

# Dyer County Board of Education

Descriptor Term:

**Dyer County School System  
Section 504/Title II ADA  
Parent/Student Rights in Identification  
Evaluation and Placement**

Descriptor Code:

**IDDJ**

Board Approved:

**1/5/13**

Rescinds:

Board Approved:

1 Section 504 of the Rehabilitation Act of 1973 provides that “no otherwise qualified individual with  
2 a disability in the United States shall, solely by reason of her or his disability, be excluded from the  
3 participation in, or denied the benefits of, or subjected to discrimination under any program or  
4 activity receiving federal financial assistance.”  
5

6 If you are the parent/guardian of a child with disabilities, or a child who is suspected of being  
7 disabled, you and your child have the following legal rights pursuant to Section 504 of the  
8 Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.  
9

## 10 **Referral**

11  
12 Any student who needs, or is believed to need, special accommodations, related services, or programs  
13 under Section 504 of the Rehabilitation Act of 1973, may be referred for a Section 504 evaluation.  
14

15 A referral for Section 504 evaluation may be made by you, by a teacher, or by any other person. All  
16 referrals must be in writing and submitted to the principal of your child’s school.  
17

18 You may request an evaluation to determine whether your child is a “qualified handicapped person” or  
19 an “individual with disabilities” by completing a Section 504 Referral form and submitting it to the  
20 principal of your child’s school.  
21

## 22 **Eligibility**

23  
24 The Dyer County School System will convene a Section 504 Committee Meeting to review the request.  
25 This meeting will include the principal/designee, a regular education teacher, and other individuals who  
26 are knowledgeable about your child. You will be asked to participate in this meeting. The Section 504  
27 Committee will determine whether your child needs a formal assessment to determine his/her eligibility.  
28

## 29 **Identification**

30  
31 Your child will be eligible for protections and/or services if he/she has a physical or mental impairment that  
32 substantially limits one or more major life activities (“major life activities” include activities such as caring for  
33 one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working) or  
34 major bodily functions (such functions include immune system, normal cell growth, digestive, bowel, bladder,  
35 neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).  
36

37 Your child may be considered eligible if he/she no longer has a disability, but has a “record of” having  
38 disability, or is “regarded as” having a disability.  
39

40 Your child will be evaluated by tests that are appropriately validated and selected for use by trained  
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1 personnel to assess specific areas of educational need.

2 The Section 504 Committee will consider all relevant information about the child, including reports  
3 from physicians, classroom and parental observations, and results of standardized tests.

4  
5 In interpreting the testing results and making placement decisions, the Section 504 Committee will  
6 consider information from a variety of sources. Your child’s placement decision will be made by a  
7 group of individuals, including yourself.

8  
9 Your child’s educational needs will be reevaluated at least once every three (3) years or more often if  
10 deemed necessary.

11  
12 **If your child is eligible for Section 504/Title II protections, your child has the following rights**  
13 **under law:**

14  
15 Not be excluded **on the basis of disability** from participation in, or denied the benefits of, any program  
16 or activity conducted by the Dyer County School System;

17  
18 To receive an appropriate education, including regular or special education and related aids and services  
19 that meet his/her needs as adequately as the needs of other students;

20  
21 To be educated with his/her nondisabled peers to the maximum extent appropriate, including lunch,  
22 recess, and other non-academic activities;

23  
24 To be provided an equal opportunity to participate in non-academic and extracurricular activities offered  
25 by the Dyer County School System;

26  
27 To be educated in facilities and receive educational services that are comparable to those provided to  
28 nondisabled students; and

29  
30 Not to be removed from his/her educational program for disciplinary reasons and without the provision  
31 of educational services for more than ten (10) school days cumulatively per school year. Prior to a  
32 removal of more than ten (10) school days per school year, your child’s Section 504 Committee will  
33 meet to determine whether a functional behavior assessment and/or behavior intervention plan are  
34 needed. The Section 504 Committee will also determine whether your child’s behavior is a  
35 manifestation of his/her disability. If your child’s misbehavior is a manifestation of his/her disability,  
36 your child cannot be removed from school for additional days. If your child’s misbehavior is not a  
37 manifestation of his/her disability, the child may be suspended or expelled in accordance with the Dyer  
38 County School System’s Student Code of Conduct and Board of Education policies without receiving  
39 any educational services.

40  
41 **If you are a parent/guardian of a child with disabilities, you have the following additional legal**  
42 **rights:**

43  
44 To examine all records relating to the child’s evaluation, identification, educational program, and  
45 placement;

1 To examine the child’s educational records, and to obtain copies of these records, at a reasonable cost  
 2 unless the fee would effectively deny you access to the records;

3  
 4 To receive an explanation of, or interpretation of, any information contained in the child’s educational  
 5 records;

6  
 7 To be notified in writing of all decisions concerning your child’s educational program or services;

8  
 9 To receive notice of all Section 504 Committee meetings and to be given an opportunity to attend and  
 10 participate in these meetings, including the right to be accompanied by a friend, advocate, or attorney (at  
 11 your own expense);

12  
 13 To request amendment of your child’s educational records if you believe they are inaccurate,  
 14 misleading, or otherwise in violation of your child’s rights, and if the Dyer County School System  
 15 refuses your request to amend the records, you have the right to (1) place a written statement in your  
 16 child’s education file and/or, (2) request a due process hearing to seek an administrative order to amend  
 17 the records;

18  
 19 To file a written complaint with the Office for Civil Rights if you believe that the Dyer County School  
 20 System has violated the legal rights of you or your child pursuant to Section 504 and/or Title II of the  
 21 ADA;

22  
 23 To request informal mediation of any dispute regarding the child’s identification, evaluation or  
 24 placement by notifying Mrs. Angela Harrington, Section 504 Coordinator, at (731) 285-6712; and  
 25 To request a formal due process hearing of any dispute regarding the child’s identification, evaluation or  
 26 placement before an impartial Section 504 hearing officer, and if you are not satisfied by the decision of  
 27 the hearing officer, you may seek review of the hearing officer’s decision in a court of competent  
 28 jurisdiction (generally the closest federal district court). The form to request a due process hearing  
 29 should be obtained from and returned to Mrs. Angela Harrington, Section 504 Coordinator. The due  
 30 process hearing procedures are more fully detailed in the following section.

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 33  
 34  
 35 Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent  
 36 wishes to contest any action of the Dyer County School System with regard to a child’s identification, evaluation,  
 37 and placement under Section 504. This provision is found within 34 CFR §104.36. If a parent/guardian requests a  
 38 Section 504 hearing with the Dyer County School System, the parent/guardian has the right to personally  
 39 participate and to be represented by at the hearing by an attorney or advocate at the parent’s expense.

40  
 41 Contested actions or omissions that are appropriate for a Section 504 hearing with the Dyer County School  
 42 System should involve identification, evaluation, or placement issues involving a child who has or is believed to  
 43 have a disability.

44  
 45 **Request for Due Process**

46 A parent/guardian who wishes to challenge the Dyer County School System’s action or omission with regard to  
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1 the identification, evaluation, or placement of a student who has or is believed to have a disability as defined by  
2 Section 504, shall make a written request for a due process hearing to the Dyer County School System's Section  
3 504 Coordinator, Mrs. Angela Harrington. If a request is received orally, it should be reduced to writing or the  
4 parent/guardian should be provided a form to reduce the request to writing. The written request must make clear  
5 that the parent is seeking a due process hearing under Section 504 before an impartial Section 504 hearing officer.  
6 The written request must be made on a form provided by the Dyer County School System for that purpose. If the  
7 intent to seek a due process hearing is not clear from the face of the request, the Dyer County School System's  
8 Section 504 Coordinator may contact the parent to clarify the request and ascertain whether the parent wishes to  
9 initiate a Section 504 due process hearing. The Section 504 Coordinator may also assist the parent in clarifying  
10 any questions regarding due process rights under Section 504. Timelines for the appointment of a hearing officer  
11 will not begin until it is clear from the parent/guardian's request for due process that the dispute at issue is  
12 regarding the Section 504 identification, evaluation or placement of a child. If after such communication, the Dyer  
13 County School System is still unsure whether the parent is requesting a due process hearing under Section 504,  
14 the Dyer County School System shall initiate due process procedures, and appointed hearing officer will hold a  
15 pre-hearing conference to decide whether the parent is seeking a due process hearing under Section 504, and  
16 whether the hearing office has jurisdiction to entertain the claims and issues raised by the parent.

### 17 **Hearing Officer**

18 The Dyer County School System will appoint an impartial hearing officer to preside over the hearing  
19 and issue a decision. Such appointment will be made within fifteen (15) days of the date of receipt of a  
20 clear request for a due process hearing. The hearing officer will be hired by the Dyer County School  
21 System as an independent contractor at no expense to the parent. The hearing officer that is appointed  
22 shall not be a current employee of the Dyer County School System, and shall not be related to any  
23 member of the Dyer County School System's local board of education. The hearing officer need not be  
24 an attorney, but shall be familiar with the requirements of Section 504 and the Dyer County School  
25 System's hearing procedures under Section 504. The District's choice of an impartial hearing officer is  
26 final and may not be presented as an issue at the due process hearing, since such an issue would not  
27 relate to the identification, evaluation, or placement of a disabled child under Section 504. If a  
28 parent/guardian disputes the impartiality of the appointed hearing officer, s/he may raise such issue in a  
29 review of the hearing officer's opinion by a court of competent jurisdiction or in a complaint to the  
30 Office for Civil Rights. The regional office which covers Tennessee is: U.S. Department of Education  
31 Office for Civil Rights - Atlanta | 61 Forsythe Street, SW, Suite 19T70 | Atlanta, GA 30303 | (404-974  
32 9406).

### 33 **Scheduling of Hearing**

34 The appointed hearing officer shall issue an Order Setting Hearing Date to the parent/guardian and the Dyer  
35 County School System's Section 504 Coordinator in writing. Such Order shall set a date for the hearing to be held  
36 within fifteen (15) days of the date of issuance of the hearing officer's Order. The Order shall also set forth a  
37 mutually agreeable time and place for the hearing.  
38

### 39 **Continuances**

40 Upon a showing of good cause, the hearing officer, at his/her discretion may grant a continuance of the  
41 hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.  
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### 43 **Legal Representation at Hearing**

44 The Dyer County School System generally will not have legal representation at the hearing unless the parent  
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1 represented by a licensed attorney at the due process hearing, s/he must inform the Dyer County School System’s  
 2 Section 504 Coordinator and the appointed hearing officer of that fact, in writing, at least seven (7) calendar days  
 3 prior to the hearing date, or the hearing can be continued upon the Dyer County School System’s request.  
 4

5 **Pre-Hearing Conference**

6 The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her  
 7 representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing  
 8 Conference will also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the  
 9 parties’ questions regarding the hearing process. The Pre-Hearing Conference can be held via telephone  
 10 or in person depending on the Hearing Officer’s decision based on the convenience to both parties.  
 11

12 **Dismissals**

13 If, after the Pre-Hearing Conference, the hearing officer finds that the parent, as a matter of law, alleges and/or  
 14 raises no factual claims or legal issues that come within his/her jurisdiction as a Section 504 hearing officer, s/he  
 15 may dismiss the hearing and issue an order to that effect explaining the basis for such finding.  
 16

17 **Hearing**

18 The hearing shall be conducted in an informal, non-adversarial manner. The parties shall address the  
 19 hearing officer by name (i.e. Mr. or Ms.). The hearing shall be closed or open to the public as the  
 20 parent/guardian’s request. Neither the federal nor the Tennessee Rules of Evidence or Procedure will  
 21 apply. The hearing officer may reasonably limit testimony and introduction of documentary exhibits for  
 22 reasons or relevance.  
 23

24 **Recording**

25 Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape  
 26 recorded. The parent/guardian may obtain a copy of the tape-recording, at his/her request. In order for an accurate  
 27 recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations.  
 28 If a parent/guardian proceeds to a review of the due process hearing decision to a court of competent jurisdiction,  
 29 the Dyer County School System will prepare a written transcript of the hearing tape-recording to be offered to the  
 30 court as an exhibit.  
 31

32 **Witnesses**

33 Witnesses will present their information in narrative form, without the traditional question and answer format of  
 34 legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the hearing  
 35 officer, at his/her discretion, ask a witness a certain question.  
 36

37 **Format of Presentation**

38 Each side will have an equal amount of time to present their positions to the hearing officer, who will make the  
 39 determination as to time constraints based upon the issues involved. The parent/guardian will present its case  
 40 first, by making an opening statement, which outlines the parent/guardian’s position on all issues, presenting  
 41 personally, calling additional witnesses, and making a closing argument. The Dyer County School System will  
 42 present its side next. All of the preceding may be done either personally or through counsel, except for personal  
 43 presentations or statements. At the end of the Dyer County School System’s presentation, the parent/guardian  
 44 may offer a short response to the Dyer County School System’s case.  
 45

46 **Submission of Documentary Exhibits**

47 As part of their presentations, the parties may submit any reports, evaluations, correspondence, notes, or any  
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1 other documents that may support their positions and that the hearing officer will admit at his/her discretion.  
 2 Exhibits submitted to the hearing officer by either party must be marked. The hearing officer may, in the exercise  
 3 of his/her discretion, reasonably limit the number of documents to be submitted for his/her review, as well as the  
 4 number of witnesses and the length and/or scope of their presentations or statements.

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 6 **Closing Argument/Briefs**

7 The hearing officer may allow or request written closing arguments summarizing and characterizing the  
 8 information presented at the hearing; and provide legal authority in support of each party’s position. The  
 9 hearing officer will set time lines for their submission at the conclusion of the hearing.

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 11 **Decision**

12 The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement;  
 13 but, in all cases, the hearing officer shall issue a written opinion addressing and ruling on all issues raised by the  
 14 Petitioner, indicating what corrective action, if any, the Dyer County School System must take. Formal findings  
 15 of fact and conclusions of law are not required. Any issue or claim raised by the parent/guardian that is left  
 16 unaddressed by the hearing officer in his/her decision will be deemed to have been denied. The hearing officer  
 17 should include in his/her decision that the unaddressed issues/claims have been denied. The decision must be  
 18 issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district.  
 19 The hearing officer may not award attorneys’ fees as a part of the relief granted to a parent/guardian or the  
 20 district.

21  
 22 **Review Procedure/Appeal**

23 If the parent/guardian is not satisfied by the decision of the hearing officer, s/he may seek review of the hearing  
 24 decision in a court of competent jurisdiction (generally the closest federal district court).

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

27 A parent/guardian may file a complaint with the Office for Civil Rights (“OCR”) if s/he believes that the  
 28 Dyer County School System has violated any provision or regulation of Section 504. The filing of a  
 29 complaint does not affect the hearing process or the time lines set forth above. OCR addresses Section  
 30 504 complaints separately and independently of the local hearing process, in accordance with the  
 31 guidelines set forth in OCRs Case Processing Manual. A parent/guardian should contact OCR or consult  
 32 its Case Processing Manual concerning timeframes for filing OCR complaints.

33  
 34 The OCR office for Tennessee is located at:

35 Atlanta Office- Office for Civil Rights, U.S. Department of Education, 61 Forsyth St. S.W., Suite 19T10  
 36 Atlanta, GA 30303-8927

37 Telephone: 404-974-9406; Fax 404-974-9471; TDD 877-521-2172; Email: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)

38 The OCR National Headquarters is located at:

39 U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of  
 40 Education Bldg. 400 Maryland Avenue, SW Washington, DC 20202-1100

41 Telephone: 800-421-3481; Fax 202-453-6021; TDD 877-521-2172; Email: [OCR@ed.gov](mailto:OCR@ed.gov)