

OFFICE FOR DISPUTE RESOLUTION

# Pennsylvania Special Education Dispute Resolution Manual



A Resource for Parents and Educators

2017 Version

OFFICE FOR DISPUTE RESOLUTION  
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Through the Office for Dispute Resolution, the Pennsylvania Department of Education (PDE) fulfills its statutory mandate to maintain a special education due process system. PDE contracts with the Central Susquehanna Intermediate Unit to provide fiscal and certain management support for that office, without becoming involved in substantive operations. The hearing officers and mediators are free from interference or influence on any matters affecting the outcome of individual mediations and due process hearings. This includes, without limitation, interference or influence from any entity, individual, or group, such as parents, advocacy groups, school districts, intermediate units including CSIU, ODR staff, and PDE. At the same time, those hearing officers and mediators are provided with administrative support, as well as training delivered in a manner preserving their impartiality through ODR, which itself is also free of such interference or influence.

The Central Susquehanna Intermediate Unit will not discriminate in educational programs, activities or employment practices based on race, color, national origin, gender, disability, marital status, age, religion, sexual orientation, ancestry, union membership or other legally protected classifications. Announcement of this policy is in accord with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. Employees and program participants who have an inquiry or complaint of harassment or discrimination or who need information about accommodations for people with disabilities, should contact Director of Human Resources, CSIU, 90 Lawton Lane, Milton, PA, 17847, 570-523-1155.

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## **Chapter 1 - General Information**

This manual sets forth general guidelines, policies, and procedures for special education dispute resolution in Pennsylvania. The current version of this manual is available on the Office for Dispute Resolution (ODR) website, [www.odr-pa.org](http://www.odr-pa.org), or by contacting ODR.

### **101. Name and Citation of Manual**

This manual may be known and cited as the Pennsylvania Special Education Dispute Resolution Manual 2017 version.

Any changes to this manual will be identified and posted on the ODR website as *Updates to the Special Education Dispute Resolution Manual*.

### **102. Purpose and Basis for Manual**

This manual replaces all prior editions of the Pennsylvania Special Education Dispute Resolution Manual issued by the Office for Dispute Resolution (ODR).

- A. This manual provides information on a variety of resources available in Pennsylvania to resolve special education disputes between parents and the local educational agencies (LEAs) serving their children. Information is also provided about the services administered by ODR, which include IEP and IFSP facilitation, mediation, and due process hearings.
- B. This manual conforms with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400, *et. seq.*, and its implementing federal regulations, 34 C.F.R. §§300.1-300.818; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulations, 34 C.F.R. §§104.1-104.61; and state regulations in Chapters 14, 15, 16, and 711 of Title 22 of the Pennsylvania Code (22 Pa. Code §§14.101-14.163, 15.1-15.11, 16.1-16.65, 711.1-711.62), Chapter 4226 of Title 55 of the Pennsylvania Code (55 Pa. Code §§4226.1-4226.103), and, where applicable, 2 Pa. C.S. §§101-588, and Title 1 of the Pennsylvania Code (see 1 Pa. Code §31.1, 22 Pa. Code §1.6, 71 P.S. §§1, 66, 186).

The purpose of this manual is to serve as a practical guide for implementation of federal and state statutes and regulations governing early intervention and special education. It is not intended to create new law or to supplant any federal or state laws, regulations, or requirements. Nothing in this manual is intended to represent, or have the force of, law or legal authority. See *Pennsylvania Human Relations Comm. v. Norristown Area Sch. Dist.*, 473 Pa. 334, 374 A.2d 671

(1977); *Bethlehem Area Sch. Dist. v. Zhou*, 976 A.2d 1284, 1288-89 (Pa. Commw. 2009).

This manual is written primarily as a resource for parties and the attorneys representing them. For parents who are not represented by attorneys, guides to understanding due process hearings for children who are eligible for IDEA, Section 504, early intervention or gifted programming are also available from ODR, [http://odr-pa.org/wp-content/uploads/pdf/DPH\\_parent\\_guide.pdf](http://odr-pa.org/wp-content/uploads/pdf/DPH_parent_guide.pdf) <http://odr-pa.org/2012-parent-guide/>. The guide for parents provide basic and practical information for any parent who may be participating in any of the available dispute resolution options, including a due process hearing.

- C. For parents who are not represented by attorneys, a guide for parents to understanding due process hearings for parents of children who are eligible for early intervention or gifted programming are also available from ODR, <http://odr-pa.org/2012-parent-guide/>. The guide for parents provides basic and practical information for any parent who may be participating in any of the available dispute resolution options, including a due process hearing.
- D. Federal and Pennsylvania special education laws and regulations can be found on the Pennsylvania Training and Technical Assistance Network (PaTTAN) website, [www.pattan.net](http://www.pattan.net). Basic Education Circulars (BECs) are issued by the Department of Education on various educational topics and can be obtained at <http://www.education.pa.gov/Pages/Codes%20and%20Regulations/Basic-Education-Circulars.aspx#.VyzOvkrLIU>

### **103. Office for Dispute Resolution (ODR)**

- A. *General.* The Office for Dispute Resolution (ODR) coordinates the administration of the statewide special education dispute resolution system in Pennsylvania. ODR provides training on dispute resolution skills, manages the administrative aspects of the IEP and IFSP facilitation process, coordinates the scheduling of mediations and due process hearings, and provides technical assistance.
  - 1. ODR is funded by the Pennsylvania Department of Education with fiscal administration provided under contract with the Central Susquehanna Intermediate Unit (CSIU).
  - 2. ODR is a neutral administrative office, neither aligned with parents nor LEAs.
  - 3. ODR cannot provide legal advice or opinion to either party in a dispute, or to any person or entity in any context, as the office was established solely to provide dispute resolution coordination services.



4. ODR may be contacted at the following addresses and telephone/fax numbers:

ODR  
6340 Flank Drive  
Harrisburg, PA 17112-2764  
Phone: 800-222-3353 or 717-901-2145  
TTY Users: PA Relay 711  
Fax: 717-657-5983  
Email: [odr@odr-pa.org](mailto:odr@odr-pa.org)

5. Additional information may be obtained from ODR at the following website:

[www.odr-pa.org](http://www.odr-pa.org)

6. The Special Education ConsultLine is a helpline available to parents and advocates wishing to learn more about special education regulations and procedural safeguards. The ConsultLine can be reached by phone at 800-879-2301 or TTY Users: PA Relay 711, or by submitting an online request at <http://odr-pa.org/contact-consultline>.

7. Additional resources for parents and LEAs are provided in [Appendix A](#).

- B. Mediation and due process hearings are available to resolve disputes between a parent and the LEA responsible for providing the child with an education. These disputes concern the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) for students with disabilities, students who are gifted, protected handicapped students, and children with disabilities 3 years and older served by the early intervention system.
- C. IFSP Facilitation, mediation and due process are also available for children under the age of 3 who receive Early Intervention Services for Infants and Toddlers under Part C of the IDEA.
- D. Information regarding the state complaint process for a child aged three through 5 years is available from:

Pennsylvania Department of Education  
Office of Child Development and Early Learning (OCDEL)  
Bureau of Early Intervention Services (BEIS)  
333 Market Street, 6th Floor  
Harrisburg, PA 17126-0333  
Phone: (717) 346-9320  
Fax: (717) 346-9330

<http://www.education.pa.gov/Early%20Learning/Early%20Intervention/Pages/default.aspx#.Vbo-r IVhBe>

- E. ODR does not manage or coordinate proceedings within the state complaint process. Information regarding the state complaint process for school-age students is available from:

Bureau of Special Education (BSE)  
Division of Monitoring and  
Improvement-East  
333 Market Street, 7th Floor  
Harrisburg, PA 17126-0333  
717-783-6137

<http://odr-pa.org/parents/state-complaint-process>

Questions about the state complaint process may also be directed to the ConsultLine:

Toll-free in PA: 800-879-2301  
TTY Users: PA Relay 711  
Outside PA: 717-901-2146

Online Contact Form: <http://odr-pa.org/contact-consultline/>

## 104. Definitions

**Parent** - The term parent means a natural, adoptive or foster parent of a child; a guardian; an individual acting in the place of a natural or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent.

**Local Educational Agency** - The term local educational agency (LEA) means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. An LEA may be a school district, charter school, cyber charter school, intermediate unit (in cases involving preschool students), an agency providing early intervention services under arrangement with the Pennsylvania Department of Education (referred to as the "MAWA"), or the Department of Corrections (in cases regarding students in state correctional facilities).

**State Educational Agency** - The term state educational agency (SEA) means the State board of education or other agency or officer primarily responsible for the State

supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

Student with a Disability, Eligible Young Child, Protected Handicapped Student, Gifted Student, Children Under the Age of 3 with a Disability – See Section 105, Children Served by ODR.

## **105. Children Served by ODR**

ODR is responsible for coordinating dispute resolution services for any child who has been identified as, or who is thought to be:

- A. *An eligible young child.* An eligible young child is a child who meets all three of the following criteria:
  1. The child is at least 3 years old, but is less than the age of beginners (a beginner is a child who enters a school district's lowest elementary school grade that is above kindergarten);
  2. The child has been evaluated as having one or more of the following disabilities: intellectual disability/mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or developmental delay(s) in cognitive, communicative, physical, social/emotional, and/or self-help areas; and
  3. Because of the disability, the child is in need of special education and related services.
- B. *A student with a disability.* A student with a disability is a child who meets all three of the following criteria:
  1. The student is of school age;
  2. The student has been evaluated and found to have one or more of the following disabilities: intellectual disability/mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities; and
  3. Because of the disability, the student is in need of special education and related services.

C. *A protected handicapped student.* Students protected by Section 504 and Chapter 15 of the Pennsylvania regulations are defined and identified as protected handicapped students. A protected handicapped student is a student who meets all three of the following criteria:

1. The student is of an age at which public education is offered in the LEA;
2. The student has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program; and
3. The student is not eligible as defined by Chapter 14 (relating to special education services and programs), or is eligible but is also raising a claim of discrimination under Section 504 and/or Chapter 15.

D. *A gifted student.* A gifted student is a student who meets both of the following criteria:

1. The student is of school age; and
2. The student has outstanding intellectual and creative ability, the development of which requires specially-designed programs or support services, or both, not ordinarily provided in the regular education program.

E. *A child under the age of 3 with a disability.* An infant or toddler with a disability is a child under the age of 3 who has:

1. A significant delay in one or more areas of development (cognitive, physical, communication, social or emotional, and adaptive); or
2. A known physical or mental condition which has a high probability for developmental delays.

In this manual, where the term *child* is used alone, it may refer to any of the children served by ODR.

## **Chapter 2 – Early Dispute Resolution Options**

### **201. Informal Meeting**

When a parent and LEA disagree with each other over an aspect of a child's educational programming, the usual first step is to convene a meeting to discuss the specific concern. This may be all that is needed to resolve any disagreement to the satisfaction of both parties. The parties should, however, remain aware of the applicable timelines for requesting a due process hearing or mediation during any period of early dispute resolution.

### **202. Individualized Education Program (IEP) and Individual Family Service Plan (IFSP) Facilitation Services (Applicable to IDEA claims)**

IEP/IFSP facilitation is a voluntary process that can be utilized when the parent and LEA agree that the presence of a neutral third party would assist in the facilitation of communication and, as a result, the successful drafting of an IEP/IFSP for the student. This process is not necessary for most IEP/IFSP meetings – it is most often utilized when it may be helpful to have a neutral, trained facilitator guide the process, such as when there is a sense from the participants that certain issues at the IEP/IFSP meeting are creating an impasse.

The facilitator's primary tasks are to assist the IEP/IFSP team's effort to communicate, and to ensure that the IEP/IFSP team focuses on developing the IEP/IFSP while addressing any disagreements that may arise during the meeting. The facilitator does not make recommendations or decisions for the IEP/IFSP team; the members of the IEP/IFSP team remain the sole decision-makers.

Either the parents or the LEA may request IEP/IFSP facilitation; however, since the process is voluntary, both parties must agree to use it. If either the parents or the LEA decline to participate, facilitation cannot be used. A copy of all request forms can also be found in [Appendices B and C](#).

ODR coordinates the services of the facilitators, which are provided at no cost to the parent and are paid for by ODR in cases involving a student with a disability, or an eligible young child. For further information on IEP/IFSP facilitation, please visit the ODR website at <http://odr-pa.org/alternative-dispute-resolution/iep-facilitation> and <http://odr-pa.org/early-intervention/infant-toddler>.

### **203. Resolution Meeting Facilitation (IDEA claims)**

Resolution meetings are required after a due process complaint is filed by a parent under the IDEA. ODR will provide, upon request and agreement by both parties, a

facilitator for the resolution meeting. A resolution meeting facilitation request form may be found in [Appendix D](#).

The facilitator's primary task is to assist the participants in communicating with each other. The facilitator does not make any recommendations or decisions on the outcome of the meeting. The resolution meeting participants remain the sole decision-makers in the resolution meeting.

The LEA and parent remain responsible for scheduling the resolution meeting for which a facilitator is requested. After that meeting has been scheduled, ODR will assign a facilitator to attend the scheduled meeting. At the resolution meeting, the facilitator will ask the parties to sign a form indicating their agreement to the presence of the facilitator.

ODR coordinates the services of the resolution meeting facilitator, which are provided at no cost to the parent and are paid for by ODR in cases involving a student with a disability, or an eligible young child.

For further information on resolution meeting facilitation, please visit the ODR website at <http://odr-pa.org/alternative-dispute-resolution/resolution-meeting-facilitation>.

## **Chapter 3 – Mediation**

### **301. Availability**

Mediation is a voluntary process in which the parent and LEA involved in a dispute regarding special education both agree to obtain the assistance of an impartial mediator. Mediation can be used to address matters that arise prior to filing a due process complaint, as well as to address matters that are the subject of a due process complaint. Mediation may also be used to resolve matters of special education law that cannot be the subject of a due process complaint.

Mediation can be requested by either the parent or the LEA and that they are considered the “parties”. Others may be invited by the parties to participate in mediation.

### **302. Mediators**

ODR maintains a current list of individuals who are qualified mediators and knowledgeable in laws and regulations regarding the provision of special education and related services. The list is available on the ODR website, <http://odr-pa.org/mediation/overview>, or can be requested from ODR.

The following applies to mediators who conduct mediation through ODR.

- A. ODR coordinates the services of the mediator, which are provided at no cost to the parent and are paid for by ODR in cases involving a student with a disability, or an eligible young child.
- B. Mediators are not employed by any local or state agency that is involved in the education or care of the child, and the mediator must not have a personal or professional interest that conflicts with his or her objectivity. The mediators’ code of ethics is attached as [Appendix E](#).

For further information on mediation through ODR, please visit the ODR website at <http://odr-pa.org/mediation/overview>.

### **303. Mediation Procedures**

The following procedures apply to requests for mediation made to ODR.

- A. Mediation services may be requested by contacting ODR, or by filling out the mediation request form and sending it to ODR. The form is included in [Appendix F](#).

- B. Mediation can be requested alone, before, or in conjunction with a due process hearing request, and it may be requested as to IDEA related matters that cannot be the subject of a due process complaint. For example, a parent can request mediation regarding the alleged failure of an SEA or LEA employee to be highly qualified, even though this matter could not be the subject of a due process complaint. However, there are limited situations where mediation is not available to public agencies under 34 C.F.R. 300.300 (b) (3) (i), (b) (4) (ii), and (d) (4) (i); or to parents of parentally placed private school children with disabilities consistent with 34 C.F.R. 300.140 (a).
- C. Mediations are scheduled in a timely manner, and are held in a location that is convenient for the parties to the dispute. When mediation is requested by only one of the child's parents, ODR will notify both parents, if contact information is available, of the time and place of the mediation session, unless it is established that a parent's educational rights have been terminated.
- D In the event the parties resolve the dispute through mediation, they are required to execute a legally-binding agreement that is signed by both the parent and a representative of the LEA who has authority to bind the LEA. This agreement must state that all discussions that occurred during the mediation will remain confidential and will not be used as evidence in any subsequent due process hearing or civil proceeding.
- D. Mediation cannot be used to deny or delay the parent's right to a due process hearing, or to deny any other rights of the parent.



## **Chapter 4 – Due Process Prehearing Procedures - General**

### **401. Requesting Due Process**

- A. A parent or a public agency may file a due process complaint on any matter related to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to an individual child.
- B. The contents of the due process complaint are described in Chapters 7, 8, 9, 10, and 11 of this guide.
- C. A request for a due process hearing is made by sending a copy of the due process complaint to ODR and to the other party. If you do not provide a copy of your complaint to the school, there may be delay in the resolution process and due process hearing timelines.

### **402. Parties to a Due Process Hearing**

- A. The parties to a due process hearing are the parent(s) of the child and the responsible LEA.
- B. When a due process hearing is requested by an LEA or only one of the child's parents, ODR will notify both parents, if contact information is available, of the time and place of the scheduled hearing session(s), unless it is established that **one** parent's educational rights have been terminated in which event only the other will be notified.

### **403. Representation of Parties**

#### *A. Parent Representation*

- 1. A parent may represent himself or herself throughout a due process proceeding. Parents who represent themselves are considered to be proceeding *pro se*.
- 2. A parent may be represented by counsel throughout a due process proceeding. The resources provided in [Appendix A](#) include organizations that may be able to help a parent locate an attorney.

A parent may be accompanied and advised, but not represented, by any other individuals with special knowledge or training with respect to the problems of children with disabilities.

#### *B. LEA Representation*

An LEA is represented by an attorney in a matter that proceeds with the filing of a due process complaint. (See generally *Shortz v. Farrell*, 327 Pa. 81, 193 A. 20 (1937); *Nolan v. Department of Public Welfare*, 673 A.2d 414, (Pa.Comm. 1995)).

#### *C. Notice of Representation*

Parties should provide the name and contact information (mailing address, telephone number, and email address) of attorneys representing them to the other party and to ODR as soon as possible, to ensure timely notification of all matters associated with the due process complaint. The same information should be provided to the assigned hearing officer once notice of that assignment has been provided to the parties.

#### *D. Attorney Qualifications*

Attorneys representing parties in due process matters are subject to all relevant and applicable rules promulgated by the Pennsylvania Supreme Court, including the Pennsylvania Bar admission rules, rules of professional conduct, and rules of disciplinary enforcement.

### **404. Assignment of a Hearing Officer**

- A. Following receipt of a due process complaint by ODR, a case manager is assigned. The case manager assigns a case number and a hearing officer. Hearing officers are assigned cases by ODR based upon availability and existing caseloads.
- B. Joint requests by the parties for a particular hearing officer will be considered by ODR, but are dependent upon his or her availability.
- C. The ODR case manager notifies the parties of the name and contact information of the assigned hearing officer.

### **405. Notice of Hearing Date and Location**

- A. A hearing date is scheduled by the assigned hearing officer based upon the applicable timelines. The ODR case manager will notify the parties of the date, time, and location of the scheduled hearing session(s)
- B. The hearing is conducted at a time and place that is reasonably convenient for the parent and child. In the case of a student with a disability, a protected

handicapped student, or a gifted student, the hearing is held within the local school district. (22 Pa. Code §§14.162, 15.8, 16.63)

- C. Once a hearing officer has been assigned and a hearing date scheduled, any change in the hearing date or time may be only made by the hearing officer. All requests for changes to a hearing date or time must be made directly to the hearing officer.
- D. 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 decisions 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.

#### **406. Communication with Hearing Officer**

All communications between a party and a hearing officer must be provided to the other party. Hearing officers cannot engage in *ex parte* communications, or communications with only one party, about the case.

#### **407. Withdrawing a Due Process Complaint**

- A. Only a party who filed the due process complaint may seek to withdraw the complaint.
- B. Before a case has been assigned to a hearing officer, a party who wishes to withdraw a due process complaint should notify the assigned case manager, in writing, with a copy to the other party.
- C. After a case has been assigned to a hearing officer, a party who wishes to withdraw a due process complaint should notify the hearing officer, in writing, with a copy to the other party. The hearing officer will rule on the request for withdrawal of the due process complaint.

#### **408. Settlement by the Parties**

- A. If the parties have reached a settlement of some or all of the issues raised in the due process complaint, the party who filed the complaint should notify the hearing officer, in writing, with a copy to the other party.
- B. If the parties have reached a settlement of some of the issues raised in the due process complaint, the hearing will proceed on the remaining issues. The hearing officer will ordinarily clarify at the next hearing session what issues remain in dispute.
- C. If the parties have reached a settlement of all of the issues raised in the due process complaint, and have advised the hearing officer of this, the hearing officer will close the case, notifying the parties and the ODR case manager.
- D. Hearing officers do not approve or disapprove settlements between parties.
- E. Settlement agreements, like other contracts, are enforceable in a court of competent jurisdiction.

#### **409. Uniform Prehearing Directions**

The hearing officers have developed prehearing directions for all due process cases. The version of the prehearing directions in use at the time of this manual revision is included as [Appendix G](#). The version of the prehearing directions current at any given time is available on the ODR website at <http://odr-pa.org/due-process/hearing-procedures>.

## **Chapter 5 – Due Process Hearing Procedures – General**

### **501. Authority of Hearing Officer: Conduct of Hearing**

Consistent with the authority granted to hearing officers generally, hearing officers are responsible for presiding over due process hearings, maintaining order and decorum in the hearing room, and otherwise acting to promote efficiency in special education due process hearings, as well as to foster fairness in the process through equal treatment of the parties. A hearing officer's authority in conducting the hearing is necessarily discretionary, since the concept of affording due process "imposes only such procedural safeguards as the situation warrants". *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 712, 720 (Pa. Commw. 2010).

"Due process principles apply to quasi-judicial or administrative proceedings, and require an opportunity, *inter alia*, to hear the evidence adduced by the opposing party, cross-examine witnesses, introduce evidence on one's own behalf, and present argument." *Kowenhoven v. County of Allegheny*, 587 Pa. 545, 555-556, 901 A.2d 1003, 1010 (2006).

In general, the hearing officer is responsible for the following: regulating the course of the proceedings, including scheduling, within applicable timelines; ensuring that a clear record of the hearing is produced; swearing in or supervising the swearing in of witnesses; ruling on procedural matters, objections and other motions; evidentiary rulings including admitting exhibits into the record; and maintaining order at the hearing.

### **502. Open or Closed Hearing**

The due process hearing will be closed to the public unless the parent chooses to have an open hearing. If a parent is not present at the hearing and the hearing proceeds without him or her, the hearing will be closed to the public.

- A. *Open Hearing*. In an open hearing, any member of the public may attend. The hearing officer's decision, with the student's name or initials, but not the transcript or exhibits introduced, will be made available to the public.
- B. *Closed Hearing*. A closed hearing is one where the participants are limited to the parent(s); the student, if the parent so chooses; the representative(s) of the parent(s) any friends or observers accompanying the parent(s); LEA officials; the LEA representative; witnesses who are called by either party to testify; the hearing officer; and the court reporter. The hearing officer's decision, in its original form, will be provided to the parties or their representatives and to anyone required to implement the decision. A redacted version of the hearing officer's decision, with all potentially-identifying information omitted, will be made available to the public in all cases, except those involving a student who is gifted but not also a student with a disability or a protected handicapped student (see

Section 1405). Redactions to hearing officer decisions issued following a closed hearing do not affect the substance of the decision.

- C. ODR Representative. A representative of ODR may attend any due process hearing, for hearing officer observational purposes.

### **503. Order of Presentation at the Hearing**

Hearing officers retain the discretion to regulate the conduct of the hearing, including the order of presentation. In general, the due process hearing will typically proceed as follows.

- A. *Introductory Remarks by the Hearing Officer.* The hearing officer will open the hearing, and make introductory remarks on the record that typically include, but are not limited to, the following:
1. Introducing himself or herself and explaining that he or she has been assigned the case by ODR and by law is empowered to conduct the hearing and render a decision on the matter;
  2. Stating the general purpose of the hearing;
  3. Determining the representative for each party and ensuring that the parent proceeding *pro se* has been advised of the right to be represented by counsel;
  4. Explaining the differences between an open and closed hearing, determining whether the parent proceeding *pro se* understands the differences, and asking on the record whether the parent chooses an open or closed hearing;
  5. Informing the parent of the right to a free electronic or printed transcript of the hearing;
  6. Determining whether both parties have complied with all applicable disclosure requirements; and
  7. Identifying any stipulations on the record.
- B. *Opening Statements.* Each party is given an opportunity to make an opening statement, which typically provides a concise and specific description of the issue(s) to be decided by the hearing officer, and the specific relief requested. An opening statement is not evidence. The hearing officer retains discretion over matters such as the timing of when opening statements are made.

C. *Restatement of the Issues by the Hearing Officer.* The hearing officer may restate the issues, as he or she understands them, on the record.

D. *Presentation of Evidence*

1. The hearing officer retains the discretion to regulate the order of the presentation of evidence. In general, the party who requested the hearing initially produces its evidence, then the other party has the opportunity to present evidence.
2. Evidence is presented through calling witnesses and referencing exhibits. Witnesses typically provide testimony on direct examination by the party who calls the witness, then on cross-examination by the other party. The hearing officer retains the discretion to determine the extent of further questioning of any witness.
3. In his or her discretion, the hearing officer may, at any time, ask questions of a witness.

E. *Closing Statements.* After all evidence has been presented, the hearing officer may ask for closing statements. The hearing officer retains the discretion to determine whether any closing statements are oral or written, as well as the timing of, and order in which, closing statements will be received.

F. *Concluding Remarks by the Hearing Officer.* At the end of the hearing, the hearing officer typically confirms the timeline within which a decision will be issued, and makes a statement on the record that the hearing is concluded.

#### **504. Burden of Proof**

The U.S. Supreme Court determined in 2005 that in an administrative hearing conducted under the IDEA, the party who is seeking relief, i.e., the party who requested the hearing, bears the burden of persuasion. *Schaffer v. Weast*, 546 U.S. 49 (2005). The Third Circuit has applied this same burden to a case involving Section 504 (see, e.g., *Ridley Sch. Dist. v. M.R.*, \_\_\_ F.3d \_\_\_, 2012 WL 1739709 (3d Cir. 2012) and to an infant/toddler program under Part C of the IDEA (*Andrew M. v. Delaware County Office of Mental Health and Mental Retardation*, 490 F.3d 337 (3d Cir. 2007)); and the Commonwealth Court of Pennsylvania has also placed the burden on the requesting party in a case involving a gifted student (*E.N. v. M. Sch. Dist.*, 928 A.2d 453 (Pa. Commw. 2007).

## **505. Accommodations at the Hearing**

- A. *Interpreters.* ODR will, when asked by a hearing officer prior to a hearing date, make arrangements for an interpreter to attend a due process hearing upon request by, or on behalf of, a parent (as defined in Section 104 herein) who is a party (as defined in Section 402 herein) and has limited ability to speak or understand English (defined as, “the ability to speak exclusively or primarily a language other than English and the inability to sufficiently speak or understand English,” 2 Pa. C.S. §101), at no cost to the parent, consistent with 2 Pa. C.S. §§101-588. ODR will also do so, when requested by hearing officer, in those situations where a disability renders the services of an interpreter necessary.

The hearing officer will make the requisite determinations on the qualifications of the particular interpreter prior to him or her serving as an interpreter in the due process hearing.

- B. *Audio Recordings.*

If a party requires an audio recording of a hearing as an accommodation, ODR will make arrangements for such accommodation upon request made prior to the hearing date.

## **506. Transcripts**

- A. A transcript is a verbatim record of the hearing, which may be transmitted in written or electronic format.
- B. A parent has the right to obtain a free copy of the transcript, in either written or electronic format at the parent’s choosing which will be provided to either the parent or to his or her legal representative. LEAs are responsible for payment of their copy of the transcript.

## **507. Failure to Appear**

- A. If a party to a hearing is not present on the scheduled date and time, the hearing officer will attempt to contact the party who is not present and ODR to determine whether any contact has been made by the party who is not present regarding an inability to appear or an intention not to appear.
- B. The hearing officer will, in his or her discretion, determine whether the hearing should proceed in the absence of the party who does not appear. The hearing officer retains the discretion to determine whether the record will remain open and/or reconvene at a later date, which may not occur after a final decision is issued.



- C. If the party who fails to appear is a parent, and the hearing officer proceeds with the hearing, the hearing will be closed (see Section 502).
- D. If the hearing officer proceeds with the hearing without a party present, the hearing officer will state the circumstances known to the hearing officer surrounding the party's failure to appear.
- E. If the party who fails to appear is a parent who is not represented by counsel, and the hearing officer proceeds with the hearing, the parent will be provided with a copy of the transcript, and a copy of all exhibits which were introduced, at no cost to the parent.

### **508. Prehearing Directions**

The hearing officers have developed prehearing directions for all due process cases. The version of the prehearing directions in use at the time of this manual revision is included as [Appendix G](#). The version of the prehearing directions current at any given time is available on the ODR website at <http://odr-pa.org/due-process/hearing-procedures>.

## **Chapter 6 – Due Process Hearing Procedures – Exhibits and Witness**

### **601. Disclosure of Evidence**

The parties' obligation to disclose witnesses and exhibits, including timelines, are set forth in Chapters 7, 8, 9, 10, and 11 of this manual.

### **602. Exhibits**

- A. When both parties are represented by counsel, the hearing officers strongly encourage the attorneys to work together to identify exhibits that both the parent and the school will want to use at the hearing (marked as a "joint" exhibit, as opposed to either a parent exhibit or a school exhibit). This reduces or eliminates the number of identical exhibits appearing in both the parents' exhibit book as well as the school's exhibit book (when only one copy is needed). As a pro se parent, you are not required to work with the school to assemble exhibits that both you and the school want to use at hearing, but you are welcome to do so. Contact the school's attorney if you are interested in doing so.
- B. In cases with electronic exhibits, the hearing officer will provide instructions to the parties.
- C. Exhibits which will be introduced at the hearing are marked as follows: Parent exhibits are marked with a "P", and LEA exhibits are marked with "S" or "IU" or other letters that identify the LEA. Each exhibit is given a number, and each page in each exhibit is also numbered sequentially. Examples of exhibits marked in portrait and landscape formats are included in **Appendix H**.
- D. Four copies of each exhibit are provided at the due process hearing, one each for 1) the hearing officer; 2) the witness(es); 3) the offering party; and 4) the other party. Originals of exhibits should be retained by the offering party.
- E. Exhibits need not be offered in any particular order.
- F. Hearing officers will, in their discretion, rule on any specific objections to exhibits.

### **603. Witnesses**

- A. Before each witness testifies at a hearing, the hearing officer or court reporter will ask him or her to swear or affirm that the testimony he or she is about to give is true and correct.

- B. When a party is represented by an attorney, the attorney will ask all questions of any witness.
- C. Witnesses answer questions on direct examination by the party calling that witness, then on cross-examination by the other party. Hearing officers may, in their discretion, permit re-direct and re-cross examination.
- D. A parent who is representing himself or herself may be permitted by the hearing officer to provide a narrative statement under oath as direct examination. The LEA attorney may cross-examine him or her following that narrative.
- E. Hearing officers will, in their discretion, rule on any specific objections to witnesses, and questions asked of witnesses.
- F. Hearing officers may, in their discretion, ask questions of witnesses at any time.
- G. Hearing officers may, in their discretion, permit testimony by telephone or other similar means. Requests for telephone testimony by a witness should be made prior to the hearing session to ensure that appropriate equipment is available.
- H. Hearing officers may, in their discretion, permit testimony of a witness by deposition outside of the hearing. Depositions of witnesses are given under oath, in the presence of both parties and their representatives, and are transcribed by a court reporter whose services are arranged by the party requesting the deposition. Hearing officers retain the discretion to rule upon objections to the deposition or any portion of the deposition. If offered and admitted into the record by the hearing officer, copies of the deposition transcript are provided to both parties and to the hearing officer.

#### **604. Compelling Witness Testimony and/or Documentary Evidence**

In most cases, parties obtain the cooperation of witnesses and production of relevant documents without a need for intervention by the hearing officer. However, a party who wishes to compel the testimony of a particular witness or the production of particular documentary evidence, which the party has not been able to secure, may request the hearing officer to issue a subpoena. Parties should first make an effort to have the witness or document produced voluntarily before asking for a subpoena to compel a witness' attendance or provision of a document. Hearing officers retain the discretion to determine the relevance and materiality of the evidence sought in deciding whether to grant or deny any requested subpoena.

- A. *Subpoena of a Witness.* A party who seeks a subpoena of a witness shall make the request in writing to the hearing officer, with a copy to the other party, specifying 1) how the testimony is relevant and material to the issues in the hearing; and 2) the name, address, and position of the witness. If not made part

of the subpoena request, the hearing officer may inquire into what attempts have been made to secure the witness' testimony without a subpoena. The party requesting the subpoena is responsible for serving it on the witness.

- B. *Subpoena for Documentary Evidence (Subpoena Duces Tecum)*. A party who seeks a subpoena *duces tecum* for documentary evidence shall make the request in writing to the hearing officer, with a copy to the other party, specifying 1) how the evidence is relevant and material to the issues in the hearing; and 2) the name, address, and position of the individual who is in control of the requested document. If not made part of the subpoena request, the hearing officer may inquire into what attempts have been made to secure the evidence without a subpoena. The party requesting the subpoena is responsible for serving it on the individual who has control of the document.

## **605. Evidentiary Issues**

- A. Hearing officers retain the discretion to admit or deny evidence which, in general, must be both relevant and material to the issues presented in the due process hearing. A hearing officer also may, in his or her discretion, limit or preclude evidence which is cumulative.
- B. Technical rules of evidence generally are not strictly followed in a due process hearing; however, the hearing officer's decision is based solely upon the substantial evidence presented at the hearing.

## **606. Additional Evidence**

A hearing officer may, in his or her discretion, order that additional evidence be presented.

## **607. Prehearing Directions**

The hearing officers have developed prehearing directions for all due process cases. The version of the prehearing directions in use at the time of this manual revision is included as [Appendix G](#). The version of the prehearing directions current at any given time is available on the ODR website at <http://odr-pa.org/due-process/hearing-procedures>.

## **Chapter 7 – Due Process Procedures under the IDEA**

This chapter relates specifically to due process hearings filed pursuant to the IDEA and its federal and state implementing regulations, including Pennsylvania's Chapter 14.

### **701. Incorporation of Previous Chapters**

Chapters 4, 5, and 6 are hereby incorporated into, and made a part of Chapter 7.

### **702. Scope of Due Process Hearing**

- A. *Subject Matter.* A parent or LEA may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to an individual student with a disability.
- B. *Timeline for Requesting Hearing.* A parent or LEA must request an impartial hearing on their due process complaint within two years of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that state law. 34 C.F.R. §300.511(e).
- C. *Exceptions to Timeline.* The timeline (see Section 702B) does not apply to a parent if the parent was prevented from filing a due process complaint due to 1) specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or 2) the LEA's withholding of information from the parent that was required under this part to be provided to the parent. 34 C.F.R. §300.511(f).
- D. The party requesting the due process hearing will not be permitted to raise any issues at the hearing which were not included in the due process complaint (or amended due process complaint) unless the other party agrees.

### **703. Due Process Complaint**

- A. *Content.* A parent or LEA who files a due process complaint must include the following information as set forth in 34 C.F.R. §508(b):
  - 1. The name of the child; the address of residence of the child; and the name of the school the child is attending; or, in the case of a homeless child (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act

- (42 U.S.C. §11434a(s)), available contact information for the child, and the name of the school the child is attending;
2. A description of the nature of the problem, including facts relating to the problem; and
  3. A proposed resolution to the problem, to the extent known and available to the filing party.
- B. *Notice.* A due process hearing may not be held until the party filing the complaint, or their representative, files a due process complaint that includes the information set forth in Section 703A.
- C. *Sample Form.* A sample due process complaint form is available on the ODR website at <http://odr-pa.org/wp-content/uploads/pdf/Due-Process-Request-Form.pdf> as well as in [Appendix I](#).

#### **704. Response to Due Process Complaint**

- A. *LEA Response to a Due Process Complaint.* If the LEA has not sent prior written notice to the parent regarding the subject matter of the parent's due process complaint, the LEA must, within 10 days of receiving that complaint, send to the parent a response that includes:
1. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
  2. A description of the other options the IEP team considered, and the reasons those options were rejected;
  3. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
  4. A description of the other factors that are relevant to the LEA's proposed or refused action.
- B. *Other Party Response to a Due Process Complaint.* Except as provided in Section 704A, a party receiving a due process complaint must, within 10 days of receipt, send to the other party a response that specifically addresses the issues raised in the due process complaint.

## **705. Sufficiency of Due Process Complaint**

- A. The due process complaint is deemed to be sufficient unless the party receiving the complaint notifies the assigned hearing officer and the other party, in writing, within 15 days of receipt that the receiving party believes the due process complaint does not meet the requirements listed in Section 703A.
- B. Within five days of receipt of a notification challenging the sufficiency of a due process complaint, the hearing officer must make a determination on the face of that complaint whether it meets the content requirements, and immediately notify the parties in writing of that determination.
- C. Where an LEA files a response to a due process complaint, it is not precluded from challenging the sufficiency of that due process complaint.

## **706. Amended Due Process Complaint**

- A. A party may amend a due process complaint only if:
  - 1. The other party consents in writing to the amendment, and is given the opportunity to resolve the complaint through a resolution meeting; or
  - 2. The hearing officer grants permission. The hearing officer may only grant permission to amend a due process complaint at any time no later than five days before the due process hearing begins.
- B. If a party files an amended due process complaint, the timelines for the applicable resolution period (see Section 707) begin again upon the filing of the amended due process complaint.

## **707. Resolution Process: Parent-Filed Complaints Only**

- A. Upon receipt by the LEA of a parent-filed due process IDEA complaint, a 30-day resolution period commences.
  - 1. Within 15 days of receipt of a parent-filed due process complaint, the LEA must convene a meeting with the parent and relevant members of the IEP team who have specific knowledge of the facts identified in the due process complaint, including an LEA representative who has decision-making authority on behalf of the LEA. The purpose of the meeting is to discuss the due process complaint, including the facts that form the basis of that complaint, and to provide the LEA with an opportunity to resolve the dispute.
  - 2. The meeting may not include an attorney for the LEA unless the parent is accompanied by an attorney.

3. The parent and LEA determine the relevant members of the IEP team who will attend the meeting.
- B. A resolution meeting need not be held if both parties agree, in writing, to waive the meeting, or the parties agree to use the mediation process (see Chapter 3).
  - C. If the LEA has not resolved the parent's due process complaint within 30 days of its receipt, the due process hearing may occur, and the timelines for completing the hearing and issuing a decision begin (see Section 711).
  - D. Except where the parties jointly agree to waive the resolution meeting or to use mediation, a failure by the parent to participate in the resolution meeting will delay the timelines for the resolution period and the due process hearing until the meeting is held.
  - E. If the LEA is unable to obtain the parent's participation in the resolution process after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day resolution period, request that the hearing officer dismiss the due process complaint.
  - F. If the LEA fails to convene the resolution meeting within 15 days of receipt of the parent's due process complaint, or fails to participate in a resolution meeting, the parent may ask the hearing officer to begin the due process hearing timelines and procedures.
  - G. In any parent-requested due process complaint, the LEA is required to return to ODR a completed resolution meeting data form within the timelines specified on that form. This information is necessary for ODR to comply with its reporting obligations to the Office of Special Education Programs (OSEP) and the Pennsylvania Department of Education, Bureau of Special Education (BSE) and Bureau of Early Intervention Services (BEIS), which have general supervisory authority for enforcement of the IDEA and its resolution meeting requirements. ODR is mandated to report to BSE or BEIS an LEA's failure to complete and return the resolution meeting data form as required.

#### **708. Agreement Reached at Resolution Meeting**

- A. If a resolution is reached at a meeting described in this section, the parties must execute a legally-binding agreement that is signed by the parent and an LEA representative who has the authority to bind the LEA. The agreement is enforceable by any state or federal district court.



- B. Either party to an agreement reached at a resolution meeting may void that agreement within three business days, after which the due process hearing may convene.
- C. Neither ODR nor the hearing officers enforce agreements reached at resolution meetings.

#### **709. Required Disclosure of Evidence**

- A. At least five business days prior to the due process hearing, each party must disclose to the other party all evidence, such as witnesses and exhibits including without limitation evaluations and recommendations based on them, that the party intends to introduce at the hearing.
- B. A party has the right to request exclusion of evidence that was not disclosed as described in this section and the hearing officer retains the discretion to grant or deny such requests as circumstances warrant.

#### **710. Hearing Rights**

- A. *Rights of Both Parents and LEAs.* Any party to a due process hearing has the right to:
  - 1. Present evidence and testimony, including the right to confront, cross-examine, and compel the attendance of witnesses;
  - 2. Obtain a written or electronic verbatim record of the hearing; and
  - 3. Obtain a written or electronic decision as described in Chapter 14 of this manual.
- B. *Rights of Parents.* A parent has the right to:
  - 1. Be represented by legal counsel, and accompanied and advised by individuals with knowledge or training with respect to regarding children with disabilities;
  - 2. Have access to the child's educational records;
  - 3. Have the child attend the due process hearing;
  - 4. Have the hearing open to the public;
  - 5. Have a copy of the verbatim record and decision provided at no cost.

## **711. Timeline for Completing Due Process Hearing and Issuing Decision**

- A. No later than 45 days after the expiration of the 30-day resolution period following a parent-initiated complaint, and no later than 45 days after the filing of an LEA-initiated complaint, a hearing must be held and a final decision issued by the hearing officer. The hearing officer will advise the parties of this decision due date.
- B. Adjustments to the 30-day resolution period following a parent-initiated complaint may be made such that the 45-day timeline for holding a hearing and issuing a decision begins the day after one of the following events:
  - 1. Both parties agree, in writing, to waive the resolution meeting;
  - 2. After either the mediation or resolution meeting starts, but before the end of the 30-day resolution period, the parties agree, in writing, that no agreement is possible;
  - 3. Both parties agree, in writing, to continue the mediation at the end of the 30-day resolution period, but one party later withdraws from the mediation process.

The parties should immediately notify the assigned hearing officer of any of the events described in this section.

- C. The hearing officer may grant an extension of the 45-day timeline for issuing a final decision upon the request of a party. If an extension is granted, the hearing officer will notify the parties of the new decision due date.

## **Chapter 8 – Due Process Procedures – Disciplinary Exclusions**

This chapter relates specifically to due process hearings filed pursuant to the disciplinary protections set forth in the IDEA and its federal and state implementing regulations, including Pennsylvania’s Chapter 14.

### **801. Incorporation of Chapters 4, 5, and 6**

Chapters 4, 5, and 6 are hereby incorporated into, and made a part of Chapter 8.

### **802. Scope of Due Process Hearing**

- A. An expedited disciplinary hearing will be held when:
  - 1. A parent disagrees with any decision regarding a manifestation determination, or disciplinary change of placement, or interim alternative educational placement;
  - 2. An LEA seeks to establish that it is likely that injury to a child will occur if a student remains in the current educational placement.
- B. If other issues related to the child’s identification, evaluation, or placement, or the provision of FAPE to the child, are raised at the same time as the disciplinary issues are raised, the expedited hearing will address only the claims afforded the protections of an expedited disciplinary hearing. All other issues should be presented in a separate due process complaint which will follow the timelines applicable to those claims.

### **803. Due Process Complaint**

- A. *Content.* A parent or LEA who files a due process complaint pursuant to this chapter must include the following information as set forth in 34 C.F.R. §508(b):
  - 1. The name of the child; the address of residence of the child; and the name of the school the child is attending; or, in the case of a homeless child (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(s)), available contact information for the child, and the name of the school the child is attending;
  - 2. A description of the nature of the problem, including facts relating to the problem; and

3. A proposed resolution to the problem, to the extent known and available to the filing party.
- B. *Notice.* A due process hearing may not be held until the party filing the complaint, or their representative, files a due process complaint that includes the information set forth in Section 803A.
- C. *Sample Form.* A sample due process complaint form is available on the ODR website at <http://odr-pa.org/wp-content/uploads/pdf/Due-Process-Request-Form.pdf> as well as in [Appendix I](#).

#### **804. Resolution Process**

- A. Unless the parties agree to waive the resolution meeting, or agree to use the mediation process, a resolution meeting must occur within seven days of receipt of the due process complaint.
- B. Unless the matter is resolved to the satisfaction of both parties within 15 days after the due process complaint is received, the due process hearing may occur, and the timelines for completing the hearing and issuing a decision begin (see Section 807).

#### **805. Required Disclosure of Evidence**

- A. At least two business days prior to the due process hearing, each party must disclose to the other party all evidence, such as witnesses and exhibits including without limitation evaluations and recommendations based upon them, that the party intends to introduce at the hearing.
- B. At least two business days prior to the due process hearing, each party must disclose to the other party all evaluations, including recommendations based on those evaluations, that the party intends to introduce at the hearing.
- C. A party has the right to request exclusion of evidence that was not disclosed as described in this section and the hearing officer retains the discretion to grant or deny such requests as circumstances warrant.

#### **806. Hearing Rights**

- A. *Rights of Both Parents and LEAs.* Any party to a due process hearing has the right to:

1. Present evidence and testimony, including the right to confront, cross-examine, and compel the attendance of witnesses;
2. Obtain a written or electronic verbatim record of the hearing; and
3. Obtain a written or electronic decision as described in Chapter 14 of this manual.

B. *Rights of Parents.* A parent has the right to:

1. Be represented by legal counsel, and accompanied and advised by individuals with knowledge or training regarding children with disabilities;
2. Have access to the child's educational records;
3. Have the child attend the due process hearing;
4. Have the hearing open to the public;
5. Have a copy of the verbatim record and decision provided at no cost.

#### **807. Timeline for Completing Due Process Hearing and Issuing Decision**

- A. No later than 20 school days after an initial complaint is filed requesting an expedited disciplinary hearing, the due process hearing must occur.
- B. The hearing officer must make a final determination within 10 school days after the hearing.
- C. No extensions of these timelines may be granted by the hearing officer.

## **Chapter 9 – Due Process Procedures – Issues Related to Extended School Year Claims**

This chapter relates specifically to due process hearings filed pursuant to the provisions governing extended school year services set forth in the IDEA and its federal and state implementing regulations, including Pennsylvania’s Chapter 14 (see 22 Pa. Code §14.132).

### **901. Incorporation of Chapters 4, 5, and 6**

Chapters 4, 5, and 6 are hereby incorporated into, and made a part of Chapter 9.

### **902. Scope of Due Process Hearing**

- A. An expedited hearing on issues related to extended school year will be held when a party files a due process complaint raising a claim on a student’s eligibility for extended school year services or the type of extended school year services to be provided, and requests an expedited hearing.
- B. If other issues related to the child’s identification, evaluation, or placement, or the provision of FAPE to the child, are raised at the same time as the extended school year claims are raised, the expedited hearing will address only the extended school year issues. All other issues should be presented in a separate due process complaint which will follow the timeline applicable to those claims.

### **903. Due Process Complaint**

- A. *Content.* A parent or LEA who files a due process complaint pursuant to this chapter must include the following information as set forth in 34 C.F.R. §508(b):
  - 1. The name of the child; the address of residence of the child; and the name of the school the child is attending; or, in the case of a homeless child (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(s)), available contact information for the child, and the name of the school the child is attending;
  - 2. A description of the nature of the problem, including facts relating to the problem; and
  - 3. A proposed resolution to the problem, to the extent known and available to the filing party.

- B. *Notice.* A due process hearing may not be held until the party filing the complaint, or their representative, files a due process complaint that includes the information set forth in Section 903A.
- C. *Sample Form.* A sample due process complaint form is available on the ODR website at <http://odr-pa.org/wp-content/uploads/pdf/Due-Process-Request-Form.pdf> and in [Appendix I](#).

#### **904. Resolution Process**

- A. Unless the parties agree to waive the resolution meeting, or agree to use the mediation process, a resolution meeting must occur within seven days of receipt of the due process complaint requesting an expedited hearing.
- B. Unless the matter is resolved to the satisfaction of both parties, the due process hearing may occur, and the timelines for completing the hearing and issuing a decision begin on the day following receipt of the due process complaint (see Section 907).

#### **905. Required Disclosure of Evidence**

- A. At least two business days prior to the due process hearing, each party must disclose to the other party all evidence, such as witnesses and exhibits including without limitation evaluations and recommendations based upon them, that the party intends to introduce at the hearing.
- B. A party has the right to request exclusion of evidence that was not disclosed as described in this section and the hearing officer retains the discretion to grant or deny such requests as circumstances warrant.

#### **906. Hearing Rights**

- A. *Rights of Both Parents and LEAs.* Any party to a due process hearing has the right to:
  - 1. Present evidence and testimony, including the right to confront, cross-examine, and compel the attendance of witnesses;
  - 2. Obtain a written or electronic verbatim record of the hearing; and
  - 3. Obtain a written or electronic decision as described in Chapter 14 of this manual.

B. *Rights of Parents.* A parent has the right to:

1. Be represented by legal counsel, and accompanied and advised by individuals with knowledge or training regarding children with disabilities;
2. Have access to the child's educational records;
3. Have the child attend the due process hearing;
4. Have the hearing open to the public;
5. Have a copy of the verbatim record and decision provided at no cost.

**907. Timeline for Completing Due Process Hearing and Issuing Decision**

- A. No later than 30 calendar days after an initial complaint is filed requesting an expedited hearing on extended school year issues, the due process hearing must occur and the hearing officer must make a final determination.
- B. No extensions of this timeline for expedited hearings on extended school year issues may be granted by the hearing officer.



## **Chapter 10 – Due Process Procedures – Section 504/Chapter 15**

This chapter relates specifically to due process hearings filed pursuant only to the provisions of Section 504 and its federal and state implementing regulations, including Pennsylvania's Chapter 15. Due process complaints which involve both IDEA/Chapter 14 and Section 504/Chapter 15 issues will proceed pursuant to Chapter 7, 8, or 9, as applicable, rather than this chapter. Therefore, this Chapter applies only to cases involving solely Section 504/Chapter 15 issues.

### **1001. Incorporation of Chapters 4, 5, 6**

Chapters 4, 5, and 6 are hereby incorporated into and made a part of Chapter 10.

### **1002. Informal Conference**

A parent may, at any time, file a written request for an informal conference with respect to the identification or evaluation of a protected handicapped student, or the student's need for related aid, service, or accommodation. Within 10 school days of receipt of the request, the LEA shall convene an informal conference at which every effort shall be made to reach an amicable agreement.

### **1003. Scope of Due Process Hearing**

- A. *Subject Matter.* A parent or LEA may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of a protected handicapped student, or the provision of FAPE to a protected handicapped student, including the need for aid, service, or accommodation; or denial of access, equal treatment, or discrimination based on handicap.
- B. *Timeline for Requesting Hearing.* A parent or LEA must request an impartial hearing on their due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of a protected handicapped student, or the provision of FAPE to a protected handicapped student within two years of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that state law. 34 C.F.R. §300.511(e); *P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.*, 585 F.3d 727 (3d Cir. 2009).
- C. *Exceptions to Timeline.* The timeline (see Section 1003B) does not apply to a parent if the parent was prevented from filing a due process complaint due to 1) specific misrepresentations by the LEA that it had resolved the problem forming

the basis of the due process complaint; or 2) the LEA's withholding of information from the parent that was required under this part to be provided to the parent. 34 C.F.R. §300.511(f).

#### **1004. Due Process Complaint**

A party may request a due process hearing by submitting a request to ODR with a copy to the other party. Filing a due process complaint consistent with Section 703 of this manual is permissible.

#### **1005. Required Disclosure of Evidence**

- A. At least five business days prior to the due process hearing, each party must disclose to the other party all evidence, such as witnesses and exhibits including without limitation evaluations and recommendations based upon them, that the party intends to introduce at the hearing.
- B. A party has the right to request exclusion of evidence that was not disclosed as described in this section and the hearing officer retains the discretion to grant or deny such requests as circumstances warrant.

#### **1006. Timeline for Completing Due Process Hearing and Issuing Decision**

- A. Not later than 45 days after the filing of a due process complaint, a hearing must be held and a final decision issued by the hearing officer.
- B. The hearing officer may grant an extension of the 45-day timeline for issuing a final decision upon the request of a party. If an extension is granted, the hearing officer will notify the parties of the new decision due date.

## **Chapter 11 – Due Process Procedures – Gifted Students**

This chapter relates specifically to due process hearings filed pursuant only to the provisions for gifted students under Pennsylvania’s Chapter 16. Due process complaints which involve both IDEA/Chapter 14 and Chapter 16 issues will proceed pursuant to Chapter 7, 8, or 9, as applicable, rather than this chapter.

### **1101. Incorporation of Chapters 4, 5, 6**

Chapters 4, 5, and 6 are hereby incorporated into and made a part of Chapter 11.

### **1102. Scope of Due Process Hearing**

#### *A. Subject Matter.*

1. A parent may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of, or the provision of a gifted education to, a gifted student.
2. An LEA may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the LEA’s proposed evaluation or reevaluation. When a parent rejects an LEA’s proposed educational placement, other than the initial placement, the LEA may request a due process hearing. If a parent fails to respond to, or refuses to consent to, the initial provision of gifted services, neither due process nor mediation may be used to obtain agreement or a ruling that services may be provided.

### **1103. Due Process Complaint**

A party may request a due process hearing by submitting a request to ODR with a copy to the other party. Filing a due process complaint consistent with Section 703 of this manual is permissible.

### **1104. Required Disclosure of Evidence**

- A. At least five calendar days prior to the due process hearing, each party must disclose to the other party all evidence, such as witnesses and exhibits including without limitation evaluations and recommendations based upon them, that the party intends to introduce at the hearing.

- B. A party has the right to request exclusion of evidence that was not disclosed as described in this section and the hearing officer retains the discretion to grant or deny such requests as circumstances warrant.

**1105. Timeline for Completing Due Process Hearing and Issuing Decision**

- A. No later than 30 days after the filing of a due process complaint, a hearing must be held.
- B. No later than 45 days after the filing of a due process complaint, the hearing officer must issue a final decision.

## **Chapter 12 – Due Process Procedures – Children Under the Age of 3**

This chapter relates specifically to due process hearings filed with respect to a child under the age of 3 with a disability.

### **1201. Responsible Agency**

The Pennsylvania Departments of Public Welfare and Education, Office of Child Development and Early Learning (OCDEL), provides statewide supervision and support to early intervention programs for children under the age of 3. County mental health/mental retardation programs are responsible for coordinating early intervention services for children under the age of 3.

### **1202. Role of ODR in Dispute Resolution**

- A. Upon receipt of a request for due process, ODR will assign a hearing officer who schedules a date and time for the hearing.
- B. Information on requesting a due process hearing for children under the age of 3 may be obtained from either ODR or OCDEL. Contact information for ODR and OCDEL is provided in [Appendix J](#).

### **1203. Due Process Complaint**

- A. *Content.* A party may file a due process complaint with respect to any matter relating to the identification, evaluation, or placement of children under the age of 3, or the provision of early intervention services to children under the age of 3 with a disability.
- B. *Sample Form.* A sample due process complaint form for children under the age of 3 with a disability is available on the ODR website at [http://odr-pa.org/wp-content/uploads/pdf/dpw\\_dp\\_request.pdf](http://odr-pa.org/wp-content/uploads/pdf/dpw_dp_request.pdf) and in [Appendix K](#).

### **1204. Hearing Timelines and Convenience**

- A. The due process hearing shall be carried out at a time and place that is reasonably convenient to the parent.
- B. The due process hearing shall be conducted, and a written decision mailed to each party, no more than 30 days after the parent's request for a hearing is received.

- C. A hearing officer may grant specific extensions of time beyond the 30 days at the request of either party.

### **1205. Required Disclosure of Evidence**

At least five days prior to the due process hearing, each party must disclose to the other party all evidence that the party intends to introduce at the hearing.

## **Chapter 13 – Hearing Officers**

### **1301. Responsibilities**

- A. Consistent with the authority granted to hearing officers generally, hearing officers are responsible for presiding over due process hearings, maintaining order and decorum in the hearing room, and otherwise acting to promote efficiency in special education due process hearings, as well as to foster fairness in the process through equal treatment of the parties. A hearing officer’s authority in conducting the hearing is necessarily discretionary, since the concept of affording due process “imposes only such procedural safeguards as the situation warrants”. *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 712, 720 (Pa. Commw. 2010).
- B. In general, the hearing officer is responsible for: regulating the course of the proceedings, including scheduling, within applicable timelines; ensuring that a clear record of the hearing is produced; swearing in or supervising the swearing in of witnesses; assessing credibility of witnesses and the weight to be accorded the evidence; ruling on procedural matters, objections and other motions; evidentiary rulings including admitting exhibits into the record; and maintaining order at the hearing.
- C. The hearing officer is responsible for ensuring that parties do not engage in *ex parte* communications, that is, communications which the other party is not involved in or copied on, with him or her.
- D. The hearing officer is responsible for issuing a final decision within applicable timelines (set forth in Chapters 7, 8, 9, 10, 11, and 12 of this manual) and consistent with the requirements set forth in Chapter 14 of this manual.

### **1302. Qualifications**

- A. A hearing officer must not be, at a minimum:
  - 1. An employee of the SEA or the LEA that is involved in the education or care of the child; and
  - 2. A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing.
- B. A hearing officer must, at a minimum:
  - 1. Have knowledge of, and the ability to understand, special education statutes, regulations, and case law;

2. Have the ability to conduct hearings in accordance with appropriate, standard legal practice;
  3. Have the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- C. A person who otherwise qualifies as a hearing officer is not an employee of the SEA merely because he or she is paid by the agency to serve as a hearing officer.

### **1303. Disqualification**

Hearing officers must abide by all applicable laws regarding their impartiality in all due process hearings. The Pennsylvania Standards of Conduct for Special Education Hearing Officers developed by the ODR Stakeholder Council, is attached as [Appendix L](#).

### **1304. Testimony by Hearing Officers**

A hearing officer may not be compelled to testify as a witness in any future proceedings related, directly or indirectly, to the due process hearing.



## **Chapter 14 – Hearing Officer Decisions**

### **1401. Contents of Hearing Officer Decisions**

Hearing officer decisions must be in writing, and will include findings of fact, discussion, and conclusions of law. Hearing officer decisions are based on the evidence presented in the due process hearing.

### **1402. Distribution of Hearing Officer Decisions**

- A. Hearing officer decisions are provided to the parties, or to their counsel if represented, in written or electronic format at the option of the parties.
- B. If a party fails to attend a hearing, the hearing officer will send a copy of the decision to that party.

### **1403. Implementation of Hearing Officer Decisions**

- A. The Pennsylvania Department of Education, BSE or BEIS, has general supervisory responsibility to ensure that LEAs are implementing educational programs in compliance with applicable laws and regulations, including implementation of hearing officer decisions. For gifted students, the Bureau of Curriculum, Assessment & Instruction provides oversight of educational programs including implementation of hearing officer decisions.
- B. ODR and hearing officers have no authority over the implementation of hearing officer decisions.

### **1404. Assurance of Implementation of Hearing Officer Decisions**

- A. *Assurance Form.* When a hearing officer orders an LEA to take action, the LEA is obligated to complete an assurance form, assuring that it has complied with the hearing officer's decision. The completed form is sent to the ODR. If the hearing officer has not ordered the LEA to take any action, then an assurance form is not required.
- B. *Instructions for Completing Assurance Forms.* The hearing officer provides a copy of the instructions for completing assurance forms, which are also included in [Appendix M](#).
- C. *Timeline for Completion of Assurance Form.* Upon expiration of the applicable appeal period, if no appeal has been filed, the LEA is obligated to complete the

assurance form and return it to ODR within the timelines specified in the instructions accompanying the assurance form.

#### **1405. Publication of Hearing Officer Decisions**

ODR is required to make all hearing officer decisions, except those involving a gifted student who is not also a student with a disability or a protected handicapped student when the hearing was closed, available to the public after all personally-identifiable information has been redacted. Hearing officer decisions are available on the ODR website at <http://odr-pa.org/due-process/hearing-officer-decision/>.

#### **1406. Citation to Hearing Officer Decisions**

Hearing officer decisions should be cited in the following format: *Student Initials v. School District*, ODR Case # (Hearing Officer Name, Hearing Officer Decision date). For example, *K.S. v. No Name School District*, 12345 09-10AS (Valentini, January 1, 2010).

#### **1407. Appeal of a Hearing Officer Decision**

- A. Hearing officer decisions are final and appealable to a court of competent jurisdiction.
- B. A hearing officer decision concerning a student with a disability, a child under the age of 3 with a disability, or a protected handicapped student may be appealed by either party to state court within thirty (30) calendar days, or to federal court within ninety (90) calendar days of the date of that decision.
- C. A hearing officer decision concerning a gifted student may be appealed by either party to state court within thirty (30) calendar days of the date of that decision.

#### **1408. Other Challenges to Hearing Officer Decisions**

- A. ODR does not affirm, reverse, interpret, modify, enforce, or take any action with respect to the substance of hearing officer decisions. The sole means to challenge the substance of a hearing officer decision is a judicial appeal as described in Section 1407.
- B. The dispute resolution options which ODR coordinates and manages, including mediation, may not be used in conjunction with issues on which a final decision has been issued by a hearing officer.

- C. Because hearing officer decisions are final and appealable, motions for reconsideration of final hearing officer decisions will not be considered.

**1409. Exhaustion of Administrative Remedies**

- A. The IDEA and its implementing regulations require that a party exhaust administrative remedies for claims raised under the U.S. Constitution, Americans with Disabilities Act, Section 504, or other federal law, if the party is seeking relief that is available under the IDEA, before filing a civil action.
- B. Chapter 15 of the Pennsylvania Code provides that a student filing a claim of discrimination need not exhaust procedures in Chapter 15 before filing a court action under Section 504.
- C. ODR does not make any determination as to whether parties must exhaust, or have exhausted, their administrative remedies.

**1410. Records Certified to Court on Appeal by ODR**

Upon receipt of a request from a party, ODR will process the request and transmit a certified copy of the administrative record directly to the court with which the appeal was filed.

**[Appendix A: Resources](#)**

[Resources](#)

**[Appendix B: IEP Facilitation Request Form](#)**

[IEP Facilitation Request Form](#)

**Appendix C: IFSP Facilitation Request Form**

[IFSP Facilitation Request Form](#)

**[Appendix D: Resolution Meeting Facilitation Request Form](#)**

[Resolution Meeting Facilitation Request Form](#)

## Appendix E

### **Pennsylvania Standards of Conduct for Special Education Mediators**

The Pennsylvania Standards of Conduct for Special Education Mediators is based on the Model Standards of Conduct for Mediators as adopted by the American Arbitration Association, American Bar Association, and Association for Conflict Resolution in 2005.

#### **Standard I - Self-Determination**

A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary decision, free of coercion, in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of the mediation, including process design, participation in or withdrawal from the process, and outcomes.

#### **Standard II – Impartiality**

- A. A mediator shall decline mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall and avoid conduct that is, or gives the appearance of being partial, and shall observe the following principles.
  - 1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
  - 2. A mediator shall neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
  - 3. A mediator may neither accept, from nor give to, any participant or their representatives, individual gifts, items, or services, including meals.
- C. If at any time a mediator is unable to conduct mediation in an impartial manner, the mediator shall recuse him/herself. The file will be returned to ODR for immediate rescheduling.

#### **Standard III - Conflicts of Interest**

- A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest before, during, and after a mediation. A conflict of interest can arise from

## **Pennsylvania Standards of Conduct for Special Education Mediators – Exhibit O**

involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

- B. A mediator 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 a mediator.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interests that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.
- D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary. The file will be returned to ODR for immediate rescheduling.
- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals, or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and the services offered when determining whether the relationships might create a perceived or actual conflict of interest.

### **Standard IV - Mediator Independence**

Mediators are independent contractors and, as such, should not present themselves in such a way as to convey the impression that s/he speaks for or on behalf of the Office for Dispute Resolution during mediation, speaking engagements, training presentations, etc.

### **Standard V - Competence**

A mediator shall demonstrate and maintain the competencies as found in §300.506 (b)(1)(iii) in that a mediation “*is conducted by a qualified and impartial mediator who*

## **Pennsylvania Standards of Conduct for Special Education Mediators – Exhibit O**

*is trained in effective mediation techniques.”, and (b)(3)(i) “The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.”*

### **Standard VI – Confidentiality**

Confidentiality in the mediation process is guaranteed as found in 20 U.S.C. 1415 (e)(2)(G):

***Mediation discussions.*** — *Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.*

The mediator shall maintain the confidentiality of and not voluntarily repeat any information obtained during mediation. This requirement does not preclude the mediator from following child protection protocol as established in state law.

### **Standard VII – Quality of the Process**

- A. A mediator shall conduct mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency, and mutual respect among all participants, in accordance with the following:
1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
  2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of mediation.
  3. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of mediation.
  4. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is prohibited (i.e. psychologist, professor, attorney, etc).
  5. A mediator may recommend, when appropriate, that parties consider resolving their dispute through other processes.

**Pennsylvania Standards of Conduct for Special Education Mediators – Exhibit O**

6. A mediator shall not undertake an additional dispute resolution role in the same matter unless both parties agree, and relay that agreement directly to ODR, rather than to the mediator during the course of the mediation process.
  7. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in mediation, the mediator shall explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.
- B. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards or the Mediation Rules for Special Education as agreed to by both parties, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation



**[Appendix F: Mediator Request Form](#)**

[Mediator Request Form](#)

**[Appendix G: Prehearing Directions](#)**

[Prehearing Directions and Prehearing Directions Plain Writing Act Version](#)

[Appendix H](#)

**Sample  
Exhibit  
In  
Portrait  
Format**

**Sample  
Exhibit  
In  
Landscape  
Format**

**[Appendix I](#): Due Process Complaint**

[Due Process Complaint](#)

**[Appendix J](#): OCDEL Contact Information**

[OCDEL Contact Information](#)

**[Appendix K](#): Infant-Toddler Early Intervention Due Process Request Form**

[Infant-Toddler Early Intervention Due Process Request Form](#)

## Appendix L

### **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.

**Pennsylvania Standards of Conduct for ODR**  
**Special Education Hearing Officers**

**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 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.

**Pennsylvania Standards of Conduct for ODR**  
**Special Education Hearing Officers**

(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.

(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.

**Pennsylvania Standards of Conduct for ODR**  
**Special Education Hearing Officers**

**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.
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.



**Pennsylvania Standards of Conduct for ODR**  
**Special Education Hearing Officers**

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.

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**Special Education Hearing Officers**

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.

**Pennsylvania Standards of Conduct for ODR**  
**Special Education Hearing Officers**

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

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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.

## Appendix M

### **Appeal Timelines and Instructions for Completing Assurance Forms**

**ODR DOES NOT MAKE A DETERMINATION AS TO WHETHER AN LEA OR PRESCHOOL EARLY INTERVENTION PROGRAM IS IN COMPLIANCE WITH A HEARING OFFICER DECISION, NOR DOES ODR INTERPRET SUCH DECISIONS. ISSUES REGARDING COMPLIANCE SHOULD BE DIRECTED TO THE APPROPRIATE DIVISION CHIEF OF THE BUREAU OF SPECIAL EDUCATION, OR THE LEA SOLICITOR, OR OCDEL FOR EARLY INTERVENTION CASES.**

I. Appeal Timelines

A Hearing Officer Decision concerning early intervention, school-age, and/or Section 504 issues for children with disabilities may be appealed by either party to state court within thirty (30) calendar days, or to federal court within ninety (90) calendar days of the date of that decision.

II. Completion of Assurance Forms

When a hearing officer orders an EI-Preschool Early Intervention, LEA or Charter School to take action, the EI-Preschool Early Intervention, LEA or Charter School is obligated to complete an assurance form, assuring that it has complied with the hearing officer's decision. The completed form is sent to the Office for Dispute Resolution. If the hearing officer has not ordered the EI-Preschool Early Intervention, LEA or Charter School to take any action, then an assurance form is not required.

III. Child's Status During Appeals: Completion of Assurance Form

If the hearing officer agrees with the child's parents that a change of placement is appropriate, the child is afforded that placement during the pendency of any administrative or judicial proceeding, consistent with the requirements at 34 CFR § 300.518(d). Within thirty (30) days of the hearing officer decision, an assurance form must be executed by the EI-Preschool Early Intervention, Superintendent or Charter School Chief Executive Officer and returned to the assigned Office for Dispute Resolution Case Manager, assuring that the child has been afforded the ordered placement regardless of any appeal.

IV. Timeline for Completing All Other Assurance Forms (i.e. those not covered under Section III. above)

Until the expiration of the applicable appeal period, the EI-Preschool Early Intervention, LEA or Charter School is not obligated to implement the Hearing Officer's Decision. At the expiration of the appeal period, if no appeal has been

## **Appeal Timelines and Instructions for Completing Assurance Forms**

taken, the EI-Preschool Early Intervention, LEA or Charter School is required to comply with the Hearing Officer's Decision. The EI-Preschool Early Intervention, LEA or Charter School has sixty (60) calendar days after the expiration of the appeal period in which to complete, have executed by the EI-Preschool Early Intervention, Superintendent or Charter School Chief Executive Officer, and return the assurance form to the assigned Office for Dispute Resolution Case Manager.

If an appeal is taken from the Hearing Officer Decision, the LEA or Preschool Early Intervention is not required to implement the Decision unless directed to do so by the judiciary.



OFFICE FOR DISPUTE RESOLUTION

6340 Flank Drive

Harrisburg, PA 17112-2764

(800) 222-3353 (717) 901-2145

TTY USERS: PA Relay 711

[www.odr-pa.org](http://www.odr-pa.org)