

## **DISCIPLINE AND SECTION 504**

### **Section 504 Manifestation Determination Review (MDR) Process**

1. Students determined eligible under Section 504 may be disciplined to the same extent as their non-disabled peers, provided the disciplinary action does not amount to a change in placement.
2. If a 504 student is recommended for long-term suspension, or subject to a series of short-term suspensions that amount to more than ten (10) school days and constitute a change in placement, a 504 team must be convened to determine if the student's behavior that led to the out-of-school suspension is a manifestation of the student's disability.
3. If the 504 Team concludes that the behavior that led to the suspension is a manifestation of the student's qualifying disability, the student cannot be suspended and the student returns to placement as agreed to by school and family. At the manifestation determination review, the 504 Team should review any existing 504 Accommodations Plan to determine if changes are appropriate, or consider whether an Accommodations Plan is appropriate, if one does not already exist.
4. If the 504 team determines the behavior is not a manifestation of the student's disability, the student is subject to the same disciplinary action that any non-disabled student would receive for the same violation. Students eligible under Section 504 are entitled only to the same alternative learning services or alternative learning program offered to non-disabled students who are suspended.

### **SECTION 504 DUE PROCESS HEARING PROCEDURES**

**Right to Due Process.** In the event a parent or guardian [hereinafter "parent"] disagrees with an identification, evaluation, or placement decision under Section 504, the parent has a right to an impartial hearing.

**Requesting a Due Process Hearing.** To seek a due process hearing with regard to an identification, evaluation, or placement decision, the parent must submit a written request to the District 504 Coordinator. The written request may be made by contacting the 504 Coordinator: Kim McCormick at 910-362-0000. If the parent's intent to seek a due process hearing under Section 504 is not clear from the face of the request, the 504 Coordinator may contact the parent to clarify the request and ascertain whether the parent wishes to initiate a Section 504 Due Process Hearing.

504 Due Process Hearing: The Director of the school shall The District is not responsible for the costs of parent/guardian's legal counsel or any other parent representative or parent secured witness.

**Parent Participation & Representation.** A parent has the right to participate, speak, and present information at the due process hearing, and to be represented by legal counsel or any other type of advocate or representative of their choice at their expense. If a parent is to be represented by an attorney at the due process hearing, he or she must inform the 504 Coordinator and the Director of that fact in writing at least ten (10) calendar days prior to the hearing date. Failure to notify the 504 Coordinator and the Director of that fact in writing may cause the hearing date to be delayed.

**Scheduling and Pre-Hearing Procedures.** The Director shall schedule a Hearing date in writing at his or her earliest opportunity at a mutually agreeable time. The Director shall attempt to schedule the hearing within 45 days of the parent's request for a hearing.

**Conduct of Hearing.** The hearing shall be conducted in an informal, non-adversarial manner. Formal rules of evidence and civil procedure do not apply. The Director is not required to entertain any legal evidentiary objections to the admissibility, authenticity, or probative value of either oral testimony or documentary exhibits offered at the hearing. In the exercise of his or her discretion, however, the Director may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. The Director may consider any relevant evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious matters. The hearing shall be limited to issues raised in the hearing request and the Director shall exclude any issues that are not related to identification, evaluation, and placement under Section 504.

**Director's Decision.** Within thirty (30) days of the conclusion of the hearing, the Director will issue a written decision with findings of fact and conclusions of law. The Director must confine his or her orders and rulings to those matters that involve identification, evaluation, or placement of children under Section 504 and to the provisions of the regulations implementing Section 504.

**Review Procedure.** If not satisfied by the final decision, a parent may seek review of the hearing decision from the school board within thirty (30) days. The school board's decision will be a review on the record, which will include the written request for the hearing, the hearing transcript, any hearing exhibits, the Director's decision, the School's Procedures for Section 504 Due Process Hearings, any written argument provided by the Parent regarding the decision, and any additional written argument submitted by the school regarding the decision. The Board's decision may reverse the Director's decision if there was an error in the application of Section 504, an error of procedure that prejudiced the outcome of the hearing, the decision was arbitrary and capricious, or the decision was not supported by substantial evidence in view of the entire record. Substantial evidence refers to relevant evidence as a reasonable mind might accept as adequate to support a conclusion.