

UNIFORM PREHEARING DIRECTIONS

Effective immediately, Pennsylvania special education hearing officers, in the exercise of their discretion pursuant to the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §1415, the Pennsylvania Code, and other applicable law, will implement the following procedures in all cases. Although hearing officers retain discretion to make exceptions to these procedures for good cause shown to the extent permitted by law, all parties shall abide by these directions unless an explicit exception is made in a particular case.

PREHEARING MATTERS

1. COMMUNICATION WITH THE HEARING OFFICER

Email. Any counsel or *pro se* party who has an email account shall use email as the sole means of correspondence with the hearing officer. All emails to the hearing officer shall be copied to the opposing party's counsel, or to a *pro se* party. Unless otherwise instructed by the hearing officer, the parties shall not submit hard copies of any document emailed to the hearing officer. All emails should contain the ODR file number in the subject line. Embedded graphics and electronic "stationery" are strongly discouraged.

Mail & Fax. In the event that any counsel or *pro se* party does not have an email account, correspondence and other documents shall be sent by U.S. mail, or by fax if available to the hearing officer. In such circumstances, it is the hearing officers' strong preference to receive any document by regular U.S. mail.

Conference Call. Notwithstanding the foregoing directions, the parties or hearing officer may request conference calls.

2. RE-SCHEDULING HEARING DATES

Upon assignment of a case to a hearing officer, the hearing officer, in order to comply with statutory and regulatory requirements, will promptly schedule the first hearing. Should counsel or a party be unavailable for the initial hearing date or any scheduled session, they shall immediately notify the hearing officer to request that the hearing date be rescheduled, stating the exact reason for the request, and shall ascertain from the other party's counsel, or opposing *pro se* party, whether there is an objection.

Either party may request a hearing date change, known as a continuance, if unforeseen circumstances prevent attendance on the scheduled date. The hearing officer will rule on all continuance requests. A continuance request differs from a request to extend timelines (usually referred to as an extension of the decision due date). The decision due date is calculated when the hearing request is made. Changes to the decision due date may be needed due to continuances; the number of sessions needed to complete the case; time needed to complete written closing arguments, or other reasons. Any request that the decision due date be extended must be directed to the hearing officer. Decision due dates can only be changed if a party explicitly asks the hearing officer to change them. If the hearing officer agrees to extend the decision

due date, a new decision due date will be set at the time of the hearing officer's ruling. See 34 C.F.R. §§ 300.510 and 300.515.

Hearing officers retain the discretion to grant or deny requests to reschedule hearings and to extend decision due dates.

In expedited cases, a hearing officer's discretion to re-schedule hearing dates is limited by statutory timelines that require the prompt issuance of a final decision. Consequently, requests to re-schedule the hearing date in expedited cases are unlikely to be granted.

EXHIBITS

3. NOTICE FOR DISCLOSURE OF WITNESSES & EXHIBITS

So that the parties have the entire scope of evidence before a hearing begins, parties shall disclose all potential witnesses and exhibits that may be used over the course of the entire proceeding at least five business days (*two business days prior to expedited hearings*) prior to the initial hearing session of any matter.

After the hearing begins, if parties discover evidence that should have been disclosed under the evidence-disclosure rule in the preceding paragraph, hearing officers retain the discretion to make exceptions to this rule. Such exceptions, however, will be made only after strict offers of proof as to the materiality and relevance of the evidence and the reasons(s) that it was not discovered and/or disclosed, affording the opposing party an opportunity to examine it.

4. JOINT EXHIBITS

Eliminating duplicative exhibits creates a much clearer and more concise hearing record.

Prior to the hearing, parties should confer and designate one copy of the following documents to serve as the exhibit of record:

- (a) permissions to evaluate or reevaluate,
- (b) any report offered pursuant to paragraph #10 below,
- (c) invitations to any meeting,
- (d) IEPs/GIEPs/ IFSPs/Section 504 plans, and
- (e) NOREPs.

The documents in (a)-(e) above may be marked as an exhibit of either party or as a joint exhibit. In addition, the parties are encouraged to confer and designate a single copy of any other document that may be duplicative to serve as the document of record.

Please note that these directions are intended to apply to duplicates of the same document. If the parties feel that there is a material difference in the documents that is important to fact-finding, then each party's copy of the exhibit may be presented at the hearing.

5. EXCHANGE OF EXHIBITS

Notwithstanding the parties' collaborative effort to eliminate duplicative documents pursuant to paragraph #4 above, and consistent with paragraph #3 above, at or before the initial hearing session of any matter, the parties shall exchange a complete set of their respective exhibits and, at the initial hearing, shall provide a complete set of their exhibits to the hearing officer. In cases with electronic exhibits, the hearing officer will provide instructions to the parties for sharing and accessing each set of exhibits.

6. PREPARATION OF EXHIBITS

Exhibits shall be prepared according to the requirements set forth in the Attachment to these pre-hearing directions. All exhibit markings must be placed on the page so that they are clearly legible.

Exhibits not prepared according to these requirements will be returned to the party for re-marking. No exhibit that is improperly prepared and marked will be admitted.

HEARING

7. NOTICE OF SETTLEMENT

As soon as the parties have settled the case, or believe that they are in a position to request a conditional-dismissal order, the party who filed the complaint shall immediately notify the assigned hearing officer.

8. PRESENTATION OF EVIDENCE

Pursuant to *Schaffer v. Weast*, 546 U.S. 49 (2005), the party seeking relief bears the burden of persuasion. In absence of a direction from the hearing officer to the contrary, the party seeking relief shall bear the burden of production and, therefore, present its case-in-chief first in whatever sequence that party prefers. However, the hearing officer, at his/her discretion, may issue a direction setting the presentation of evidence, including the sequence of witnesses. The parties may submit their preferences in this regard, but the hearing officer retains discretion to establish the presentation of evidence.

9. SCOPE OF THE CLAIM

In the event that there is a dispute over the timeliness of filing of the complaint or the scope of the claims to be heard, the hearing officer may request an offer of proof and/or take evidence with regard to the known-or-should-have-known (KOSHK) date and/or the basis for any explicit exceptions to filing and/or scope of the claim requirements or limitations.

10. REPORTS AS EVIDENCE

Where the Author Testifies. Any evaluation report, re-evaluation report, independent report, or other report that is offered as an exhibit shall speak for itself, and may serve as direct testimony of its author as to the *substantive contents of the report*. A hearing officer may limit direct examination of the author to matters that, while not repeating the substantive contents of the report, are important to establishing its evidentiary weight and/or relevance, or to fostering understanding of the report.

Where the Author Does Not Testify. Any evaluation report, re-evaluation report, independent report, or other report, may be offered as an exhibit. The report shall speak for itself. Each hearing officer will give the report the weight the hearing officer determines to be appropriate in the exercise of her/his sole discretion.

11. REDUCTION OF UNNECESSARY/REDUNDANT EVIDENCE

The timely resolution of due process hearings is not only contemplated by the law, but in practical terms is best for the student, family, and educators. Therefore, every attempt will be made to conclude hearings within two full days. It is the intent of the hearing officers that hearings will extend no longer than four full days. Additionally, specific time allotments may be employed to promote efficiency in the testimony of witnesses.

A hearing officer, in his or her discretion or at the request of a party, may hold a pre-hearing conference in advance of the first session of a hearing.

Regardless of whether or not a pre-hearing conference is held, in the parties' opening statements on the record, the parties will state the issue(s) to be determined by the hearing officer. After the opening statements, the hearing officer will re-state the issues precisely on the record, seeking confirmation from the parties of issue(s) to be determined in the hearing. The hearing officer's re-statement of the issues on the record will govern the scope of the hearing and the evidence to be presented.

12. DECORUM IN THE HEARING

Parties, attorneys, participants and observers at the due process hearing are advised that hearing officers will prohibit the reading of newspapers, magazines, or books, the use of mobile devices, and performance of work unrelated to the hearing, in the hearing room while the hearing is in session. Hearing officers will not limit the use of a laptop or other electronic device where such technology is necessary for access to exhibits or for the accommodation of a disability.

Hearing officers will address attendees, as necessary, regarding decorum during the hearing.

Attachment Requirements for Exhibits

The Office for Dispute Resolution is strictly enforcing guidelines for marking exhibits in light of the need to prepare records properly for appeals of hearing officers' decisions in accordance with court directives.

- 1) **Copying**. The copy of exhibits for the Hearing Officer must be one-sided. The copy for the witness and the copies for the parties may be either one-sided or two-sided. Four copies are required—a copy for the parent, a copy for the LEA, a copy for a witness to refer to, and a copy for the hearing officer.
- 2) **Exhibit Marking**. All exhibits must be marked as follows: P for Parent, or S for School District, or IU for Intermediate Unit, or C for County.
- 3) **Exhibit Numbers & Page Numbers**. On every page of the exhibit, the page should include the exhibit number and the page number as part of the overall number of pages in the exhibit.

So, for example, parents' first exhibit, with four pages, would be numbered P-1 page 1 of 4, P-1 page 2 of 4, P-1 page 3 of 4, and P-1 page 4 of 4, with each page marked separately and completely. The same would apply for the pagination of each of the LEA's exhibits with the appropriate abbreviation from #2 above.

- 4) **Location of Exhibit Numbers & Page Numbers**. Exhibit numbers and page numbers must be in the lower right corner and not obscured by other print on the page. So that exhibit numbers and page numbers are not cut off when being copied, exhibit numbers and page numbers must be a minimum of ½ inch from the bottom of the page and ½ inch from the right side of the page. (See example pages that follow.)
- 5) **Exhibits in Landscape Format**. Where exhibits are in landscape format, the exhibits should be oriented so that, when placed in portrait format, the type faces away from the left side of the page. In effect, type on an exhibit in landscape format, when the page is held in portrait format, would be read from the bottom of the page to the top. (See example pages that follow.)

These requirements must be followed and any previous methods that differ must be abandoned. ***If the exhibits are not numbered properly they will be returned to the party for re-numbering. The record will not be closed until the exhibits are marked and numbered properly.***

Sample

Exhibit

in

Portrait

Format

Sample

Exhibit

in

Landscape

Format

(See also example on next page)

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Student's Name:

V. GOALS AND OBJECTIVES - Include, as appropriate, academic and functional goals. Use as many copies of this page as needed to plan appropriately. Specially designed instruction may be listed with each goal/objective or listed in Section VI.

Short term learning outcomes are required for students who are gifted. The short term learning outcomes related to the student's gifted program may be listed under Goals or Short Term Objectives.

MEASURABLE ANNUAL GOAL Include: Condition, Name, Behavior, and Criteria (Refer to Annotated IEP for description of these components)	Describe HOW the student's progress toward meeting this goal will be measured	Describe WHEN periodic reports on progress will be provided to parents	Report of Progress

SHORT TERM OBJECTIVES - Required for students with disabilities who take alternate assessments aligned to alternate achievement standards (PASA).

Short term objectives / Benchmarks