



DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF

# EDUCATION

## NOTICE OF CHANGES TO THE STANDARD OPERATING PROCEDURES

The Office of the State Superintendent of Education (OSSE) is hereby providing notice of proposed changes to the Standard Operation Procedures Manual (SOP). To ensure an opportunity for the public to provide input, this policy will be posted for 30 calendar days and open for public comment within the same period. This period begins June 22, 2016 and ends July 22, 2016. Individuals, who wish to make comments, please email [Pamela.Brown4@dc.gov](mailto:Pamela.Brown4@dc.gov).

### EFFECTIVE DATE

The changes to the provisions below will take effect for all due process complaints filed on or after July 1, 2016.

### CHANGES

#### § 700.5 Burden of Proof

~~As of June 30, 2006, DCPS Board of Education policy regarding the burden of proof was amended (53 DCR 5249 (June 30, 2006)). The revised rule shall apply to all hearing requests filed on or after Monday July 3, 2006.~~ Unless otherwise established by law, all hearing requests filed on or after July 1, 2016, shall meet the burden of proof requirements set forth in 5E DCMR 3030.14 and section 103(6)(A) of the Special Education Procedural Protections Expansion Act, effective March 10, 2015 (D.C. Law 20-194; D.C. Official Code § 38-2571.03(6)(A)).

**Comment [TAL1]:** Deleted text is the SOP's previous section on Burden of Proof. All text in Black is updated to reflect proposed changes.

### PROVING THE CASE

Standard of Proof. All cases will be decided by the preponderance of the evidence standard. Preponderance of the evidence means the greater weight of the evidence, that is, more than 50 percent of the evidence, if taken as true, will result in a decision in favor of the party. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

**Burden of Proof.** The party who filed for the due process hearing has the burden of production and the burden of persuasion; except as otherwise provided by law. “Burden of production,” also called the burden of going forward, is the obligation to come forward with evidence of the facts necessary to support a finding in support of a claim or defense. To carry the burden of production, a party must introduce sufficient evidence to make out a prima facie case for a claim or defense. “Burden of persuasion” means the burden to prove by a preponderance of the evidence (more probably true than not true) each element of a claim and that the evidence is true.

**Prima Facie Case.** Establishing a prima facie case means that the party requesting the hearing must present evidence that is sufficient to raise a presumption of fact or establish the fact in question. The party’s evidence must be sufficient to justify a final determination in a party’s favor, provided that such evidence is not disproved by the other party.

**Hearing Officer Ruling on Prima Facie Case.** At the conclusion of the requesting party’s case, the Hearing Officer shall rule on the record whether the filing party has made a prima facie case. When determining whether a prima facie case has been made, the Hearing Officer shall presume that the evidence is true until rebutted by a preponderance of the evidence. The Respondent must offer evidence to rebut the presumption that Petitioner will make a prima facie case. “Rebut” means to claim or prove that evidence or an accusation is false. The rationale for the prima facie case ruling shall be addressed by the Hearing Officer in the final decision.

**Right to Rebuttal Evidence.** The party requesting the hearing shall have the right to present rebuttal evidence. No continuances will be granted to allow for the presentation of rebuttal evidence, unless otherwise ordered at the discretion of the Hearing Officer.