

## **Section 504/Title II (ADA) Complaint Procedure**

Challenge Charter Schools has adopted this internal complaint procedure for the prompt and equitable resolution of complaints alleging violations of Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 (ADA). Section 504 and the ADA provide that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a covered entity or be subjected to discrimination by such an entity. Accordingly, it is the policy of Challenge Charter Schools to not discriminate on the basis of disability. Challenge will investigate complaints and provide for prompt and equitable resolution of complaints that allege any action prohibited by Section 504 or Title II of the ADA.

The 504 Coordinator will receive complaints, whether verbal or written. If school staff or administrators who learn of complaints in forms other than writing, including but not limited to verbal, phone message, or email, they shall notify the 504 Coordinator without delay. Once a complaint has been received, the 504 Coordinator will study the complaint and conduct an investigation, which will consist of gathering information; interviewing witnesses, including but not limited to the complaining party, the alleged victim, and the subject of the complaint; and reviewing relevant documents. This investigation process will afford the complainant, the subject of the complaint, and other interested persons, if any, an opportunity to submit documents and information relevant to the consideration of and resolution of the complaint.

Following the investigation, the 504 Coordinator will promptly determine an equitable resolution, and will notify all parties in writing of its findings and any necessary corrective action. Among the options for necessary corrective action are the implementation of a 504 plan and training on disability and non-discrimination law. This notification shall be issued no later than 30 days from the date the Coordinator receives notice of the complaint. This timeline may be extended as reasonably necessary upon the Coordinator's written notification of such extension to the complainant and subject of the complaint.

Challenge will make all reasonable efforts to maintain confidentiality of the alleged victim and subject of the complaint. Challenge may not be able to preserve the confidentiality in all circumstances however, and will weigh the need for confidentiality against the seriousness of the alleged conduct and other relevant factors. Retaliation against any complainant or against any person who assists a complainant in his or her pursuit of a complaint under Section 504 or Title IX is prohibited. Challenge will take prompt responsive action if it learns of any retaliation.

During the pendency of the complaint Challenge will provide appropriate interim measures. These interim measures may include, but are not limited to, separating students in classrooms, counseling services, and assistance identifying an advocate to help secure additional resources or assistance.

## **Section 504 Due Process Procedure**

**Right to Due Process.** In the event a parent or guardian [hereinafter “parent”] wishes to contest an action or omission on the part of Challenge Charter School with regard to the identification, evaluation, or placement of a disabled child under § 504 of the Rehabilitation Act of 1973 (“§504”), the parent has a right to an impartial hearing before an impartial hearing officer. Omissions on the part of Challenge with regard to a disabled child might include, for example, Challenge’s failure to identify a child eligible for services under § 504. A child’s identification as eligible for services under § 504 is not an absolute prerequisite to the right to due process.

The parent must exercise the right to an impartial hearing by providing the written request for hearing (described below) within the state-law timeline for a special education due process hearing under the IDEA. In Arizona, the application of this rule means that requests for a Section 504 due process hearing must be made in writing within two years of Challenge’s action or omission.

**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 a licensed attorney at the due process hearing, he or she must inform Challenge’s § 504 Coordinator and the appointed hearing officer of that fact in writing at least seven (7) calendar days prior to the hearing date. Failure to notify the § 504 Coordinator and the appointed hearing officer of that fact in writing shall constitute good cause for a continuance of the hearing date. (See “Continuances” below).

**Initiation of Due Process Procedures.** A parent who wishes to challenge Challenge’s action or omission with regard to the identification, evaluation, or placement of a disabled child must submit a written Request for a Due Process Hearing to Challenge’s § 504 Coordinator. Such a written request must make clear that the parent is seeking a due process hearing under § 504 before an impartial § 504 Hearing Officer. If an intent to seek a due process hearing under § 504 is not clear from the face of a Request, Challenge’s § 504 Coordinator may contact the parent to clarify the Request and ascertain whether the parent wishes to initiate a § 504 due process hearing. The Coordinator may also assist the parent in clarifying any questions regarding due process rights under § 504.

**Appointment of a Hearing Officer.** Within fifteen (15) days of the date of receipt of a clear Request for a Due Process Hearing, Challenge will appoint an impartial Hearing Officer to preside over the hearing and issue a decision. The Hearing Officer will be hired by the District as an independent contractor at no expense to the parent. The Hearing Officer shall not be a current employee of Challenge. The Hearing Officer need not be an attorney, but shall be familiar with the requirements of § 504 and Challenge’s Hearing Procedures under §504. Challenge’s choice of an impartial Hearing Officer is final and may not be made an issue at the due process hearing,

since such an issue would not relate to the identification, evaluation, or placement of a disabled child under § 504. If a parent disputes the impartiality of the appointed Hearing Officer, he or she may raise such issue in a review of the Hearing Officer's opinion by a court of competent jurisdiction (See "Review Procedure" below), or in a complaint to the appropriate Office for Civil Rights regional office (See "Complaints to the Office for Civil Rights (OCR)" below).

**Scheduling of Hearing.** The appointed Hearing Officer shall issue an Order Setting Hearing Date to the parent and Challenge's § 504 Coordinator in writing at his or her earliest opportunity. Such Order shall set a date for a hearing to be held within fifteen (15) days of the date of issuance of the Hearing Officer's Order. The Order shall also set forth a mutually agreeable time and place for the hearing.

**Pre-Hearing Conference.** The Hearing Officer may also order a Pre-Hearing Conference at which the parent or his or her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference can also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process.

**Dismissals.** If, after the Pre-Hearing Conference, the Hearing Officer finds that the parent, as a matter of law, alleges and raises no factual claims or legal issues that come within his or her jurisdiction as a § 504 Hearing Officer, he or she may dismiss the hearing and issue an order to that effect explaining the bases for such finding.

**Continuances.** Upon a showing of good cause, the Hearing Officer, at his or her discretion, may grant a continuance of the hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.

**Conduct of Hearing.** The hearing shall be conducted in an informal, non-adversarial manner. The parties shall address the Hearing Officer by name (i.e. Mr. or Ms.). The hearing shall be closed to the public unless the parent requests that it be open to the public. The parties are free to provide the Hearing Officer with information or opinion as to the validity and weight to be given the information presented to him or her. Neither the Federal nor Arizona Rules of Evidence or Civil Procedure, however, will apply. The Hearing Officer 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 Hearing Officer may reasonably limit testimony and introduction of documentary exhibits for reasons of relevance. (See also "Submission of Documentary Exhibits" below).

**Recording.** Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape-recorded. The parent may obtain a copy of the tape recording at his or her request. In order for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations.

**Witnesses.** Witnesses will present their information in narrative form, without the traditional question and answer format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the Hearing Officer, at his or her discretion, ask a witness a certain question.

**Format for Presentations.** The parent will present its case first, by making an opening statement which outlines the parent's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. This may be done either personally or through counsel, except for personal presentations or statements. At the end of Challenge's presentation, the Parent may offer a short response to Challenge's case. The above format is not required, but may be helpful in organizing the presentation of the case to the Hearing Officer.

**Submission of Documentary Exhibits.** As part of their presentations, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions and that the Hearing Officer will admit at his or her discretion. Each separate documentary exhibit submitted to the Hearing Officer by either party must be marked numerically (i.e., Parent 1, Parent 2; Challenge 1, Challenge 2, etc.). The Hearing Officer may, in the exercise of his or her discretion, reasonably limit the number of documents to be submitted for his or her review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

**Written Closing, Arguments or Briefs.** The parties may submit, at the Hearing Officer's discretion, a written Closing Argument summarizing and characterizing the information presented at the hearing, and providing legal authority in support of their position. Time lines for the submission of Closing Arguments shall be set by the Hearing Officer at the conclusion of the hearing.

**Closing of Hearing.** At the conclusion of all presentations, the Hearing Officer will close the hearing. The Hearing Officer may make an oral ruling at the conclusion of the hearing or take the case under advisement, but must in all cases issue a written opinion addressing and ruling on all issues raised by the parents and indicating what corrective action, if any, Challenge must take. Formal findings of fact and conclusions of law, however, are not required. Any issue or claim raised by the parent that is left unaddressed by the Hearing Officer in his or her decision will be deemed to have been denied. The decision must be issued to both parties within fifteen (15) calendar days after the hearing.

**Decision Time line.** A decision must be issued within forty-five (45) calendar days after the date the Request for a Due Process Hearing is received by the district.

**Remedies and Relief.** The Hearing Officer must confine his or her orders and rulings to those matters that involve identification, evaluation, or placement of children under § 504 and to the provisions of the regulations implementing § 504. If a parent has raised issues or claims outside of the areas of identification, evaluation, or placement, that are not within the Hearing Officer's

jurisdiction, the Hearing Officer will make appropriate findings to that effect either in the written decision, or at any time prior to the issuance of a decision (for example, at a Pre-Hearing Conference). A Hearing Officer may not award attorneys' fees as a part of relief granted to a parent.

**Review Procedure.** If not satisfied by the decision of the Hearing Officer, a parent may seek review of the hearing decision in a court of competent jurisdiction, generally the closest federal district court.

**Complaints to the Office for Civil Rights (OCR).** At any time, a parent may file a complaint with OCR if he or she believes that the District has violated any provision or regulation of § 504. The filing of a complaint does not affect the hearing process or the time lines set forth above. OCR addresses § 504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.