

## **Pennsylvania Standards of Conduct for Office for Dispute Resolution (ODR) Special Education Hearing Officers**

The Pennsylvania Standards of Conduct for ODR Special Education Hearing Officers was created by the Pennsylvania ODR Stakeholder Council in 2012. It is based on the Model Code of Ethics of the National Association of Hearing Officials. If any ethical requirements are set forth in statutes, regulations or rules for administrative hearing officers that explicitly apply to Pennsylvania ODR Special Education Hearing Officers, either presently or in the future, the following Standards of Conduct are intended to supplement any such requirements. Nothing in these Standards is intended to contradict or overrule any such requirements.

### **Standard I – Impartiality**

- A. A Hearing officer shall recuse him/herself if the due process hearing cannot be conducted in an impartial manner.
  
- B. Hearing officers shall act in such a way that no one could reasonably believe that any person or agency could improperly influence them in the performance of their duties.
  - 1. Hearing officers shall not conduct or participate in deciding the outcome of any proceeding in which their impartiality might be reasonably questioned. An appropriate ground for disqualification of a hearing officer is personal knowledge of the evidentiary facts in a case, other than (a) that obtained in the course of the hearing officer's official duties with regard to a prior case involving a party, and (b) that obtained from the official transcript in a prior case involving a party.
  - 2. Hearing officers shall preside without bias or prejudice and without discrimination on any prohibited basis against any person involved in the proceeding, and should control the proceedings to prevent such discriminatory behavior by any other person involved.
  - 3. A hearing officer shall neither give nor accept a gift, favor, loan, services, meals, or other item of value that raises a question as to the hearing officer's actual or perceived impartiality.
  
- C. If the Hearing officer must recuse him/herself, the file will be returned to ODR for immediate rescheduling.

### **Standard II - Conflicts of Interest**

- A. Hearing officers shall avoid a conflict of interest or the appearance of a conflict of interest before, during, and after a proceeding. A conflict of interest can arise from involvement by the hearing officer with the subject

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matter of the dispute or from any relationship between the hearing officer and any participant, whether past or present, personal or professional, that reasonably raises a question of the hearing officer's impartiality.

- B. The hearing officer shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the hearing officer.
- C. Unless the hearing officer recuses on the hearing officer's own motion, the hearing officer shall promptly disclose all conflicts of interest that are known to the hearing officer. The hearing officer shall make such disclosure to the parties' counsel. The parties may agree to allow the hearing officer to preside after full disclosure has been made.
- D. When the parents and/or student are not represented by counsel, and the hearing officer discloses a conflict of interest without recusing, the hearing officer shall contact the assigned ODR case manager immediately to allow the parties to grant or refuse informed consent for the hearing officer to continue with the due process proceeding. The ODR case manager will contact both parties, following the procedure attached hereto as Attachment A. The hearing officer shall set a time frame for this procedure that is appropriate in light of the decision due date and the next scheduled hearing date.
- E. Subsequent to a due process hearing, a hearing officer shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the proceeding. When a hearing officer develops personal or professional relationships with parties, other individuals, or organizations following a proceeding in which they were involved, factors such as time elapsed following the proceeding, the nature of the relationships established, and the services offered when determining whether the relationships might create a perceived or actual conflict of interest should be taken into consideration.

**Standard III – Competence**

- A. Hearing officers shall demonstrate and maintain the competencies as found in 34 C.F.R. § 300.511.
  - (c) *Impartial hearing officer.* (1) At a minimum, a hearing officer—
    - (i) Must not be—

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(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c ) (1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

**Standard IV – Professional Conduct**

Hearing officers shall:

1. Always act in a manner that promotes public confidence in the integrity, impartiality and efficiency of the hearing process.
2. Maintain high standards of professional conduct.
3. Follow procedural formalities to the extent required by the IDEA, exercising their discretion to make exceptions in the interest of fairness and adjudicative efficiency, consistent with the requirements of due process.
4. Punctually fulfill their professional commitments within the specified timelines of the due process hearing guidelines.

**Standard V – Confidentiality**

1. Hearing officers shall not disclose confidential or private information obtained by reason of official position or authority as required by law.

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2. Hearing officers shall never seek to use such confidential information to further their personal interests.
3. Hearing officers shall follow ODR's rules or policies regarding media contacts. In any permitted contact with the media, hearing officers shall limit the sharing of information to that which does not identify individuals and should never discuss the merits of any specific case.
4. Hearing officers shall avoid ex parte communications about a case with anyone (including family, friends, and agency staff and associates) unless authorized by statute or agency regulations. However, hearing officers may in confidence discuss cases with other hearing officers.

**Standard VI - Personal Conduct**

- A. Hearing officers, either those directly employed or contracted by ODR should not present themselves in such a way as to convey the impression that he/she speaks for or on behalf of ODR during a due process hearing, speaking engagements, training presentations, etc.
- B. Hearing officers should treat all participants with equal courtesy and dignity and require the same treatment of the hearing officers by participants. Hearing officers should refrain from social conversation that is inconsistent with the formality and gravity of the situation, and should assure that every participant is addressed with the degree of formality that such participant prefers.

## Attachment A: Procedures When Hearing Officer Has Identified Conflict

1. The hearing officer will notify the assigned ODR case manager of the situation, along with the date upon which a decision about the conflict must be made by the parties and reported to the hearing officer by the ODR case manager. The hearing officer will give no more than ten (10) days for this process to be completed.
2. The ODR case manager will contact the unrepresented parent to ascertain whether the parent agrees to waive the conflict. The ODR case manager will advise the parent of the availability of ConsultLine staff to discuss the situation with parent. If parent chooses to talk with a ConsultLine representative, the ODR case manager will give parent's contact information to ConsultLine, along with the deadline set by the hearing officer for completion of these procedures. The ODR case manager and ConsultLine supervisor will, together, monitor the situation to ensure that parent's wish to talk to a ConsultLine representative does not adversely impact the deadline set by the hearing officer.
3. The ODR case manager will contact counsel for the LEA to ascertain whether the LEA agrees to waive the conflict.
4. The ODR case manager will notify the parent and the LEA's counsel of their respective decisions regarding waiver of the conflict.
5. If both parties do not agree to waive the conflict, the ODR case manager will notify the hearing officer that the conflict cannot be waived, with no mention of which party did or did not agree to a waiver.
6. The hearing officer will immediately recuse him or herself from the pending hearing, and as soon as is practical, the ODR case manager will reassign the case to another hearing officer.
7. If both the parent and LEA agree to waive the conflict, parent and LEA's counsel will complete and sign the "Consent Form for Waiver of Hearing Officer Conflict" and forward it to the ODR case manager in sufficient time to allow the ODR case manager to advise the hearing officer of the parties' decision within the timeframe set by the hearing officer.
8. The ODR case manager will notify the hearing officer that the parties have consented to his/her continued involvement in the pending matter.

9. If either party does not provide a response to the ODR case manager in sufficient time for the case manager to abide by the deadline set by the hearing officer, it will be assumed that the party(ies) do not consent to the waiver. The ODR case manager will notify the hearing officer that the case will be reassigned to another hearing officer, and as soon as is practical, the ODR case manager will reassign the case to another hearing officer.

Consent Form for Waiver of Hearing Officer Conflict

The hearing officer assigned by ODR to the due process hearing listed below has disclosed a conflict of interest to the parties. The hearing officer has indicated that, despite the conflict of interest, he/she does not believe that this conflict violates the impartiality requirements of 34 CFR §300.511(c). The hearing officer has referred this matter to the ODR case manager to determine from the parties whether they agree to waive the conflict, and agree to allow the assigned hearing officer to preside over the case.

Your decision to consent, or not to consent, to hearing officer [Name] presiding over due process hearing [File No.] is entirely voluntary. Only if all parties in the case agree to hearing officer [Name] deciding the case will he/she do so.

Check one:

I consent (agree) to hearing officer [ Name] deciding File No. [ ].

OR

I do not consent (agree) to hearing officer [Name] deciding File No. [ ].

Party Name

Signature of Party or Attorney  
(Electronic signature accepted)

Date

34 CFR 300.511(c):

*Impartial Hearing Officer. (1).* At a minimum, a hearing officer—

- (i) Must not be—
  - (A) An employee of the SEA, or the LEA that is involved in the education or care of the child; or
  - (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
- (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.