of a student's ability to learn by inference, opening that "by definition, a person who is succeeding in regular education does not have a disability which substantially limits the ability to learn."

Teams should determine eligibility based on current performance and avoid basing decisions on the prediction of future problems such as transition from one academic setting to another (i.e. elementary to middle school or middle to high school). Teams should focus on equity not advantage. Teams should not focus on one indicator such as semester grades to determine if a student is substantially limited in the major life activity of learning. Rather, teams should compare student performance to local (district), state, and national averages. Teams should consider, among other things, standardized test scores from state mandated assessments (i.e. Milestones) and national norm referenced tests to evaluate the student's academic performance level. When faced with students who are performing in the average range on standardized tests, but earning failing grades, the team may need to further investigate the reasons behind the student's failing grades and consider appropriate interventions. As an example, if a student has failing grades due to poor attendance, the team should develop interventions to address the student's poor attendance prior to consideration of eligibility for a Section 504 Accommodation Plan. Teams should be careful to assess whether a student truly has a qualifying disability. Recognize "other factors" that could adversely affect student learning, such truancy, and limited English proficiency.

## III. Procedures

### A. Referral: Type 1 Eligibility Consideration

Type 1 "Clearly" physical issues and/or temporary physical issues which primarily affect caring for oneself, or another major life activity, and not noticeably affecting learning.

A parent, guardian, teacher and/or other member of the school staff may raise their concern about a student's unique need for support. In order to respond adequately to the needs of students, the first step should be a meeting between the students' parents and the teacher. Section 504 Plans may be developed for students with a disability, when there is sufficient medical documentation indicating that there is a need for such services. as stated in the policy, it is more a record of impact of disability or disabling condition.

Type 1 Students with medical disorders (e.g. diabetes, seizure disorder, allergies, epilepsy, asthma, orthopedic impairment, etc.) typically will fall under this category and a Health Care Plan may be developed as part of the 504 Plan to sufficiently address their physical needs. Staff should follow the RTI/SST intervention process.

Reminder: accommodations and services provided must be related to the identified disability.

Parents or guardians:

- Have the right to give consent or deny the evaluation of a child.
- Have the right to make changes to the 504 Plan.
- Plans are reviewed annually and a reevaluation is done at least every three years, unless a guardian consents to continue without a new evaluation.
- Have the right to see all of their child's records and make a request

#### B. Referral: Type 2 Eligibility Consideration

Type 2 - A pattern of student performance which may indicate the presence of a physical or mental impairment that substantially limits learning or equal access to the school environment that has not been successfully responsive to regular education strategies and interventions using the Problem Solving/Response to Intervention (RTI/SST) model. Under Type 2, if interventions do not result in sufficient success compared with an average student, a Section 504 evaluation is considered in order to provide sufficient information to the Student Support Team to make an eligibility determination. To refer for a Section 504 evaluation, district personnel must have reason to believe that a student is having problems that substantially affect the student's overall learning or other life activities at school when compared with that of an average student. The school has the obligation to attempt to address these types of problems through documented school-based interventions prior to conducting an evaluation. These intervention procedures will apply to circumstances involving an identified physical or mental impairment, as well as those where there is a suspicion of an impairment.

#### C. Collaborative Problem Solving

Schools have the responsibility to address the needs of struggling learners pursuant to Georgia law. Students may have academic, behavior and/or attendance difficulties for a variety of reasons, many of which may be unrelated to a disability. A RTI/SST process will help to differentiate students who require more direct instruction from those with a disability substantially limiting their learning. SST/RTI is a fluid process that evaluates the impact of intervention strategies and modifies them as needed based on the identified problem.

#### D. Evaluation

School districts must conduct Section 504 evaluations for students suspected of having a disability, following the established policies and procedures noted in the referral section. The Section 504 evaluation must take place prior to a Section 504 eligibility decision. The evaluation goal is to provide sufficient information to the eligibility team from a variety of sources so that the possibility of error in classification is minimized. At the same time, the goal of the evaluation activities is to provide information describing the needs of the student (e.g. Does the suspected disability impact the student's successful access to the school education program and its activities compared to an average student?). This information will allow the Eligibility Team to determine appropriate eligibility and may form the basis for an appropriate accommodation plan.

Evaluation under Section 504 may not require formal testing to determine eligibility. Common information/data for a Section 504 evaluation might include the student file, student's grades,

disciplinary referrals, health information, communication surveys, parent information, standardized test scores, a review of student's record and work sample, direct observation in school, norm referenced rating scales, prescriptive assessment results, and interviews with the student, parent, and school personnel.

**For Type 1 referrals,** informal evaluation procedures will generally be the most common. If medical information is needed, it is requested of the parent. If the parent cannot provide such medical data and the team deems such medical data as necessary, the school district will facilitate obtaining the medical data.

**For Type 2 referrals,** prescriptive/psychological assessment may be necessary to determine if the areas of concern are having a significant impact on the student's learning and which have not been sufficiently responsive within the RTI/SST process.

The Office of Civil Rights (OCR) states that the decision of whether a particular impairment substantially limits a major life activity for a student is a determination that should be made at a school's CARE Team. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The ADA Amendments Act of 2008 states that the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measure, such as medication, low-vision devices, hearing aids and mobility devices, with the exclusion of ordinary eyeglasses and contact lenses.

School districts must no longer consider the current use of "mitigating measures" by a student in determining whether the student has a disability under Section 504 based on the ADA Amendment Act of 2008. Mitigating measures are devices or practices that a person uses to correct or reduce the effects of that person's mental or physical impairment.

### Initial Eligibility

What steps should be taken in determining an initial eligibility for a Section 504 Plan?

Remember: The Eligibility Team process determines all initial eligibility and dismissal decisions for Section 504.

Eligibility team member:

School Counselor\*

SPED Director

Administrator

LEA (if appropriate)

School Psychologist

School Social Worker (if appropriate)

Parent(s)

Determine additional committee members (including those who are knowledgeable about the student's academic progress and functioning in the academic setting, those who are knowledgeable about the assessment procedures, etc.).

\*School Counselor (or LEA ) is generally the facilitator for this meeting.

#### Prior to the Eligibility meeting:

1. Send notice of meeting to parent/guardian.
2. Collect or request available documentation relative to the impairment.

Type 1 (Students with physical issues)

Health Care Plan

Medical records

Other relevant information

Type 2 (Students displaying difficulties with major life activities which include, but are not limited to, learning, thinking, concentrating, reading, vision, hearing, depression, attention, etc.)

RTI/ SST Documentation and portfolio

Prescriptive/ Psychological assessments

Norm referenced behavior rating scales.

Other relevant information

3. Collect current student performance data and information.
4. School nurse should be consulted to represent the medical needs of the student if appropriate.

#### At the meeting:

1. Review available information regarding the student's current functioning and any additional relevant data.
2. Use the problem-solving model to identify the negative impact on performance (Gap Analysis) and its causal relationship to the impairment.
3. Determine if there is an impairment that is having a direct and substantial negative impact on the student's academic performance as compared to the average student in the general population or is

preventing the student from having equal access to the school environment and/or activities.

#### Guidelines for Determining Substantial Limitations

1. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student.
2. Consider a student's response to interventions. Make data driven decisions when determining eligibility. If a student is responding to intervention, then he or she may not meet the substantial limitation requirement for a Section 504 Accommodation Plan.
3. Students are only eligible under Section 504 if their disability prevents them from benefiting from the school's programs and activities as compared to the average student in the general population.
4. The ADA Amendment Act (2008) states that for eligibility determination, whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, low-vision devices, hearing aids, and mobility devices, with the exclusion of ordinary eyeglasses and contact lenses.

There is no basis for an accommodation plan if a student's physical or mental impairment currently does not substantially limit a major life activity. This means some students who are eligible under Section 504 will need to be monitored and will not have an actual written accommodation plan. In such cases, review the specific procedures below.

#### Eligibility Determination

If the student has both an impairment and evidence that it is having a direct and substantial negative impact on the student's academic performance or preventing the student from having equal access to the school environment and/or activities:

- Complete the appropriate 504 forms (Eligibility Form, Accommodation Plan, and if necessary Test Accommodation Sheet) and distribute as indicated.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of

the Rehabilitation Act of 1973.

If the student has an impairment, yet there is no evidence that it is currently having a direct and substantial negative impact on the student's academic performance or preventing the student from having equal access to the school environment and/or activities (for example, a student who has an impairment which is being successfully alleviated by mitigating measures):

- 3 Complete the 504 Eligibility Form documenting the impairment.
- In this situation, students would not have a written Accommodation Plan but should be monitored to ensure that the impairment does not substantially impact their academic performance or prevent them from having equal access to the school environment and/or activities. The Eligibility Team should determine the appropriate frequency and method for monitoring the student's progress (which is most often facilitated through quarterly progress reports). If a pattern of declining performance develops, the Eligibility Team should review the relevant data and consider implementing the SST/RTI process.

- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

If an impairment is episodic or in remission, it should be considered a disability if it would substantially limit a major life activity when active (i.e. sickle cell anemia, cancer, depression, etc.). In such cases:

- Complete the 504 Eligibility Form documenting the impairment.
- If there is no evidence that it is currently having a direct and substantial negative impact on the student's academic performance or preventing the student from having equal access to the school environment and/or activities the student would not have a written Accommodation Plan but should be monitored.
- If there is evidence of a direct, current, and substantial impact an Accommodation Plan should be written.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

If the student has no evidence of an impairment:

- Complete the Informed Refusal To Take A Specific Action Regarding Section 504 of the Rehabilitation Act of 1973 form and distribute as indicated.
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

After the meeting:

1. Ensure that the student's current teachers (and significant stakeholders, as appropriate) are aware of the meeting outcomes and, if necessary, provided with a copy of the 504 Plan and/or Test Accommodations).
2. If the student is found eligible, make the appropriate entries on the electronic student record keeping system,
3. Please file original documents (e.g., Eligibility Team notes, 504 Plan, Documentation of impairment, etc.) in the student records.

Please Note: If a Section 504 student is subsequently found eligible for an Exceptional Student Education (ESE) program, then the 504 plan accommodations will be incorporated into the student's Individual Education Plan (IEP). The "notes section" of the IEP indicates that the student was previously provided accommodations on a 504 plan.

#### F. Accommodation Plan

Accommodation Plans are one of the keys to delivering effective education programs for qualified students with a disability. These involve a wide range of strategies and supports that accommodate students with limitation(s) resulting from their disability. The goal of accommodations is to "level the playing field" ensuring that students with a disability have the opportunity to participate and access the

general education curriculum and extracurricular activities to the same extent as an average, non-disabled peer. In accordance with Section 504 guidelines, the school is required to provide necessary services and related aides. Throughout this manual, these services and related aides will be referenced as “reasonable accommodations”. Accommodations a student will receive are individualized. Furthermore, they have a direct relationship to data that demonstrates the disability related need. It is critical that appropriate data be collected to determine student needs:

- Accommodations must be based on information and data used in the evaluation and eligibility determination process.
- The plan should indicate how, where, and by whom the accommodations will be provided.
- The plan may include accommodations for the school building or classroom, extracurricular activities, administrative adjustments, academic and instructional accommodations, and/or testing accommodations.
- The same types of accommodations should be provided for both classroom assignments and assessments. Accommodations for testing, both classroom and standardized, must be addressed when developing the plan and these testing accommodations specified in the plan. Any approved standardized testing accommodations (i.e., Milestones,) must also be consistent with what is outlined in the test administration manual.
- Types of accommodations:

\*To be eligible for accommodations on standardized students must also require and use testing accommodations in the classroom setting.

#### CLASSROOM ACCOMMODATIONS TESTING ACCOMMODATIONS\*

Instruction Changes to Presentation Format

Organization/Management Change to Test Procedures

Environmental Change to Response Mode

Materials/Equipment Change in Setting

#### G. 504 Review Procedures

Remember: the Eligibility team should facilitate all initial and dismissal meetings for Section 504 eligibility determination.

The annual review meeting should be conducted on or before the anniversary date of the preceding plan (original or review). The review sheet is designed to be used for subsequent years following the original eligibility. If significant changes occur (e.g., change of schools, expulsion, serial suspensions that exceed ten days in a school year, and/or significant change in the delivery of educational accommodations), the development of a new plan should be considered.

Prior to the meeting:

1. Send notice of meeting to parent/guardian
2. Determine the appropriate team members. If considering possible dismissal, this committee will be the Eligibility Team. If it appears as though the Section 504 Plan will continue, a team of those who are knowledgeable about the student's academic progress and functioning in the academic setting will meet to review and revise the current 504 Plan. If necessary, the school nurse should be consulted to represent the medical needs of the student.
3. Collect or request school performance data necessary to determine the student's continued need for a Section 504 Plan/Accommodations.

At the meeting:

1. Review pertinent information regarding the impairment and the student's academic progress and functioning in the academic setting.
2. Determine if the student continues to be in need of Section 504 Accommodations. If the team determines that the student no longer needs accommodations, remember to consider the effects that the accommodations may have had on his or her academic performance. For example, if a student's "average functioning" is directly related to the accommodations provided by the Section 504 Accommodation Plan, then the student should continue to receive these accommodations.

If YES:

- Complete the appropriate 504 review form
- Distribute the 504 review form and Accommodation Plan to appropriate stakeholders as necessary
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.

If NO:

- Complete the appropriate 504 review form
- Give parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.
- Monitor student progress and if a pattern of declining performance develops, the appropriate team (i.e., RTI, SST, Eligibility) should review the relevant data and consider the RTI/ SST process.

After the meeting:

1. Notify the parent/guardian (if not present). Send parent/guardian a copy along with Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973.
2. Ensure that the student's current teachers (and significant stakeholders, as appropriate) are aware of the meeting outcomes and provided with a copy of the 504 Plan and Test Accommodations.
3. Please file original documents (Eligibility Team notes, 504 Plan, Documentation of impairment, etc.) in the "purple" folder in the student records.
4. If the student is found to no longer be in need of an accommodation plan, make the appropriate entries on the electronic student record keeping system.

## H. Dismissal

Remember, the Eligibility Team should facilitate all dismissal meetings for Section 504. Dismissals from Section 504 eligibility should be considered when a student no longer has an identified impairment.

## I. Section 504 Transfer Procedures

After reviewing the existing 504 Plan, determine if the plan can be implemented as written or if an immediate Eligibility Team meeting is necessary to discuss the appropriateness of the accommodations.

When reviewing the available student information, determine if the documentation of the impairment appears sufficient; provide appropriate accommodations from the existing plan and collect relevant information for use in the review meeting. If the documentation of the impairment is not sufficient, appropriate prescriptive assessment(s) should be considered and utilized in determining need for interventions/accommodations or dismissal.

## J. Temporary Section 504 Impairment

If a temporary impairment is physical (e.g. broken dominant hand) and will substantially limit a major life activity (e.g. performing manual tasks) Section 504 eligibility can be established and a Section 504 Accommodation Plan can be written. During the eligibility meeting, a date for review and possible dismissal should be established based upon the estimated length of the temporary impairment.

## K. Discipline/Manifestation Determination

Discipline practices for a student with a disability should be determined on a case-by-case basis. Under each circumstance, it is important that students with disabilities should not be discriminated against nor should they be punished for behavior that was caused by or was a “manifestation” of their disability. A manifestation determination must be conducted when a Section 504 eligible student commits a violation (or violations) which results in excess of 10 cumulative days of suspension (including in-school suspension if student is removed from the educational program and/or there’s failure to provide services as specified in the student’s accommodation plan) or when expulsion is being considered.

At this meeting, the team (including the parents/guardians, those who are knowledgeable about the, and those who are knowledgeable about the assessment procedures):

- Review student’s academic progress and functioning in the educational setting, student records, and any additional pertinent data.
- Will determine if the student’s misconduct was a manifestation of his/her disability.
- The Team decision is documented in the students records and appropriate staff.
- Provide parents with a copy of the Notice to Parents - Rights Afforded By Section 504 of the Rehabilitation Act of 1973 and Procedural Safeguards For Section 504.

If it is determined that the misconduct is related to the disability, a review meeting needs to be conducted with parent involvement to consider if the Section 504 Accommodation Plan should be modified and/or additional assessments are needed.

If it is determined that the misconduct is not related to the disability, the school may initiate normal disciplinary procedures.

#### IV: PROCEDURAL SAFEGUARDS FOR SECTION 504

##### General Information

Established procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students with a disability shall include the following as indicated under Section 504

- Notice
- An opportunity for the parents or guardian to examine relevant records
- An impartial hearing with the opportunity for participation by the student's parents or guardian
- A review procedure

YHALE must annually do the following:

- Identify and locate all children in YHALE who are eligible under Section 504 and are not receiving a public education
- Notify students with disabilities and their parents or guardians of the district's responsibility
- Review current 504's to discuss effectiveness

##### Provision of Notice

To be in compliance with Section 504's notice provision, educational institutions must provide public notification of their policies of nondiscrimination, identify the person who coordinates compliance within the institution, and adopt grievance procedures.

Procedural safeguards are established to ensure that parents and guardians are fully informed concerning decisions involving their child and to inform them of their rights. These safeguards include the following:

- Taking part in and receiving benefits from public education programs without discrimination because of disability
- Receiving notice of rights under this federal law
- Receiving notice with respect to identification, evaluation, or placement
- Receiving a free appropriate public education with non-disabled students to the maximum extent appropriate (it also includes the right to have the school make reasonable accommodations to allow an equal opportunity to participate in school and school-related activities)
- Being educated in facilities and receiving services comparable to those provided to non-disabled students
- Having the right to an appropriate education designed to meet individual educational needs as adequately as the needs of non-disabled students
- Having evaluation, educational, and placement decisions made based on a variety of information sources and by a group of persons, including persons who know the student, the evaluation data, and placement options

- Having the right to an equal opportunity to participate in nonacademic and extracurricular activities offered by the school
- Examining all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement

### **YHALE SECTION 504 PROCEDURAL SAFEGUARDS** Overview: Any

student or parent or guardian ("grievant") may request an impartial hearing due to the school system's actions or inactions regarding your child's identification, evaluation, or educational placement under Section 504. Requests for an impartial hearing must be in writing to the school system's Section 504 Coordinator; however, a grievant's failure to request a hearing in writing does not alleviate the school system's obligation to provide an impartial hearing if the grievant orally requests an impartial hearing through the school system's Section 504 Coordinator. The school system's Section 504 Coordinator will assist the grievant in completing the written Request for Hearing. Hearing Request:

#### **The Request for the Hearing must include the following:**

- a. The name of the student.
- b. The address of the residence of the student.
- c. The name of the school the student is attending.
- d. The decision that is the subject of the hearing.
- e. The requested reasons for review.
- f. The proposed remedy sought by the grievant.
- g. The name and contact information of the grievant. Within 10 business days from receiving the grievance's Request for Hearing, the Section 504 Coordinator will acknowledge the Request for Hearing in writing and schedule a time and place for a hearing. If the written Request for Hearing does not contain the necessary information noted above, the Section 504 Coordinator will inform the grievant of the specific information needed to complete the request. All timelines and processes will be stayed until the Request for Hearing contains the necessary information noted above. Mediation: The school system may offer mediation to resolve the issues detailed by the grievant in his or her Request for Hearing. Mediation is voluntary and both the grievant and school system must agree to participate. The grievant may terminate the mediation at any time. If the mediation is terminated without an agreement, the school system will follow the procedures for conducting an impartial hearing without an additional Request for

#### **Hearing. Hearing Procedures:**

- a. The Section 504 Coordinator will obtain an impartial review official who will conduct a hearing within 45 calendar days from the receipt of the grievant's Request for Hearing unless agreed to otherwise by the grievant or a continuance is granted by the impartial review official. b. Upon a showing of good cause by the grievant or school system, the impartial review official, at his or her discretion, may grant a continuance and set a new hearing date. The request for a continuance must be in writing and copied to the other party.

- c. The grievant will have an opportunity to examine the child's educational records prior to the hearing.
- d. The grievant will have the opportunity to be represented by legal counsel at his or her own expense at the hearing and participate, speak, examine witnesses, and present information at the hearing. If the grievant is to be represented by legal counsel at the hearing, he or she must inform the Section 504 Coordinator of that fact in writing at least 10 calendar days prior to the hearing. Failure to notify the Section 504 Coordinator in writing of representation by legal counsel shall constitute good cause for continuance of the hearing.
- e. The grievant will have the burden of proving any claims he or she may assert. When warranted by circumstances or law, the impartial hearing officer may require the LEA to defend its position/decision regarding the claims (i.e. An LEA shall place a disabled student in the general educational environment operated by the LEA unless it is demonstrated by the LEA that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. §104.34). One or more representatives of the school system, who may be an attorney, will attend the hearing to present the evidence and witnesses, respond to the grievant testimony and answer questions posed by the review official.
- f. The impartial review official shall not have the power to subpoena witnesses, and the strict rules of evidence shall not apply to hearings. The impartial review official shall have the authority to issue pre hearing instructions, which may include requiring the parties to exchange documents and names of witnesses to be present.
- g. The impartial review official shall determine the weight to be given any evidence based on its reliability and probative value.
- h. The hearing shall be closed to the public.
- i. The issues of the hearing will be limited to those raised in the written or oral request for the hearing.
- j. Witnesses will be questioned directly by the party who calls them. Cross-examination of witnesses will be allowed. The impartial review official, at his or her discretion, may allow further examination of witnesses or ask questions of the witnesses.
- k. Testimony shall be recorded by court reporting or audio recording at the expense of the LEA. All documentation related to the hearing shall be retained by the LEA.
1. Unless otherwise required by law, the impartial review official shall uphold the action of school system unless the grievant can prove that a preponderance of the evidence supports his or her claim.
- m. Failure of the grievant to appear at a scheduled hearing unless prior notification of absence was provided and approved by the impartial review official or just cause is shown shall constitute a waiver of the right to a personal appearance before the impartial review official.

**Decision:** The impartial review official shall issue a written determination within 20 calendar days of the date the hearing concluded. The determination of the impartial review official shall not include any monetary damages or the award of any attorney's fees.

**Review:** If not satisfied with the decision of the impartial review official, any party may pursue any right of review, appeal, cause of action or claim available to them under the law or existing state or federal rules or regulations.