



# **MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS**

**2013-2014 Edition**

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

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MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

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The Americans with Disabilities Act of 1990 (ADA) - disability  
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The following individual has been designated to handle inquiries regarding the nondiscrimination policies and laws above except Section 504:

Sheila Miller  
ADA/Title IX Coordinator  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301-3860  
(603) 271-3743

Inquiries regarding Section 504 should be directed to:

Tina Greco  
Section 504 Coordinator  
NH Department of Education  
21 S. Fruit Street  
Concord, NH 03301-3860  
(603) 271-3993

Complaints regarding Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX, Section 504, and/or Title II of the ADA should be directed to:

Boston Office  
Office for Civil Rights  
U.S. Department of Education  
9 Post Office Square, Suite 900  
Boston, MA 02109-3921  
Telephone: 617-289-0111  
FAX: 617-289-0150; TDD: 877-521-2172

Inquiries concerning discrimination claims may also be directed to:

**NH Commission for Human Rights**

2 Chenell Drive  
Concord, NH 03301-8501  
(603) 271-  
2767

**Equal Employment Opportunity Commission (EEOC)**

1 Congress Street  
Room 100 10th Floor  
Boston, Mass 02114  
Tel. (617) 565-3200

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**General Information**

<u>SUBJECT</u>	<u>Page</u>
Editor Note	6
General Information	7-10
Overview of Section 504 Procedural Safeguards	7-10
Background	7
Complaints to the Office for Civil Rights (OCR)	8
34 CFR 104.36 Procedural Safeguards	8
Disability under Section 504	8,9
Child with a Disability	9,10
Section 504 Impartial Hearings	11-36
1. Conducting Section 504 Impartial Hearings	11
2. Sequence of a Section 504 Impartial Hearing	11
3. Filing a Section 504 Impartial Hearing Request	11,12
4. E-mail and Facsimile Hearing Requests	12
5. Representation – Attorney or Advocate	12
6. Pro Se Complainants	12,13
7. Persons Authorized to be Present	13
8. Initiation of Section 504 Impartial Hearing	13
9. Commencement of Section 504 Impartial Hearing Process	13,14
10. Scheduling of Prehearing Conference, and Impartial Hearing	14
11. Withdrawal of Section 504 Impartial Hearing Request	14
12. Local Education Agency Responsibilities when a Section 504 Impartial Hearing Request is Filed	14,15
13. Voluntary Production of Information	15
14. Motion to Compel Production of Information	15
15. Ex Parte Communication	16
16. Unexpected Circumstances	16
17. Requests for Continuance	16,17
18. Prehearing Procedures	17
19. Purpose of the Prehearing Conference	17,18
20. Authority of Prehearing Conference Participants	18
21. Failure to Appear at a Prehearing Conference	19
22. Telephone Conference	19
23. Hearing Officer Letter Confirming Results of Prehearing Conference	19
24. Procedures that May Occur Before or During a Hearing	19,20
25. Requests for Hearing Officer Recusal	20,21
26. Motions	21,22
27. Burden of Proof	22
28. Standard of Proof	22
29. Order of Proof	22
30. Subpoenas	22
31. Hearing Procedures	22,23
32. Hearing	22-26

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

33.	Maintaining Order at the Hearing	26
34.	Exhibit List	26
35.	Evidence at Hearing	27
36.	Official Record – Audio Cassette Tape	28
37.	Testimony	29
38.	Objections	30
39.	Close of the Hearing	30,31
40.	Failure to Appear	31
41.	Rights of All Parties	31,32
42.	Summary Judgments	32
43.	Dismissal With or Without Prejudice	32
44.	Request for Dismissal with Prejudice by Parties	32,33
45.	Request for Withdrawal	33
46.	Dismissal By Order of the Hearing Officer	33
47.	Inactive Cases	33
48.	Consolidation of Cases	33
49.	List of Hearing Officer Qualifications	34
50.	Hearing Officer Decision	34
51.	Review Procedure – Appeal of Decision of Hearing Officer	34
52.	Post-hearing Matters	34
53.	Hearing Officers	35
54.	Hearing Files and Official Record of Hearing	36
55.	Tips for Participants to Hearing	36
Appendix A		
Forms for Usage in 504 Impartial Hearing Procedure		37
	Form to Request a Section 504 Hearing	38,39
	Exhibit List	40
	Written Request for Continuance of Impartial Hearing	41
	Written Request for Withdrawal of Impartial Hearing	42

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

NOTE: The following information was prepared by the Department of Education's Office of Legislation/Hearings to assist parents to 504 hearings and is meant to supplement and not in any way replace, modify or advise participants about federal and state law or regulations. Furthermore, please be advised the information is based on statutes and regulations in existence at the time of publication and therefore may only be used as a guide. The Department of Education recommends that all participants carefully review and familiarize themselves with relevant federal and state law and regulations prior to participating in a hearing. The Department of Education reserves the right to modify this information, amend or terminate any description of procedures described in this guide at any time. See [www.education.nh.gov](http://www.education.nh.gov) for federal and state laws and regulations.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

## GENERAL INFORMATION

### OVERVIEW OF SECTION 504 PROCEDURAL SAFEGUARDS

School Districts are required to comply with Section 504 and provide impartial hearings when requested to resolve issues concerning compliance with Section 504. Although the State of New Hampshire neither enforces Section 504 nor provides impartial hearings pertaining to Section 504, the New Hampshire Department of Education has compiled the following model procedure for Section 504 Impartial Hearings to assist school districts to comply with Section 504.

#### Background

Section 504 of the Rehabilitation Act of 1973 ("Section 504") prohibits discrimination against individuals with disabilities in any program or activity that receives federal financial assistance. Public School Districts, institutions of higher education and other state and local education agencies receive federal financial assistance and, therefore, are required to assure that students and prospective students with disabilities have equal access to the educational opportunities and benefits provided to students who do not have disabilities. In addition, school districts are required to provide a free appropriate education to students with disabilities based on their individualized educational needs. The services students with disabilities may receive pursuant to Section 504 include evaluations, modifications to the regular education program to enable the student with a disability to access his or her education, special education and/or related aids and services, such as physical or occupational therapy. Section 504 also provides protections for students with disabilities who are subjected to out of school suspensions for conduct code violations due to behaviors which are a manifestation of the student's disability.

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive funds from ED. ED has published a regulation implementing Section 504 (34 C.F.R. Part 104) and maintains an Office for Civil Rights (OCR), with 12 enforcement offices and a headquarters office in Washington, D.C., to enforce Section 504 and other civil rights laws that pertain to recipients of federal funds. The contact information for the OCR enforcement office that serves New Hampshire is as follows:

Office for Civil Rights, Boston Office  
U.S. Department of Education – 8<sup>th</sup> Floor  
5 Post Office Square  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
E-mail: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

### **Complaints to the Office for Civil Rights (OCR)**

At any time, a parent or any individual 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 Processing Manual. Note that typically OCR may not investigate the same allegations that are pending in a hearing.

### **34 CFR 104.36 Procedural Safeguards**

Under Section 504 and its implementing regulations, school districts are required to provide procedural safeguards, including notice of any action (or refusal) proposed by the school district, an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing that includes an opportunity for parents or guardian and an attorney for the student to participate, and, a procedure to review the outcome of the impartial hearing. Parents/guardians are entitled to impartial hearings to determine issues regarding the identification, evaluation or educational placement, including the services and accommodations requested or recommended for the student, the denial of an educational placement and any proposed change in placement as a result of a disciplinary action concerning students who, because of disability, need or are believed to need special instruction or related services. In addition, a parent has a right to request a hearing to resolve a disagreement with their school regarding the provision of a free appropriate public education ("FAPE"). Under Section 504, appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of non-handicapped persons are met and are based upon adherence to procedures that satisfy the requirements of 34 CFR 104.34, 104.35, and 104.36.

### **Disability under Section 504**

Under Section 504, a recipient who operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified student with a disability (or child with a disability) who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 34 CFR 104.33.

1. To qualify for Section 504's protections an individual must either have a physical or mental impairment which substantially limits one or more major life activities, have a record of such impairment, or be regarded as having such an impairment. 34 CFR 104.3(j).
2. Under Section 504, "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special



NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

sense organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 34 CFR 104.3 (j)(2)(i)

3. The physical or mental impairment must substantially limit one or more "Major life activities". "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 34 CFR 104.3 (j)(2)(ii).
4. A student currently engaging in the use of illegal drugs is not considered a student with a disability under Section 504, when the LEA's action is based on the student's use of illegal drugs.

(This list is not exclusive: many other "major life activities may be covered by Section 504)

### **Child with a disability**

(A) In general. The term "child with a disability" means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services. 20 USC 1401 (3)

The State of New Hampshire also has it's own definition of "Child with a disability". See New Hampshire Rules for the Education of Children with Disabilities at Ed 1102.01 (r).

Therefore it is important to recognize that the persons eligible for a FAPE under Section 504 may be different from the persons eligible for services under the Individuals With Disabilities Education Act, 20 USC 1400. Under the IDEA, a student must be found to have one of the specific disabilities listed in that law, and by reason thereof, to need special education and related services.

Generally speaking, the physical or mental impairments covered under Section 504 are much broader than the disability categories under the IDEA, and the major life activities which can be affected by an impairment under Section 504 are also very broad.

It is therefore important to determine at the outset whether the student in question has an issue to be addressed under the IDEA or under Section 504. This model policy applies to the Section 504 issues.

School Districts are required to comply with Section 504 and provide impartial hearings when requested to resolve issues concerning compliance with Section 504. Although the State of New Hampshire neither enforces Section 504 nor provides impartial hearings

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

pertaining to Section 504, the New Hampshire Department of Education has compiled the following model procedure for Section 504 Impartial Hearings to assist school districts to comply with Section 504.

## **SECTION 504 IMPARTIAL HEARINGS**

### **1. Conducting Section 504 Impartial Hearings**

Section 504 impartial hearings are conducted in compliance with applicable state and federal laws and regulations, including 34 CFR 104.36.

- (a) "Days" – means calendar days
- (b) "Parents" means parents or legal guardians
- (c) "Placement" means the program, including special education, related services, accommodations, modifications as well as physical location in which a student with a disability may receive his or her educational program.

### **2. Sequence of a Section 504 Impartial Hearing**

The sequence of a hearing is as follows:

- (a) A request for a hearing is to be filed with the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests.
- (b) A prehearing conference will be held within 10 days after the request for a hearing is received or the date that the parties agree to in writing.
- (c) A hearing will be held within 14 days after the conclusion of the prehearing conference.
- (d) A hearing officer's decision will be issued within 10 days after the hearing.

### **3. Filing a Section 504 Impartial Hearing Request**

- (a) A parent(s)/guardian(s) or local school district (hereinafter "LEA") may file a hearing request to resolve any disagreement regarding: the identification, evaluation, accommodations and/or modifications, provision of FAPE, educational services, including placement, or determination of causality in a disciplinary matter resulting in out of school suspension for a student with a disability.
- (b) Parents of a student with, or suspected of, having a qualifying disability have the right to review all relevant records regarding the student. Records may be

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

reviewed at the student's school or LEA office. The parents may obtain copies of the student's records (school may charge a reasonable fee for copies)

**4. E-Mail and Facsimile Hearing Requests**

In order to help facilitate the process, with prior agreement of the hearing officer and parties, e-mail and facsimile copies of hearing requests to the local school district 504 coordinator other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests will be accepted as long as a signed and dated original request is mailed to the opposing party. Any e-mail and facsimile sent to the hearing officer must be sent simultaneously and expeditiously to the opposing party. Any pleading that is filed with the hearing officer has to be signed in ink and a copy mailed to the opposing party at the same time.

**5. Representation – Attorney or Advocate**

(a) The filing of a hearing request on behalf of a party by an attorney shall mean that the attorney represents that party.

(b) The filing of a hearing request by an advocate on behalf of a party must be accompanied by a signed and dated authorization from the custodial parent(s).

(c) The filing of a hearing request by an advocate on behalf of a party that is not accompanied by a signed and dated authorization from the custodial parent(s) will not be acknowledged.

(d) An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement that notice of the withdrawal has been provided to the client and all other parties.

(e) Parties retain counsel at their own expense.

(f) Requests for appointment of counsel will not be entertained.

**6. Pro Se Complainants**

The Latin word "pro se" means to act without the aid of an attorney; representing yourself. There is no bar for pro se parents to represent themselves in a hearing. At the pre-hearing, the hearing officer may ask the pro se parent to determine the relevant legal issues to be addressed at the hearing to enable both parents and districts to adequately prepare for the hearing. Relevance is important because future rulings may ask for relevant issues to be further addressed and evidence can be excluded because it is not relevant to the issues at the hearing. Additionally, in order to gather relevant information, the

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

hearing officer may exclude irrelevant testimony, establish guidelines for the correct method of questioning witnesses, and ask questions concerning the relevance of questions. The hearing officer may also facilitate the introduction of exhibits by asking questions about the relevance of proposed exhibits. The hearing officer may also explain the substantive legal standards and burdens of proof that apply to the case.

**7. Persons Authorized to be Present**

At the hearing, the hearing officer should be sure that all necessary parties are present, and, because hearings are closed to the public, that unauthorized persons are excluded from the hearing room. Persons not on the agreed upon witness list, are excluded from attending the hearing, unless agreed to by both parties before the proceeding.

Generally, the following persons are authorized to be present at hearings:

The Hearing Officer  
The Complainant  
The Complainant's representative  
The Defendant (in the case of a school district this may be administrators, teachers, etc.)  
The Defendant's representative  
Approved assistants or technical advisors  
Interpreters and translators  
Security official  
Approved witness when testifying (accompanied by his/her attorney while testifying)

In addition, the hearing officer, with consent of the parties, may permit other persons to attend under appropriate circumstances.

**8. Initiation of Section 504 Impartial Hearing**

The local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests, will make available to parent(s)/guardian(s) a model form that may be used to initiate a written request for a hearing. Although the parent is not required to use this form the request for hearing should contain enough information so that the issues to be addressed are reasonably clear.

**9. Commencement of Section 504 Impartial Hearing Process**

The hearing process will commence on the date the section 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests receives notice of a hearing

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

request in accordance with **3. Filing a Section 504 Impartial Hearing Request**, unless the request is withdrawn as provided in **11. Withdrawal of Section 504 Impartial Hearing Request**.

**10. Scheduling of Prehearing Conference, and Impartial Hearing**

The scheduling shall allow for the following:

- (a) A prehearing conference; and
- (b) An impartial hearing

**11. Withdrawal of Section 504 Impartial Hearing Request**

The party making the request for section 504 impartial hearing may withdraw such request at any time during the proceeding.

**12. Local Education Agency Responsibilities when a Section 504 Impartial Hearing Request is Filed**

The LEA will:

- (a) Provide parent(s)/guardian(s) with the procedural safeguards notice as required by 34 CFR 104.36 with respect to actions regarding identification, evaluation, program, etc.
- (b) Inform the parent(s)/guardian(s) of any low-cost legal services and other relevant services available in the area.
- (c) Within three (3) days of the receipt of the request for a section 504 hearing, the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests, will select an impartial hearing officer. The selected impartial hearing officer will be an attorney or an individual with knowledge of section 504 law and not be employed by the school district or relevant SAU nor representing the school district or relevant SAU at an impartial hearing.
- (d) At least seven (7) days before the date of the pre-hearing conference, the hearing officer will notify the parties in writing of:
  - (1) The time and place of the prehearing conference;
  - (2) The time, place, and nature of the hearing;

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

- (3) Legal authority under which the hearing is to be held;
- (4) The particular sections of the statutes and rules involved, including a copy of those sections;
- (5) A short and plain statement of the issues involved;
- (6) The party's right to have an attorney present to represent the party at the party's expense; and
- (7) The name of the impartial hearing officer who will conduct the hearing.
- (8) Contact information for the impartial hearing officer.

**13. Voluntary Production of Information**

- (a) Each party will attempt in good faith to make a complete response to requests, as soon as practicable, for the voluntary production of information.
- (b) When a dispute between parties arises concerning a request for the voluntary production of information, releases or documents, any party may file a motion with the hearing officer to compel the release of the requested information.

**14. Motion to Compel Production of Information**

- (a) Any party may file a motion requesting that the hearing officer order the parties to comply with information requests. The motion will be filed as soon as possible after receiving the notice of hearing. Any objection to the motion to compel will be filed within 5 days of the date receipt of the motion.
- (b) The moving party's motion will:
  - (1) Set forth in detail those factors which it believes justify its request for information; and
  - (2) List with specificity the information it is seeking to discover.
- (c) When a party has demonstrated that such requests for information are relevant to the issues described in the hearing notice and are necessary for a full and fair presentation of the evidence at the hearing, the hearing officer will grant the motion to compel.

**15. Ex Parte Communication**

"Ex parte" is a term used in legal proceedings which means "from or on one side only, with the other side absent or unrepresented." The term is most commonly used to describe communications between a hearing officer and only one party to a proceeding.

Parties to hearings must not engage in ex parte communication with the hearing officer. Ex parte communication occurs when one party to the proceeding initiates discussions about a case with the hearing officer to the exclusion of the other party or parties. All contact with the hearing officer must be in writing with a copy to the other party. If you want to initiate a telephonic conversation with the hearing officer, you are requested to first write (fax or e-mail) to the hearing officer, with a copy to the other party, requesting the opportunity to speak with the hearing officer. The hearing officer will not respond to ex parte communications except for emergency discussions on ex parte basis to discuss new dates (see "Unexpected Circumstances").

**16. Unexpected Circumstances**

In the event of an unexpected event such as death, hospitalization, sudden illness, severe weather conditions, natural disasters, or unexpected business conflicts beyond the party's control that prevent the party's attendance, the party should request a continuance from the hearing officer and the opposing party as soon as possible. The initial contact shall be followed up by a written request to the hearing officer and opposing party.

As soon as possible after the emergency, the requesting party must fax or e-mail the hearing officer, with a copy to the other party, an appropriate motion including proposed alternate dates. If the hearing officer allows the continuance, the hearing officer will also issue a new hearing date. Allowance of a request for a continuance is at the hearing officer's sole discretion.

**17. Requests for Continuance**

(a) When one party seeks a continuance, the party must file a written request with the hearing officer who may allow or deny the request. At the time of the request, a copy must be sent to the opposing party. The written request must contain a reason for the continuance as well as proposed alternate dates. If the hearing officer allows the continuance, the hearing officer must also issue a new hearing date. A continuance will not occur if the hearing officer does not issue an order agreeing to continuance.

(b) Except in extraordinary circumstances, parties seeking a continuance must make such written request to the hearing officer at least five (5) business days



NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

before the scheduled hearing date. Failure to do so is grounds for denial of the request.

- (c) If the hearing officer allows the continuance, the hearing officer will issue a new hearing date by order to both parties.

**18. Prehearing Procedures**

A prehearing conference will be conducted by a hearing officer and governed by the following:

- (a) Parties will be prepared to discuss the issues described in the request for hearing.
- (b) Parties will exchange, and provide to the hearing officer, at the time of the prehearing, a preliminary list of the witnesses and the documents they intend to use at the hearing.
- (c) Parties may exchange a list of facts which expand upon the facts contained in the hearing request, and shall exchange such a list if ordered by the hearing officer.
- (d) Parties will exchange, and provide hearing officer with, a final witness list and documents they intend to present at the hearing 5 days before the hearing.

**19. Purpose of the Prehearing Conference**

A prehearing conference is the opportunity for the hearing officer to discuss and rule upon any outstanding matters that must be resolved prior to hearing. These matters may include the following if they have not already been addressed:

- (a) Advise the parties of hearing procedures;
- (b) Explain applicable burdens of proof;
- (c) Discuss and clarify the issues on which the hearing will be held;
- (d) Stipulate to facts not in dispute;
- (e) Explore settlement options;
- (f) Discuss the number of witnesses;

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

- (g) Submit the order of witnesses, showing the expected length of direct and cross examination for each witness;
- (h) Arrange for telephone testimony;
- (i) Make discovery requests;
- (j) Rule on outstanding motions;
- (k) Rule on the admissibility of exhibits;
- (l) Obtain stipulations of fact and stipulations as to the authenticity of documents;
- (m) In special education cases, determine whether the parent has been provided the opportunity to inspect their child's educational records;
- (n) Determine the timing and manner by which evidentiary disclosures will be made;
- (o) Determine the manner and date by which subpoenas must be requested;
- (p) Discuss other miscellaneous issues associated with the hearing, including:
  - (1) In hearings involving a child, whether the child will be present,
  - (2) Whether witnesses should be sequestered,
  - (3) Whether a participant requires special accommodations or assistive technology
  - (4) Whether closing submissions will be submitted in oral written form;
  - (5) Any other matters of importance the parties would like to bring to the hearing officer's attention.

**20. Authority of Prehearing Conference Participants**

Parties must appear at the prehearing conference with full authority to settle a case or ability to access authorization to settle the case at the time of the prehearing conference.

**21. Failure to Appear at a Prehearing Conference**

If a party fails to appear for a prehearing conference, a hearing officer may proceed with the conference and may also dismiss the case or rule by default for the opposing party.

**22. Telephone Conference**

At the discretion of a hearing officer, a prehearing conference may be conducted by telephone.

**23. Hearing Officer Letter Confirming Results of Prehearing Conference**

After the prehearing conference, the hearing officer will prepare a letter summarizing the matters discussed, agreed upon or otherwise decided during the conference. This letter will serve as a prehearing order, will control the balance of the proceedings and will become part of the administrative record. Accordingly, it is important that the letter be reviewed carefully, and the hearing officer be advised of any corrections or supplementation necessary.

**24. Procedures that May Occur Before or During a Hearing**

(a) DISCOVERY: The party upon whom a request for discovery is served may, within ten (10) days of service of the request, file objections to the request with the hearing officer or move for a protective order. Disputes regarding discovery shall be resolved whenever possible by conference calls. Protective orders may be issued to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the hearing officer. Orders of the hearing officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential information or documents.

(b) FORMAL REQUESTS FOR INFORMATION AND SPECIFIC TYPES OF REQUESTS FOR INFORMATION: Formal requests for information may be made at any time after a request for hearing is filed. The party upon whom the request is delivered shall respond within thirty (30) days unless the hearing officer establishes a shorter or longer period of time.

(c) REQUESTS FOR DOCUMENTS: Any party may request any other party to produce or make available for inspection or copying any documents or tangible things, not privileged, not supplied previously, and which are in the possession, custody, or control of the party upon whom the request is made.

(d) INTERROGATORIES: A party must obtain permission from a hearing officer to serve written interrogatories on any other party for the purpose of discovering relevant, not privileged, information not supplied previously through a

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

voluntary exchange of information. No party, without hearing officer approval, should serve more than twenty-five (25) interrogatories. For purposes of determining the number of interrogatories, subparts of a basic interrogatory which are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection must be stated in lieu of an answer.

(e) DEPOSITIONS: In order to take the testimony of any witness by deposition, a party must file a written motion seeking approval from the hearing officer.

(1) Time & Content. There shall be at least ten days' notice to the parties of the motion to take a deposition. A motion requesting a deposition shall state the name and address of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and address of the person before whom the deposition is desired, and the reason why such deposition should be taken.

(2) Authorization. The hearing officer shall allow the motion only upon a showing that the parties have agreed to submit the deposition in lieu of testimony by the witness or the witness to be deposed cannot appear before the hearing officer without substantial hardship, and that the testimony being sought is relevant, not privileged and not discoverable by an alternate means.

(3) Scope and Conduct of the Deposition. Deposition shall be taken orally before a person having power to administer oaths. Every witness testifying upon deposition shall be duly sworn, and the adverse party/parties shall have the right to cross-examine. Objections to questions must set out the grounds relied upon. The testimony shall be reduced to writing and shall, unless waived, be signed by the witness, and certified by the officer before whom the deposition is taken. After the deposition has been subscribed and certified, it shall be forwarded to the hearing officer. Subject to appropriate rulings on objections, and the parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the proceeding.

**25. Requests for Hearing Officer Recusal**

A request for recusal, in general, is based on an appraisal that a reasonable person with knowledge of the circumstances would be likely to question the impartiality of the hearing officer assigned to the matter.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

Requests for recusal can be broken down into two areas:

- (a) Conflicts of Interest, General: The hearing officer should recuse himself/herself from both real and perceived conflicts of interest. Generally this means that a hearing officer should not participate in a hearing where a party is a member of his/her household, a close relative, the employer of his/her spouse, parent or dependent child, someone with whom he/she has a business relationship, or a former employer (within the past year). If, however, the hearing officer determines that no reasonable person knowing all the facts would question his/her impartiality, the hearing officer may proceed with the hearing after disclosing the relationship and explaining the reasons why he/she does not believe there is a conflict. If a party disagrees, they may make note of their objection for the record and the hearing will continue to its conclusion.
  
- (b) Bias: The hearing officer should not participate in any conduct during the hearing that presents the appearance of or demonstrates actual bias in favor of or against one of the parties. For example, it is improper for the hearing officer to eat lunch with a representative of one party during the course of the hearing. If a party or a witness accuses the hearing officer of bias during the course of the hearing, the hearing officer should document the allegations and the response on the record.

In the event that a hearing officer agrees with the request for recusal, upon request of a party and agreed to by the opposing party, the office of legislation and hearings will assign another hearing officer to the case and will try to utilize the dates already scheduled for the proceedings. Once the office of legislation and hearings has assigned another hearing officer, the case will continue to its conclusion.

**26. Motions**

A motion is a request that a hearing officer issue an order or take any action consistent with relevant statutes or regulations.

- (a) Filing a Motion: After a party files a hearing request, motions shall be filed in writing with the hearing officer. Each motion shall set forth the reasons for the desired order or action.
  
- (b) Notice of the Motion to the Other Party: Written motions must be given to all parties and the hearing officer at the same time. Within ten (10) days after a written motion is file with the hearing officer, the opposing party may file written objections to the allowance of the motion.
  
- (c) Rulings on a Motion: Ten (10) days after receiving the motion and any objection thereto, the hearing officer will respond to the motion.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

(d) Evidence Relating to Motions: A party may offer only evidence relevant to the particular motion. This evidence may consist of facts which are supported by affidavit (a sworn, written statement under oath), appear in records, files, depositions, or answers to interrogatories.

**27. Burden of Proof**

It is the duty of the moving party to prove a disputed fact by preponderance of the evidence. Burden of proof will be related to the relevant issue(s) decided at the pre-hearing.

**28. Standard of Proof**

In all proceedings the party must prove his or her case by a preponderance of the evidence.

**29. Order of Proof**

The party bearing the burden of proof shall present its evidence first unless otherwise agreed to by the parties. All parties shall have the opportunity to present testimony, demonstrative and documentary evidence, cross-examine adverse witnesses and make opening and closing statements.

**30. Subpoenas**

A subpoena is a written command to appear at a certain time and place to give testimony in the case in dispute. A subpoena may also require the production of documents.

**31. Hearing Procedures.**

The hearing will be conducted by an impartial hearing officer, governed by the following:

(a) The party that has requested the hearing will present its case first unless the hearing officer determines that changing the order of presentation would not materially prejudice any party's right to a full and fair hearing, and:

(1) The hearing would proceed in a more timely manner if the party responding to the hearing request presents their case first; or

(2) The hearing would proceed in a more efficient manner if the party responding to the hearing request presents their case first.

(b) All hearings will be electronically recorded by the hearing officer or the hearing officer's designee. The hearing officer recording will be the official record of the

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

hearing unless a party requests and pays for stenographic recording of such hearing. If a party requests and pays for a stenographic recording of the hearing, the stenographic record will be under the control of the hearing officer and will be the official record.

(c) Any party to a hearing will have the right to:

- (1) Be accompanied and advised by and advised by an attorney, or by individuals with special knowledge or training with respect to 34 CFR 104.36;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses. (The school district, in its policies, should describe a process for subpoenas and attendance of witnesses.)
- (3) Request that the hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the first day of the scheduled hearing;
- (4) Obtain an electronic verbatim record of the hearing, at any point during the hearing or afterwards;
- (5) Obtain a decision of the hearing officer that sets forth the factual findings and legal conclusions; and
- (6) Record the hearing.

(d) A parent involved in a hearing has the right to open the hearing to the public. However, if a hearing is open to the public, the hearing officer will seat the members of the public and position their equipment in such a way that the public and equipment do not interfere with the proceedings.

(e) Each party will have one day to present its case, unless additional time is necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion.

(f) The hearing officer may limit examination of a witness by either party to avoid redundant, cumulative, or irrelevant testimony.

**32. Hearing**

Hearing officers have the duty and power to:

- (a) Administer the oath or affirmation to anyone who will testify at the hearing;

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

- (b) Assist all those present in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved and to determine the rights of the parties;
- (c) Ensure that all parties have a full opportunity to present their claims orally, or in writing, and to get witnesses and evidence to establish their claims;
- (d) Receive, rule on, deny, or limit evidence;
- (e) Introduce into the record any regulations, statutes, memoranda, or other materials relevant to the issues at the hearing;
- (f) Change the date, time or place of the hearing at the mutually agreeable request of the parties and continue the hearing to a subsequent date to permit either party to produce additional evidence, witnesses, and other information;
- (g) Request a statement of the issues and define the issues;
- (h) Regulate the presentation of the evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensible record of the proceedings;
- (i) Regulate the presentation of the evidence based on disclosed issues. Parties cannot bring in relevant evidence to an undisclosed issue;
- (j) Issue subpoenas upon request of any party to secure the presentation of evidence or testimony;
- (k) Examine witnesses and ensure that relevant evidence is secured and introduced;
- (l) Rule on any requests or motions that may be made during the course of the proceedings;
- (m) Order additional evaluations at public expense under appropriate circumstances;
- (n) Order written briefs to be submitted by the parties, establish the issues to be addressed by the briefs and set the deadline for their submission;
- (o) Reconvene the hearing for any purpose at any time prior to the issuance of a decision or pursuant to a post-hearing motion;
- (p) Ensure that all participants conduct themselves in an appropriate manner.



NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

(q) Set reasonable time limits on the length of conferences and hearings. Hearings proceed according to the following agenda, which may be modified at the hearing officer's discretion:

(1) Formal call to order

- a. Date, time and place
- b. Statement such as: "We are here in the matter of *[student's first name last initial/LEA – case number]*

(2) Introductory statement by hearing officer

- a. Introduction of hearing officer
- b. Statement of open or closed hearing
- c. For the record I request that parties speak loudly and clearly and only one at a time
- d. Introduction of participants for record
  - Request that parties spell their name for the record
- e. Purpose of the hearing
- f. Explanation of hearing procedures

(3) Opening of formal testimony

- a. Opening statement
  - I. LEA
  - II. Parents/guardian
- b. Presentation of written evidence and testimony
  - I. Written evidence (exhibits)
    - LEA
    - Parents
    - LEA (rebuttal)
- c. Closing arguments (when presented orally)
  - I. LEA\*

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

II. Parents

d. Closing comments by hearing officer

I. Filing of closing arguments (when presented in writing)

II. Decision due date

III. Procedures for "appeal"

*\* Unless parent(s) go(es) first*

**33. Maintaining Order at the Hearing**

The hearing officer has the authority and obligation to ensure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner. If the conduct of a party or witness disrupts, detracts from or jeopardizes the integrity of the hearing, the hearing officer must take appropriate action to address the misconduct. This action should include warning the offending party to abstain from the conduct with notice of the sanction which will follow if the conduct continues. Where sanctions are appropriate, the hearing officer should consider the nature and severity of the misconduct. If the hearing officer imposes sanctions, the hearing officer must document the record by describing the misconduct in detail, the warnings given to the offending person, the sanction issued, and the hearing officer's reasons for issuing the sanction. In the case of repeated or flagrant improper conduct by a party, the hearing officer may consider expulsion of the party or party's representative from the hearing. In the case of repeated or flagrant improper conduct by a party's representative, the hearing officer may consider suspension or disqualification of that representative from future hearings.

**34. Exhibit List**

All exhibits must be sequentially identified and numbered for each party. The exhibit list should have space for each document number, date filed and for a short description of the exhibit – example:

Document #	Date Filed	Description
Parent 1	Jul 1, 2007	Letter to John Doe dated April 1, 2006 requesting information, 2 pages

At the time the exhibit is marked for identification, the party offering the exhibit must provide an original and a copy for each party, if feasible. No reference will be made to an exhibit, other than to mark it for identification, before the hearing officer has accepted it into evidence.

**35. Evidence at Hearing**

General –

Evidence may include, but is not limited to, depositions, affidavits, official documents, and testimony of witnesses. To promote efficiency, the hearing officer officially notices facts. When he or she officially notices a fact, it is so stated in the official record, and any party will, within 10 days, be given the opportunity to show the contrary.

(a) Documents

All relevant and material evidence is admissible. Repetitive, cumulative or irrelevant evidence is excluded. The parties may offer as evidence written documents that they have exchanged prior to the hearing. The hearing officer may permit or request the introduction of additional documentary evidence where no prejudice would result to either party.

(b) Oral Testimony

Oral Testimony is given under oath or affirmation, subject to the pains and penalties of perjury. Witnesses must be available for examination and cross-examination.

(c) Regulations and Statutes

Regulations and statutes may be put into evidence by reference to the citation or by submitting a copy of the pertinent regulation or statute.

(d) Stipulations

Stipulations of fact, or stipulations as to the testimony that would have been given by an absent witness, may be used as evidence at the hearing. The hearing officer may require additions to the stipulations offered by the parties.

(e) Written Testimony

If the hearing officer determines that the subject matter of the proceeding is so complex, and that no party will be prejudiced by the testimony, the hearing officer will require that the direct testimony of specific witnesses be prepared in writing by the party offering that direct testimony.

Written testimony will be subscribed under oath or affirmation by the witness, and served upon all parties at least 15 days before the first formal evidentiary session of the proceeding. Such written testimony will not be in lieu of testimony under

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

oath at hearing, so as to afford an opportunity for cross examination on oral and written testimony.

If no other party will be prejudiced by the introduction of written testimony, a party may elect to submit such written testimony without an order, but this election will require no other party to do so. Written direct testimony so distributed will be marked as an exhibit, and will be received into evidence before the witness is cross-examined upon the contents of the exhibit.

Written testimony, offered in lieu of oral testimony at hearing, will be permitted provided that there is no material prejudice to the other parties.

(f) Administrative Notice

The hearing officer may take administrative notice of any fact of which judicial notice could be taken, and in addition may take administrative notice of statutes, regulations, and general, technical or scientific facts within the specialized knowledge of the hearing officer. Parties shall be so notified of the material so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts officially notified shall be included and indicated as such in the record.

(g) Additional Evidence

The hearing officer may require any party to submit additional evidence on any relevant matter.

**36. Official Record – Audio Cassette Tape**

Off-the-Record Discussions

The hearing officer should go off the record when necessary to prevent the record from becoming cluttered with unnecessary dialogue, not substantively related to the proceeding at hand. Prior to going off the record the hearing officer should make note of that fact to the parties that he/she will be going off the record. The hearing officer may go off the record to, for example, discuss scheduling or initially caution the parties or their representatives with regard to their conduct. Such discussions should be immediately summarized once back on the record.

Examination of Witnesses

All witness testimony is given under oath or affirmation and penalty of perjury. Either the hearing officer or an attorney representing a party must administer the oath to each witness and identify the witness before the witness begins testifying. A commonly used oath is:

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

Do you swear or affirm under penalty of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

The party calling the witness examines the witness first. When direct-examination is concluded, the opposing party may cross-examine. Generally, cross-examination should be limited to areas addressed in direct-examination. Other views of the case, by the opposing party cannot be limited by direct-examination. The opposing party may go into areas of potential bias or motive to falsify testimony, or areas that opposing party deem relevant to prove their case. The relevance of cross-examination should be determined after opposing party has an opportunity to address items they deem relevant.

When both parties request the same witness, the hearing officer shall determine whether the witness shall be called twice or whether the scope of cross-examination may exceed the scope of direct-examination. The hearing officer may independently examine the witness and permit follow-up questions by the parties.

**37. Testimony**

General

In reaching a decision, the hearing officer will assess the weight, credibility, and probative value of the evidence admitted into the record. Hearing officers may use their experience, technical competence, and specialized knowledge in evaluating the evidence. The hearing officer's decision will be based upon a preponderance of the evidence presented.

The testimony of witnesses should be relevant and material to the case. The testimony should be specific and reflect personal knowledge or recollection. Notes should be used only to refresh the memory of the witness. If notes are used, they must be shared with the other party. Hearsay testimony may be allowed if it is relevant material, and not unduly repetitious, but the hearing officer may accord it diminished evidentiary weight since it is hearsay.

There may be circumstances when witnesses are not available to appear at the hearing. In those circumstances, the hearing officer may consider alternative methods of obtaining the testimony. These alternatives may include testimony by telephone or by written transmissions.

Expert Testimony

Relative to expert witnesses, alternative testimony requests should be brought up at the pre-hearing and first discussed with the other party (or counsel). If the parties seek to offer testimony or documents by experts, the experts must be

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

qualified. This requires the hearing officer to determine whether the expert possesses the knowledge, skill, experience, training or education that permits the expert to offer opinion testimony. If the hearing officer cannot determine whether the expert witness possesses the knowledge, skill, experience, training or education that permits the expert to offer opinion testimony, the hearing officer may ask the parties whether they can stipulate that the experts are qualified. This generally requires the party seeking to introduce expert testimony to provide a resume of the expert that adequately describes the expert's knowledge, skill, experience, training or education in the subject matter about which he/she is being called to testify. The expert's opinion as to facts or law may not be substituted for the hearing officer's ultimate conclusion of facts and law. Documents prepared by experts must be authenticated and treated like other documentary evidence.

If an expert does not testify in person at the hearing, the hearing officer should balance the relevance and probative value of documentary evidence prepared by an expert against a party's inability to cross examine the expert. In most cases, this determination will ultimately go to the weight the hearing officer should give the expert's evidence, rather than to its admissibility.

**38. Objections**

If objections are made they should be made based on relevance, prejudice, or other grounds. Generally, the hearing officer should sustain objections where the evidence is irrelevant, cumulative or unreliable. Prior to ruling on an objection, the hearing officer should permit the non-objecting party to respond to the objection. The hearing officer may take a recess or take the arguments under advisement and continue with the hearing. In ruling on objections, the hearing officer should remember that admission of evidence does not speak to the weight to be given the evidence once it is admitted.

**39. Close of the Hearing**

At the conclusion of all testimony, the hearing officer has the discretion to permit or require the parties to make oral or written closing arguments. The hearing is formally closed when any additional documents permitted by the hearing officer are added to the record, or when written closing arguments, if any, are received by the hearing officer, on or upon the date such documents or arguments are due, whichever comes first. A decision will be issued by the end date cited in the scheduling notice or subsequently mutually agreed to by the parties.

The hearing officer will accept closing legal memoranda and requests for findings of fact and rulings of law from all parties and interveners unless otherwise provided by law. Such memoranda will be limited to argument on the evidence presented. Separate requests for findings of fact and conclusions of law which

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

the parties wish the Hearing Officer to reach must not exceed 50 pages in length.

Upon expiration of the time for filing closing legal memoranda and requests for finding of fact and rulings of law, the hearing record will be closed, and the hearing officer will proceed to decision. The hearing officer will reopen the record, at any time prior to a decision, upon appropriate notice to all parties if the hearing officer determines that there is new evidence that was not available at the time of the hearing and that is required to reach a fair and equitable decision.

**40. Failure to Appear**

If a party fails to appear at the scheduled hearing, the hearing officer may take evidence and issue such orders as may be necessary including, but not limited to, ordering an educational placement for the child or defaulting the absent party.

**41. Rights of All Parties**

(a) All parties have the right

- (1) To receive, upon request local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests, a list of its impartial hearing officers with their qualifications.
- (2) To be accompanied and advised by legal counsel and advocates at the party's expense;
- (3) To present evidence, to confront, cross-examine, and subpoena witnesses;
- (4) To prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties at least five (5) days before the hearing;

(b) Audio Tape

The audiocassette tape is the official record of the hearing. Parties may request a copy of the audiocassette tape(s). A copy of the electronic verbatim record will be provided within 10 days (depending upon number of audio cassette tapes) upon written request to local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

(c) Transcripts

The 504 coordinator does not provide a free copy of the transcript to the parties. Although the 504 coordinator can authorize and arrange for a transcript to be made on behalf of the school district or parent(s), the requesting party shall be responsible for payment of such transcript. A copy of the transcript will be provided to the requesting party within 30 calendar days of the petitioner's written request. If there are more than 20 tapes; however, the transcript will be provided within 60 calendar days of petitioner's written request.

(d) Verbatim Record

The electronic verbatim record may only be used in a manner consistent with these regulations and otherwise shall be kept confidential except with the parent/guardian's consent.

(e) Additionally, parents have the following rights:

- (1) To have the child, if he/she is the subject of the hearing, present at the hearing;
- (2) To open the hearing to the public; otherwise the hearing shall not be open to the public.

**42. Summary Judgments**

A party may request a decision without a hearing, also known as a summary judgment; however, all parties and the hearing officer must agree to a decision based solely on written material. The decision will have the same force and effect as any other special education appeals decision.

**43. Dismissal With or Without Prejudice**

There are two ways for a case to be dismissed. One way is dismissal with prejudice; the other is dismissal without prejudice.

- (a) Dismissal with prejudice means that the issues raised in the hearing request are closed and cannot be reopened in subsequent requests for hearing.
- (b) Dismissal without prejudice means that the same issues may be raised at a later date by the filing of a new request for hearing.

**44. Request for Dismissal With Prejudice by Parties**

Any party may file a motion or request to dismiss with prejudice for failure:



NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

- (a) To prosecute or proceed with the case by the other party;
- (b) To follow or comply with these rules or with any hearing officer order;
- (c) To state a claim upon which relief can be granted;
- (d) To sustain its case after presentation of evidence.

The hearing officer may allow a motion or request to dismiss with or without prejudice.

**45. Request for Withdrawal**

A party who decides not to go forward with their request for hearing after a proceeding has been scheduled, must file a request for withdrawal with the hearing officer. The request must contain a reason for the withdrawal. When the party files a request for withdrawal (hereinafter referred to as "petition"), the party must file a petition with the hearing officer and, at the same time, must send a copy of the petition to the opposing party.

**46. Dismissal By Order of the Hearing Officer**

The hearing officer has the authority to dismiss a case with or without prejudice when the party who requested the hearing fails to respond to notices or correspondence, file documents required by these policies, comply with orders, or otherwise indicates an intent not to proceed with the hearing request. The hearing officer may issue an order requiring the party to show cause why the appeal should not be dismissed for lack of prosecution or a failure to proceed. If that party fails to show such cause within thirty (30) days, the appeal may be dismissed with or without prejudice.

**47. Inactive Cases**

A case that has not been rescheduled, withdrawn, settled, mediated, or requested to be scheduled by either party for a period of six months from the original request for hearing, may be dismissed with prejudice. A dismissal under this section shall be a final action of the LEA.

**48. Consolidation of Cases**

Whenever it shall appear to the hearing officer that 2 or more requests involve substantially similar or substantially related issues, the hearing officer shall have the authority to consolidate those proceedings for appeal, decision, or both.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**49. List of Hearing Officer Qualifications**

The local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests maintains a list of persons who serve as hearing officers. This list includes a statement regarding the backgrounds of each of the hearing officers and is available upon request.

**50. Hearing Officer Decision**

(a) Requests for findings of fact will be limited to those facts necessary to support the decision, and the terms of their submission is within the discretion of the hearing officer.

(b) Requests for rulings of law will be limited to those central issues of law, if any, which are contested or essential, and the terms of their submission is within the discretion of the hearing officer.

(c) The hearing officer will render a decision, including findings of facts and rulings of law consistent with RSA 541-A:35.

(d) The hearing officer will ensure that not later than 10 days after the hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is sent to each of the parties.

**51. Review Procedure - Appeal of Decision of Hearing Officer**

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.

**52. Post-hearing Matters**

The decision of a hearing officer will be implemented immediately, unless a delay is agreed to in writing by both parties, and one party files a timely appeal to a court of competent jurisdiction. Unless an appeal to court is filed by either party, or a delay is agreed to, the hearing officer's decision shall be fully implemented within 30 days.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**53. Hearing Officers**

- (a) The local school district section 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests, will maintain a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each of those persons.
- (b) Hearing officers appointed by the LEA will be attorneys who have been admitted to the practice of law in at least one jurisdiction or other individuals with knowledge of state and federal special education law and not be attorneys employed by the LEA nor represent the LEA at an impartial hearing.
- (c) The LEA will enter into contracts with attorneys or other individuals with knowledge of section 504 law to serve as impartial due process hearing officers at administrative due process hearings.
- (d) Such hearings shall not be conducted:
  - (1) By a person who is an employee of the LEA which is involved in the education or care of the child;
  - (2) By any person having a personal or professional interest which would conflict with his or her objectivity in the impartial hearing; or
  - (3) By any elected member of a local school board.
- (e) No person who is currently representing a client in a section 504 matter in New Hampshire may serve as a hearing officer.
- (f) No person will serve as a hearing officer who has served as a state or local school board official or a school administrator, including a special education administrator, section 504 coordinator, or as an advocate for students with educational disabilities or their parents, in New Hampshire or in any other state within the immediately preceding 12-month period.
- (g) No attorney or other individuals with knowledge of section 504 law will preside as a hearing officer in any hearing in which there is a party:
  - (1) Whom the attorney or other individuals with knowledge of section 504 law has represented in any matter within the immediately preceding 12-month period; or
  - (2) By whom the hearing officer has been employed during the immediately preceding 3-year period.

**54. Hearing Files and Official Record of Hearing**

The hearing officer is responsible for returning the complete hearing files and official record of hearing to the 504 coordinator as soon as possible after a final decision has been rendered and the hearing process has been concluded.

**55. Tips for Participants to Hearings**

- COME PREPARED. Spend some time prior to the hearing to review the issues so that you are clear about what you want as an outcome. Understand your rights. Think about any further information you may need. If you have questions about the hearing process, feel free to ask the office of legislation and hearings for clarification. We will be happy to answer process questions but cannot offer legal advice.
- BE THOROUGH. Include all information needed in the appeal. If your appeal is rejected for lack of information, you may not receive another one.
- BE COOPERATIVE! Whether or not you have requested the hearing, it is important for you to make every effort to conduct yourself in a cooperative manner. The more uncooperative you are, the more difficult it will be for the Hearing Officer to understand your point of view.
- STAY FOCUSED ON THE ISSUE! It is important not to get lost in emotions of the issue; focus only on the facts because they are why you are at hearing.
- CONTINUANCES. Ask for a continuance if you really need one. Continuances are only granted in emergency situations. Emergency situations include: hospitalization, sudden illness or death, natural disasters, and snowstorms (Please see section "Unexpected Circumstances")

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**APPENDIX A**

**FORMS FOR USAGE IN 504 HEARING PROCEDURE**

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**FORM TO REQUEST A SECTION 504 HEARING**

1. Child's name:

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2. Child's home address and mailing address (if not the same as home address):

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3. Name of school the child is attending:

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▪ Description of the problem relating to a proposed or refused initiation or change of the Section 504 program, including related facts:

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▪ Other party suggested resolution to the problem (if known):

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4. Parent/Guardian's name: \_\_\_\_\_

5. Parent/Guardian's name: \_\_\_\_\_

6. Parent/Guardian's mailing address (if not the same as child's mailing address):

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NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

7. Parent/Guardian's mailing address (if not the same as child's mailing address):

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8. Parent/Guardian's daytime telephone number: \_\_\_\_\_

9. Parent/Guardian's daytime telephone number: \_\_\_\_\_

10. Would you be willing to attend a mediation session? \_\_\_\_\_

Signature(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date





NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**Written Request for Continuance of Hearing**

To: \_\_\_\_\_  
[enter Hearing Officer name here]

From: \_\_\_\_\_  
[enter your name]

Date: \_\_\_\_\_ Case #: \_\_\_\_\_

NOW COME \_\_\_\_\_,  
[Parent/Guardian/ name or School District]

respectfully request Continuance of Hearing in the matter \_\_\_\_\_/  
\_\_\_\_\_ due to  
[Student first name last initial/School District]

\_\_\_\_\_. \_\_\_\_\_ is currently  
[indicate reason for request] [enter student's name]

\_\_\_\_\_. We understand that postponement for an  
[indicate student's status]

indefinite period will not be granted. We propose the pre-hearing and/or hearing be  
rescheduled to: \_\_\_\_\_  
[indicate date(s) certain when you & the other party (would be available)]

We have contacted the other party and they have:

\_\_\_\_\_ agreed with the continuance and dates listed above.

\_\_\_\_\_ not agreed with the continuance

\_\_\_\_\_ agreed with the continuance but not the dates listed above

\_\_\_\_\_ agreed with the continuance but are only available: \_\_\_\_\_  
[give dates other party available]

\_\_\_\_\_  
Parent/Guardian Date

\_\_\_\_\_  
Parent/Guardian Date

\_\_\_\_\_  
Attorney/Advocate for Parent/Guardian Date

\_\_\_\_\_  
School District Representative Date

\_\_\_\_\_  
School District Representative Date

\_\_\_\_\_  
Attorney for School District Date

Form 504-3

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
MODEL USERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS

**Written Request for Withdrawal of Hearing**

To: \_\_\_\_\_  
[enter Hearing Officer name here]

From: \_\_\_\_\_  
[enter your name]

Date: \_\_\_\_\_ Case #: \_\_\_\_\_

I/We, the undersigned, as a result of \_\_\_\_\_,  
[enter reason for requesting withdrawal]\*

request that the hearing scheduled regarding the above-named student be withdrawn.

I/We certify that a copy of this request has been sent to the opposing party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date