

# Kimberly School District

## INSTRUCTION 2162P

Section 504 of the Rehabilitation Act of 1973 ("Section 504")

- (0) Impartial Due Process Hearing. If the parent or legal guardian of a student who qualifies under Section 504 for special instruction or related services disagree with a decision of the District with respect to: (1) the identification of the child as qualifying for Section 504; (2) the District's evaluation of the child; and/or (3) the educational placement of the child, the parents of the student are entitled to certain procedural safeguards. The student shall remain in his/her current placement until the matter has been resolved through the process set forth herein.
0. The District shall provide written notice to the parent or legal guardian of a Section 504 student prior to initiating an evaluation of the child and/or determining the appropriate educational placement of the child, including special instruction and/or related services;
    - A. Upon request, the parent or legal guardian of the student shall be allowed to examine all relevant records relating to the child's education and the district's identification, evaluation and/or placement decision;
    - B. The parent or legal guardian of the student may make a request in writing for an impartial due process hearing. The written request for an impartial due process hearing shall identify with specificity the areas in which the parent or legal guardian are in disagreement with the District;
    - C. Upon receipt of a written request for an impartial due process hearing, a copy of the written request shall be forwarded to all interested parties within three (3) business days of receipt of the same;
    - D. Within ten (10) days of receipt of a written request for an impartial due process hearing, the district shall select and appoint an impartial hearing officer that has no professional or personal interest in the matter. In that regard, the District may select a hearing officer from the list of special education hearing examiners available at the Office of Public Instruction, the county superintendent or any other person that would conduct the hearing in an impartial and fair manner;
    - E. Once the District has selected an impartial hearing officer, the District shall provide the parent or legal guardian and all other interested parties with notice of the person selected;
    - F. Within five (5) days of the District's selection of a hearing officer, a pre-2162P hearing conference shall be scheduled to set a date and time for a hearing, identify the issues to be heard and stipulate to undisputed facts to narrow the contested factual issues;
    - G. The hearing officer shall in writing notify all parties of the date, time and location of the due process hearing;
  0. At anytime prior to the hearing, the parties may mutual agree to submit the matter to mediation. A mediator may be selected from the Office of Public Instruction's list of trained mediators.

- J. At the hearing, the District and the parent or legal guardian may be represented by counsel;
- K. The hearing shall be conducted in an informal but orderly manner. Either party may request that the hearing be recorded. Should either party request that the hearing be recorded, it shall be recorded using either appropriately equipped or a court-reporter. The District shall be allowed to present its case first. Thereafter the parent or legal guardian shall be allowed to present its case. Witnesses may be called to testify and documentary evidence may be admitted, however, witnesses will not be subject to cross-examination and the **Montana Rules of Evidence** will not apply. The hearing officer shall make all decisions relating the relevancy of all evidence intended to be presented by the parties. Once all evidence has been received the hearing officer shall close the hearing. The hearing officer may request that both parties submit proposed findings of fact, conclusions and decision;
- L. Within twenty (20) days of the hearing, the hearing examiner should issue a written report of his/her decision to the parties;
- M. Appeals may be taken as provided by law. The parent or legal guardian may contact the Office of Civil Rights, 1244 Speer Blvd., Suite 310, Denver, Colorado 80204-3582, (303) 844-5695 or 5696.

(2) Uniform Grievance Procedure. If a parent or legal guardian of the student allege that the District and/or any employee of the District has engaged in discrimination or harassment of the student, the parent or legal guardian will be required to proceed through the District's Uniform Grievance Procedure.

Legal Reference:

34 C.F.R. 104.36. Procedural safeguards

Procedure History:

First Reading: 11/26/02

Adopted on: 1/28/03