



The Office of Dispute Resolution Standard Operating Procedures Manual (2018)

District of Columbia Office of the State Superintendent of Education

Superintendent Hanseul Kang

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SECTION I: INTRODUCTION & PURPOSE

This Standard Operating Procedures Manual for the Office of Dispute Resolution (ODR) within the Office of the State Superintendent of Education (OSSE) is to serve as a practical guide for implementation of federal and local statutes and regulations governing special education dispute resolution in the District of Columbia. This manual is intended to serve students and children in the District of Columbia ages birth to 22. It is not intended as legal advice or as an interpretation of the laws and regulations governing special education in the United States. All individuals are urged to seek professional legal advice for guidance in understanding the laws, rules, and regulations that govern special education. Upon request, ODR will provide information about any free or low-cost legal services available in the District of Columbia.

This manual replaces all prior editions of the Standard Operating Procedures for the Office of Dispute Resolution (ODR) formerly known as the Student Hearing Office (SHO).

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 U.S.C. §1400 *et seq.*, requires each state and the District of Columbia to establish and maintain procedures to ensure that parents or educational-decision makers for children with disabilities¹, children with disabilities, and children suspected of having disabilities have an opportunity to seek mediation and/or an impartial due process hearing to resolve disagreements over the identification, evaluation, educational placement, or provision of a free appropriate public education for students with disabilities. The Office of Dispute Resolution is responsible for administering the due process hearing system in the District of Columbia. This manual provides information on a variety of resources available from ODR to resolve special education disputes between parents and schools serving their children. If there is any conflict between the Standard Operating Procedures and the IDEA regulations, the IDEA regulations govern.

Name and Citation of Manual

This manual may be known and cited as the Office of Dispute Resolution Standard Operating Procedures Manual 2018.

¹ In the District of Columbia under IDEA, “Parent’ means a natural or adoptive parent of a child, a legal guardian, a person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare, or a surrogate parent who has been appointed in accordance with 34 C.F.R. §300.519. The term ‘parent’ may also include a foster parent when the natural parent’s authority to make educational decisions on the child’s behalf has been extinguished under applicable law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under IDEA, and has no interest that conflicts with the interest of the child.” See D.C. Code § 38-2571.02 (8) (Definitions).

SECTION II: THE OSSE OFFICE OF DISPUTE RESOLUTION

§ 201 General Responsibilities

- A. The due process system is administered in the District of Columbia by the State Education Agency known as the Office of the State Superintendent of Education (OSSE) in accordance with the 34 CFR §300.500, et seq. and Title 5, Chapter 30 of the District of Columbia Municipal Regulations (5E DCMR §3000, et seq.)². The Office of Dispute Resolution (ODR) is responsible for the following:
1. Providing dispute resolution services under part B and part C of the Individuals with Disabilities Education Improvement Act;
 2. Receiving the written due process complaint requesting a due process hearing;
 3. Assigning an Impartial Hearing Officer within two (2) business days of receiving the complaint;
 4. Scheduling the hearing to ensure that a final decision is reached within the statutorily mandated time limit;
 5. Notifying the parties to the due process complaint of the time and place of the due process hearing;
 6. Providing and coordinating logistical support for the hearing such as adequate space, recording equipment, and an impartial and professionally qualified interpreter;
 7. Obtaining transcripts and audio recordings of hearings and retaining copies;
 8. Providing copies of transcripts and recordings upon request;
 9. Maintaining historical statistical data and archiving hearing files;
 10. Maintaining records of due process hearings, including, without limitation: the complaint, response to the complaint, motions, notices, e-mails, and other documents submitted by the parties;
 11. Publishing Impartial Hearing Officer Determinations redacted to exclude any personal identifiable information; and
 12. Promptly and professionally responding to all inquiries.
- B. ODR shall maintain sufficient staff, equipment, and other resources and implement appropriate training, supervision, and other practices to ensure that hearings are held in a timely and professional manner.
- C. ODR is a neutral administrative office, neither aligned with parents nor local education agencies (LEAs) nor the state education agency (SEA).
- D. ODR cannot provide legal advice or opinions 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.

² Each reference herein to a provision or section in 5E DCMR Chapter 30 shall also include any succeeding and subsequent amendments thereto to any such cited provisions or sections.

E. ODR may be contacted at the following address and telephone number:

ODR
1050 First Street, NE
Third Floor
Washington, DC 20002
Phone: (202) 698-3819
EFax: (202) 478-2956
Email: hearing.office@dc.gov

*Additional information may be obtained from our webpage at <https://osse.dc.gov/service/office-dispute-resolution-odr>

§ 202 Hours of Operation

ODR is open for business at 8:30 a.m. and will remain open until 5 p.m. Monday through Friday except for federal and District of Columbia holidays, or other days when the District of Columbia Government is closed (e.g. inclement weather days). ODR may also be closed for administrative leave days. Pleadings or other documents filed on weekends, during federal or District of Columbia holidays, or filed on days the District of Columbia Government is closed will be docketed as being filed on the next business day unless other filing deadlines are made with the assigned Impartial Hearing Officer.

§ 203 Filing of Complaints and Other Papers

- A. A “paper” means any complaint, pleading, motion, exhibit, witness list, or any other written submission filed with ODR.
- B. To file any paper at ODR, a person must mail, fax, email, or hand-deliver the paper to the Office of Dispute Resolution, All mailed papers must be sent to 1050 First Street, NE, Third Fl., Washington, DC, 20002. All faxed filings shall be sent to the following fax number: (202) 478-2956 which is a dedicated fax line. Parties may file complaints and other documents by email at Hearing.Office@dc.gov. Pursuant to 34 CFR §300.507(b) and 5E DCMR §3029.4, upon request by the parent, or upon the filing of a due process complaint, ODR shall inform the parent of free or low-cost legal and other relevant services. This list is generated by ODR and is comprised of community organizations and universities that have informed ODR of their free or low-cost representation of parents in special education due process hearings. Whether legal services will be provided to any particular parent will, of course, be dependent upon each agency’s policies and procedures and its review of each individual case. The quality of these legal services are not verified by ODR. This list is updated on a quarterly basis. ODR also maintains a list of these services on OSSE’s website.

C. Documents Received for Filing

All documents received by ODR for filing by 5 p.m. Eastern Time will be accepted for filing as of that day. All documents filed with ODR after 5 p.m. Eastern Time, and all documents filed on any designated holiday, Saturday, Sunday, or day when the District of Columbia Government is closed shall be deemed filed on the following business day. Please be advised that, once an Impartial Hearing Officer is assigned to your case, he/she will set filing deadlines that may be different from those set by ODR. Although filing deadlines may vary, please file every document (after an Impartial Hearing Officer has been assigned) with ODR and the assigned Impartial Hearing Officer. Upon the filing of any paper, an attorney or unrepresented party is certifying that to the best of his/her knowledge, information and belief, after an inquiry reasonable under the circumstances, (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law; (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. *See* Fed. R. Civ. P. 11(b).

D. Notice of Appearance of Legal Counsel

If an attorney joins the case after a due process complaint has been filed, the newly joining attorney must file a notice of appearance with the Impartial Hearing Officer. All filings by an attorney or unrepresented party shall set forth the name, full business or mailing address, telephone number, fax number and email address, if any, of the attorney, or party. Subsequent notices, pleadings, and documents shall be served on the attorney of record or, if unrepresented, the party.

§ 204 Service of Documents

Unless otherwise provided by applicable law or regulation, all documents filed with ODR shall simultaneously be delivered to all parties or party representatives by the same method as the document was filed with ODR, except that service by email or fax may be substituted for hand-delivery.

§ 205 Fairness and Impartiality

The staff of ODR is neither part of nor under the supervision of any OSSE office that will participate in the hearing or implement the decision of the Impartial Hearing Officer. In fairness to all parties, the staff shall maintain neutrality and shall neither favor nor promote the interests of the litigants who participate in due process hearings or mediation; and will neither express nor imply an opinion about the outcome of a hearing to anyone seeking information regarding the

substantive merit of any claim. The staff shall advise parents/students/families where to obtain free or low-cost legal assistance and may refer inquiries to other offices for assistance.

§ 206 Civility and Decorum

All participants, observers and witnesses have the right to be treated with civility and respect by other parties and the Impartial Hearing Officer. Rude, offensive, and unprofessional conduct such as inappropriate language, angry outbursts and threatening statements directed at any person or party is absolutely prohibited. The Impartial Hearing Officer has the responsibility for maintaining the integrity and orderly conduct of the hearing process, ensuring that the rights of all parties are protected, and maintaining an atmosphere conducive to impartiality and fairness at all times. When appropriate, the Impartial Hearing Officer may exclude any person, halt or suspend a hearing, consider a referral to the Office of Disciplinary Counsel at the DC Bar, and/or summon appropriate law enforcement authorities to address any inappropriate conduct or misbehavior by any person that disrupts a hearing.

SECTION III: ALTERNATIVE DISPUTE RESOLUTION

§ 301 Alternatives to a Due Process Hearing

The Office of Dispute Resolution is committed to seeking and offering various alternative dispute resolution options for parents and LEAs. ODR understands the importance of due process; however, there are several steps that may be taken prior to a due process hearing in an attempt to reach a mutually acceptable resolution. ODR offers Facilitated Individualized Education Program (IEP) Meetings, Facilitated Individualized Family Service Plan (IFSP) Meetings, Facilitated Resolution Meetings, and Mediation for all special education related disputes in the District of Columbia at no cost to the parties. See §302 below for further guidance.

While all ODR contracted Impartial Hearing Officers may serve as Mediators or Facilitators, none will serve in more than one capacity in any case involving the same student. For example, if a contractor is assigned to a case as an Impartial Hearing Officer, he/she will not serve as a Mediator or Facilitator for that same student.

§ 302 Facilitated IEP/IFSP Meeting

When schools and families are new to working together or have a number of complex issues to discuss, a Facilitated IEP/IFSP Meeting may be a helpful option. A Facilitated IEP/IFSP Meeting is a voluntary dispute resolution option where ODR assigns a neutral ODR contractor to facilitate the communication at an IEP/IFSP meeting.

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/legal guardians or the LEA may request IEP/IFSP facilitation. Since the process is voluntary, both parties must agree to use this service. If either party declines to participate, facilitation cannot be used. ODR coordinates the services of the facilitators, which are provided at no cost to the parent/legal guardian or school, and are paid for by ODR in cases involving a student with a disability, or an eligible young child. For copies of all request forms, or further information on IEP/IFSP facilitation, please visit the ODR webpage on OSSE's website at <https://osse.dc.gov/service/office-dispute-resolution-odr>.

§ 303 Facilitated Resolution Meeting

A resolution meeting is a dispute resolution process that takes place after a parent/legal guardian files a due process complaint. Resolution meetings are mandated by IDEA, requiring the LEA to convene a meeting with the parent and relevant members of the IEP team with knowledge of the facts at issue in the due process complaint. A Facilitated Resolution Meeting (FRM) may be helpful to assist the parties to find common ground and potentially resolve the due process complaint by executing a legally-binding settlement agreement without proceeding to a formal hearing. A FRM is a voluntary dispute resolution option where the parties agree to use a neutral ODR contractor, trained in effective meeting facilitation techniques, to facilitate the resolution meeting.

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 will be the sole decision-makers. The LEA and parent/legal guardian remain responsible for scheduling the resolution meeting for which a facilitator is requested, and all Facilitated Resolution Meetings will be scheduled in accordance with the same timelines as Non-Facilitated Resolution Meetings. After the FRM has been scheduled, ODR will assign a facilitator to attend the meeting. At the resolution meeting, the facilitator will ask the parties to sign a form indicating their agreement to the presence of the facilitator. These facilitation services are provided at no cost to the parent or the school, and are paid for by ODR in cases involving a student with a disability, a student suspected of having a disability, or an eligible young child.

For additional information on resolution meeting facilitation, please visit ODR's webpage on OSSE's website at <https://osse.dc.gov/service/office-dispute-resolution-odr>.

§ 304 Mediation

Pursuant to 34 CFR §300.506 and 34 CFR §303.430(b), OSSE must ensure that procedures are established and implemented to allow parties to a due process complaint to resolve disputes through a mediation process. Mediation is a voluntary, confidential, conflict-resolution process where a third party called a Mediator facilitates open communication between the participants of the meeting in hopes of helping said participants reach solutions together instead of having an Impartial Hearing Officer decide the issues. The following procedures, as further set forth in 5E DCMR §3028, apply to requests for mediation made to ODR:

- A. Mediation services may be requested by filling out a mediation request form and sending it to ODR. The form is located on OSSE's website at <https://osse.dc.gov/service/special->

[education-mediation](#). Mediation may be requested on its own, but may also be requested before, or in conjunction with a due process hearing request. Mediation may also be requested in conjunction with the filing of a State Complaint pursuant to 34 CFR §§300.151-300.153(Part B) and 34 CFR §303.432-303.434-. For example, a parent/legal guardian can request mediation regarding the alleged failure of an SEA or LEA employee to be highly qualified, even though this matter may not be the subject of a due process complaint or a State Complaint.

- B. Mediations are scheduled at times and locations convenient to the parties to the dispute. Prior to the start of the mediation meeting, parties must sign a confidentiality statement agreeing to keep discussions occurring during the mediation session confidential.
- C. In accordance with 5E DCMR §3028.4, all ODR mediators are qualified, impartial, and trained in effective mediation techniques as well as special education law.
- D. Pursuant to 34 CFR §300.506(i) and (ii) and 5E DCMR §3028.7, if the parties resolve the dispute through mediation, the parties must execute a legally-binding agreement that is signed by both the parent/legal guardian and a representative of the LEA who has authority to make legal commitments on behalf of 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.
- E. Mediation cannot be used to deny or delay the parent/legal guardian's right to a due process hearing.

Any alternative dispute resolution option, including mediation, may be requested by a parent/legal guardian, adult student, LEA, DC EIP or other public agency by contacting ODR at (202) 698-3819, by email at hearing.office@dc.gov, or by completing one of ODR's request forms, located on ODR's webpage at <https://osse.dc.gov/service/office-dispute-resolution-odr>, where you may also learn more about ODR's dispute resolution options through our parent's handbook.

SECTION IV: THE DUE PROCESS COMPLAINT

§ 401 Overview

A special education due process hearing is an administrative proceeding during which the parties are given the opportunity to present witnesses, documentary evidence, and oral and written arguments to an Impartial Hearing Officer in support of their respective positions on disputed special education issues. The Impartial Hearing Officer then issues a written decision concerning the matters in dispute.

A. Due Process Complaint and Model Form

To obtain a due process hearing, the parent/legal guardian or public agency must file a due process complaint. The written complaint must meet the requirements set forth in 34 CFR

§300.508(b) and 5E DCMR §3029. The party requesting a hearing (parent or public agency) may, but is not required to file a Notice of Due Process Complaint, a model form developed by ODR to meet these legal requirements. All parties must meet the requirements for service set forth in 34 CFR §300.508(a) that require either party, or the attorney representing a party, to provide the other party and ODR with a copy of the due process complaint.

Model Form: In accordance with 34 CFR §300.509, a model *Due Process Complaint Notice* form created by ODR may be used to give proper notice and meet the requirements set forth in 34 CFR §300.508(b), however use of the form is voluntary. A copy of the model form is available on OSSE’s website at <https://osse.dc.gov/service/office-dispute-resolution-odr>. ODR will also provide a copy of the model *Due Process Complaint Notice* upon oral or written request. Nothing in these procedures shall be construed to require use of the model form so long as hearing requests filed in another manner comply with 34 CFR §300.508(b).

B. Parties to Due Process Complaint

Parties to a due process hearing may include the parent(s) or legal guardian(s) of the child, or an adult student, and the public agency responsible for providing education to children with disabilities. Public agencies include the State Education Agency (SEA), Local Education Agency (LEA), and in the case of children 0 to 2 years old, Early Intervention Services provider (EIS), or Lead Agency representative.

A parent/legal guardian may represent himself or herself throughout a due process proceeding, which is called, proceeding *pro se*.

A parent/legal guardian may be represented by counsel throughout a due process proceeding. A parent may also 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.

A public agency may be represented by counsel throughout a due process proceeding. A public agency may also 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.

§ 402 Due Process Procedures – Children under Age 3 (Part C) and Due Process Procedures Regarding Services from Strong Start/DC Early Intervention Program

This part relates specifically to due process complaints filed with respect to children who are entitled to services under Part C of IDEA, including a child with a disability or suspected of having a disability under the age of 3 who is eligible for or receiving services under an extended Individualized Family Service Plan (“IFSP”) under Part C, or who is otherwise challenging the

services provided to a child with a disability under Part C of IDEA. *See* 34 C.F.R. § 303.21 (a), (c); 34 C.F.R. § 303.211 Families of children serviced under part C have the same rights as families serviced under part B of the Individuals with Disabilities Education Improvement Act. Therefore, the hearing procedures are largely the same, with some notable differences.

A. Lead Agency

OSSE's Strong Start DC Early Intervention Program (DC EIP) is responsible for administering early intervention programs for children under Part C in the District of Columbia.³

B. Role of ODR in Dispute Resolution

1. Consistent with 34 CFR §303.430(b), mediation is available for all parties to disputes involving children under the age of 3 or eligible for or receiving services under Part C. ODR also offers IFSP and resolution meeting facilitation. The benefits of using mediation and facilitation, and the process for requesting these services are discussed in section III of this manual.
2. Upon receipt of a due process complaint, ODR will assign an Impartial Hearing Officer who meets the qualifications set forth in 34 CFR §303.435 and ODR will schedule a date for the hearing.

C. Resolution Meeting

Pursuant to 34 CFR §303.442, within fifteen (15) days of receiving notice of the parent's due process complaint, and prior to the commencement of a due process hearing for a child under the age of 3 or eligible for or receiving services under Part C, OSSE's Early Intervention Program shall convene a meeting with the parent and the relevant members of the IFSP team who have specific knowledge of the facts identified in the due process complaint. The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the complaint, so that the lead agency has an opportunity to resolve the dispute without going to hearing. Consistent with 34 CFR §303.442(a)(3), the parties may agree in writing to waive the meeting or agree to use the mediation process in lieu of the resolution process. Resolution meetings are discussed in more detail in §502 of this manual.

³ Where "LEA" or "Lead Agency" are mentioned throughout this document, the corresponding agency for disputes under part C of the IDEA is the DC Early Intervention Program.

D. Due Process Complaint

1. Who May File

Pursuant to 34 CFR §303.440 and 5 D.C.M.R § E-3029.1, a parent/legal guardian or educational decision maker, Early Intervention Services (EIS) provider, or Lead Agency (i.e., OSSE) may file a due process complaint with respect to any matter relating to the eligibility, identification, evaluation, or placement of a child eligible for or receiving services under Part C, or regarding the provision of early intervention services to children eligible for services under Part C, and the due process complaint must allege a violation that occurred not more than two years before the date the [parent](#) or EIS provider 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 filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in [§ 303.443\(f\)](#) apply to the timeline in this section.

2. Content of Due Process Complaint

There are six required components of a due process complaint. These components are discussed in more detail in §405 of this manual.

E. Hearing Timelines and Convenience

1. The due process hearing shall be held at a time and place that is reasonably convenient to the parent.
2. The due process hearing shall be conducted and a written decision mailed to each party no more than forty-five (45) days after the expiration of the 30-day period under 34 CFR §303.442(b) and 5A DCMR §3111.2, or the adjusted time periods under 34 CFR §300.442(c).
3. An Impartial Hearing Officer may grant specific extensions of time beyond the forty-five (45) days by consent of the parties, or, if both parties do not consent, if good cause is shown by motion.

F. Required Disclosure of Evidence

At least five (5) business days prior to the due process hearing, each party must disclose, to all other parties, all evidence that they intend to introduce at the hearing. The required disclosure of evidence is discussed in more detail in §504 of this manual.

§ 403 Due Process Procedures – Students Ages 3 to 22 (Part B)

A. Role of ODR in Dispute Resolution

1. Consistent with 34 CFR §300.506, mediation is available for all parties to disputes involving students ages 3 to 22. ODR also offers IEP and resolution meeting facilitation. The benefits of using mediation and facilitation, and the process for requesting these services are discussed in section III of this manual.
2. Upon receipt of a due process complaint, ODR will assign an Impartial Hearing Officer who meets the qualifications set forth in 34 CFR §300.511(c) and ODR will schedule a date for the hearing.

B. Resolution Meeting

Pursuant to 34 CFR §300.510, within fifteen (15) days of receiving notice of the parent/legal guardian's due process complaint, and prior to the initiation of a due process hearing for students ages 3 to 22, the local education agency (LEA) must convene a meeting with the parent and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process complaint. The purpose of the resolution meeting is for the [parent](#) of the child to discuss the due process complaint, and the facts that form the basis of the complaint, so that the LEA has an opportunity to resolve the dispute without going to hearing. Consistent with 34 CFR §300.510(a)(3), the parties may agree in writing to waive the meeting or agree to use the mediation process in lieu of the resolution process. Resolution meetings are discussed in more detail in §502 of this manual.

C. Due Process Complaint

1. Who May File

Pursuant to 34 CFR §300.507, a parent/legal guardian or a public agency may file a due process complaint with respect to any matter relating to the eligibility, identification, evaluation, or educational placement of a child with a disability, or the provision of a Free Appropriate Public Education (FAPE), and the due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency 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 filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

2. Content of Due Process Complaint

There are six required components of a due process complaint. These components are discussed in more detail in §405 of this manual.

D. Hearing Timelines and Convenience

1. The due process hearing shall be held at a time and place that is reasonably convenient to the parent/legal guardian.
2. The due process hearing shall be conducted, and a written decision mailed to each party no more than forty-five (45) days after the expiration of the 30-day period under 34 CFR §300.510(b) and 5E DCMR §3030.3 or the adjusted time periods under 34 CFR §300.510(c) and 5E DCMR §3030.8. While the law specifically states that a written decision be mailed to each party, ODR is willing to transmit a copy of the decision via email for convenience at the request of the party.
3. An Impartial Hearing Officer may grant specific extensions of time beyond the forty-five (45) days by consent of the parties, or, if both parties do not consent, if good cause is shown by motion.

E. Required Disclosure of Evidence

As further set forth in §504 below, at least five (5) business days prior to the due process hearing, each party must disclose, to all other parties, all evidence that they intend to introduce at the hearing.

§ 404 Notice and Service

Every complaint or other document filed with ODR must be delivered to the other parties or their attorneys or representatives no later than the day the complaint or other document is filed with ODR. Unless otherwise ordered by the assigned Impartial Hearing Officer or agreed by the parties, service shall be made by delivering a copy, mailing a copy, faxing a copy or emailing a copy.

A. Acceptable Service by Delivery

1. Handing a copy to the party or representative;
2. Leaving it at the party's or representative's place of business with an employee; or
3. Leaving it at the party's residence with an adult who lives there.

B. Acceptable Service by Mail

Mailing a properly addressed copy of the complaint or other document with first-class postage by depositing it with the United States Postal Service.

C. Acceptable Service by Fax

Faxing a legible copy to the correct fax number and receiving/retaining confirmation of transmission.

D. Acceptable Service by E-mail

All papers to be filed by e-mail should be in portable document format (PDF). The papers should be attached to an e-mail, and not contained in the body of the e-mail itself. Parties using e-mail are responsible for retaining confirmation of transmission

E. Providing Notice

1. Notice to the School

Parents/legal guardians initiating a complaint must provide notice of the due process complaint to the LEA or school. Notice to DC Public Schools or DCPS shall be provided to the District of Columbia Public Schools Office of the General Counsel, 1200 First Street NE, Washington, DC 20002, or by fax at (202) 442-5115. If the student is an inmate at the District's Central Detention Facility (DC Jail), pursuant to 20 U.S.C §1400, *et seq.* and Title 5 of the DCMR, the District of Columbia Public Schools (DCPS) is responsible for providing special education services to eligible incarcerated youth until they reach their twenty-second birthday. If the student attends a charter school, the parents must file notice of the due process complaint with the principal or director of the charter school. LEAs or SEAs initiating a complaint must provide notice of the due process complaint to the parents, guardians, primary caregivers, or other persons or entities entrusted with the authority to make decisions on behalf of the student.

2. Notice to the Office of Dispute Resolution

In addition to providing the complaint to the school or parent/legal guardian, a copy of the due process complaint must be filed with ODR. The complaint may be filed by mail, hand-delivery, email, or fax. If a parent or legal guardian is unable to read or write, is not fluent in English, or has a disability that prevents a written request, the staff in ODR shall assist the parent or guardian in filling out the complaint or refer the parent to a legal services program that handles special education matters without charge and is open for intake.

ODR may be contacted at the following address and telephone number:

ODR
1050 First Street, NE
Third Floor
Washington, DC 20002
Phone: (202) 698-3819
EFax: (202) 478-2956
Email: hearing.office@dc.gov

3. Notice to the Department of Youth Rehabilitative Services (DYRS)

Parents/legal guardians initiating complaints against DYRS must provide a copy of the complaint to the DYRS Office of the General Counsel, Attn: Lindsey Appiah, by email at Lindsey.Appiah@dc.gov or by fax at (202) 299-3816, with a copy to ODR.

4. Notice to the State Education Agency (SEA)

Parents/legal guardians initiating a complaint against OSSE as the SEA must provide notice to OSSE's Office of General Counsel at 1050 First Street NE, Third Floor, Washington, DC 20002, or by fax at (202) 299-2134, with a copy to ODR.

§ 405 Contents & Timeline for Filing Complaint (Parts B and C)

A. Timeline for Requesting Hearing: Two Year Limitation Period

Unless otherwise provided by law or regulation, the due process complaint must allege a violation that occurred not more than two years before the date the parent/legal guardian, public agency, or Early Intervention Services (EIS) provider knew or should have known about the alleged action that forms the basis of the due process complaint. 34 CFR §300.507(a)(2) and 34 CFR §303.440(a)(2).

B. Exceptions to the Two Year Limitation Period under 34 CFR § 300.511(f) and 34 CFR §303.443(f)

1. The two year limitation period shall not apply to a parent/legal guardian if the parent was prevented from filing a due process complaint due to:
 - a. Specific misrepresentations by the LEA or EIS provider that it had resolved the problem forming the basis of the complaint; or
 - b. The LEA, Lead Agency, or EIS provider's withholding of information from the parent that was required under this subchapter to be provided to the parent.

2. These exceptions do not limit the right of the parties to rely upon other applicable exceptions to the limitation period.

C. Contents of a Due Process Complaint

The due process complaint must contain the following information (34 CFR §300.508(b) and 34 CFR §303.441(b)):

1. The name of the child;
2. The address of the residence of the child; unless the child's address of residence is not available or able to be disclosed (i.e. because the child is a District of Columbia ward or homeless);
3. The name of the school the child is attending; or the name of the EIS provider servicing the child;
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(2)), available contact information for the child, and the name of the school the child is attending;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change of services, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

Please note that the Office of Dispute Resolution will not review or reject a filing for sufficiency or other reasons if a due process complaint does not comply with these requirements, but the assigned Impartial Hearing Officer may dismiss or order a party to amend a due process complaint that does not contain the required contents. For further guidance, see § 406.

§ 406 Sufficiency of Complaint

A. Sufficiency of Complaint.

A due process complaint shall be deemed to contain all of the required content unless the party receiving the due process complaint notifies ODR or the assigned Impartial Hearing Officer (if one has been assigned) and the other party or parties in writing within fifteen (15) days of receipt of the due process complaint that the receiving party believes the due process complaint does not meet the requirements of 34 CFR §300.508(d) or 34 CFR §303.441(d) as further set forth in § 405(C) above. *See* 34 CFR §300.508(d)(1) and 34 CFR §303.441(d)(1). For purposes of this provision, and consistent with §204 above, the receiving party shall be presumed to have received the complaint on the date received by the Office of Dispute Resolution.

B. Impartial Hearing Officer Decision on Sufficiency

Pursuant to 34 CFR §300.508(d)(2) or 34 CFR §303.441(d)(2), within five (5) days of receipt of notification that a party believes the due process complaint is insufficient, an

Impartial Hearing Officer shall make a determination based on the face of the notice whether the due process complaint is sufficient to meet the requirements of 34 CFR §300.508(b) and 34 CFR §303.441(b) and shall immediately notify the parties in writing of the decision.

§ 407 Amending a Due Process Complaint

- A. As set forth in 34 CFR §300.508(d)(3) and 34 CFR §303.441(d)(3), a party may amend its due process complaint only if:
 - 1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session meeting held in accordance with 34 CFR §300.510 or 34 CFR §303.442; or
 - 2. The Impartial Hearing Officer grants permission, except that the Impartial Hearing Officer may only grant permission to amend at any time not later than five (5) days before the due process hearing begins.
- B. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint start over. 34 CFR §300.508(d)(4) and 34 CFR §303.441(d)(4).
- C. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the above requirements. See §405 above.

§ 408 Response to a Due Process Complaint (Parts B and C)

- A. Response to Complaint by the Local Educational Agency or Lead Agency pursuant to 34 CFR §300.508(e) and 34 CFR §303.441(e)
 - 1. If the LEA has not sent a prior written notice to the parent/legal guardian regarding the subject matter contained in the parent's due process complaint, the LEA shall, within ten (10) days of receiving the due process complaint, send to the parent a response that includes:
 - a. An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
 - b. A description of other options that the IEP/IFSP team considered and the reasons why those options were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - d. A description of the other factors that are relevant to the agency's proposed or refused action.

2. A response by an LEA shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate. 34 CFR §300.508(e)(2) or 34 CFR §303.441(e)(2).
- B. Other Party Response to a Due Process Complaint pursuant to 34 CFR §300.508(f) or 34 CFR §303.441(f)
1. Except as provided in section A above, any party receiving a due process complaint must, within ten (10) days of receiving the due process complaint, send to the party who filed the complaint a response that specifically addresses the issues raised in the due process complaint.
 2. Parties should be cognizant of the 10-day period for filing the response. Impartial Hearing Officers may take the failure to so file into consideration in determining how to proceed on a case-by-case basis, considering the equities of the circumstances.

§ 409 Rights of All Parties (Parts B and C)

Pursuant to 34 CFR §300.512(a) and 34 CFR §303.444(a), all parties have the following rights:

A. Right to Representation

All parties have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, or with respect to part C complaints, problems of infants and toddlers with disabilities.

B. Right to Present Evidence and Argument

All parties have the right to call witnesses and present written and other evidence that will help them prove their cases subject to the 5-day disclosure requirement under 34 CFR §300.512(b) and 34 CFR §303.444(b). They will also be given the opportunity to argue the merits of their cases. ODR and the Impartial Hearing Officer will ensure hearings have adequate time and space to be conducted in the time reasonably requested by the parties.

C. Right to Confront and Cross-examine Adverse Witnesses

All parties have the right to be present when witnesses testify against their positions and to ask them questions concerning their views.

D. Right to Compel the Presence of Witnesses

It is the responsibility of the party seeking relief to secure the presence of their witnesses for due process hearings by serving the witness with a Notice to Appear. Only if a relevant witness refuses to appear at the hearing voluntarily, the party requesting the witness has the right to request the Impartial Hearing Officer to issue a “Notice to Appear” to the requested party.

Procedures:

1. The party should complete and file a Notice to Appear no later than fourteen (14) days prior to the date of the scheduled hearing along with a request for Notice to Appear. The request must explain the efforts taken to obtain the cooperation of the witness. A copy of the notice and the request must be served on all parties.
2. The Notice to Appear must specifically identify the witness or witnesses who are the subjects of the notice, and must state the relevance of the requested testimony to the pending case.
3. The Notice to Appear shall be signed and issued by the assigned Impartial Hearing Officer within two (2) business days. Any opposing party has a right to request that the Impartial Hearing Officer reject the Notice to Appear.

4. Service

It is the responsibility of the requesting party to serve the Notice to Appear. The Notice to Appear must be served by delivering a copy to the witness by certified mail, fax transmission, or hand delivery. If the witness is a party, or an employee of a party, the Notice to Appear shall be served on the party’s attorney of record.

5. Proof of Service

Proof of service must be made by filing a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

E. Right to a Record of the Hearing

The Impartial Hearing Officer shall make an electronic audio record of the hearing. ODR shall maintain the electronic record at all times, including during recesses to new dates, and make it available for review by any party upon request as permitted by ODR’s records retention policy.

F. Right to Written Findings of Fact and Decision

The Impartial Hearing Officer must prepare a written decision setting forth his or her findings of fact, analysis of the law, and final order.

G. Right to Request the Prohibition of the Introduction of Surprise Evidence

The Impartial Hearing Officer, and any party, may prohibit the introduction of any evidence at the hearing that has not been disclosed to all parties at least five (5) business days before the hearing. This includes all evaluations and recommendations based upon those evaluations that the party intends to use at the hearing.

H. Right to Request the Sequestration (Exclusion) of Witnesses

A party may ask the Impartial Hearing Officer to order prospective witnesses to remain outside the hearing room while other witnesses are testifying. The Impartial Hearing Officer shall have the discretion to rule on a motion by either party to allow expert witnesses who offer opinion testimony (based on their understanding of the facts) to remain in the hearing room while other witnesses are testifying. A party making such a motion shall support it with reference to legal authority and the facts of the particular case.

I. Right to an Interpreter

If the primary language of a party is a language other than English, an interpreter will be provided by the Office of Dispute Resolution for the hearing, free of charge. For further guidance see §505 below.

§ 410 Special Rights of Parents (Parts B and C)

Both 34 CFR §300.512(c) and 34 CFR §303.444(c) confer certain special rights to parents/legal guardians in addition to the rights set out above:

A. Right to a Public Hearing

The due process hearing will be closed to the public unless the parent chooses to have an open hearing.

B. Right to Have the Child Present at the Hearing

Parents have the right to have the child involved in the dispute present at the hearing, but may wish to consider the impact of testimony on the child; and

C. Right to a Written Verbatim Transcript of the Hearing

If a parent wishes to have an electronic copy or written verbatim transcript of the hearing, the parent or parent's counsel should submit a request in writing to ODR **signed by the parent**. There is no cost to the parent(s). Written transcripts of the hearing may take up to thirty (30) days to process. A request for an audio transcript may take up to seven (7) days to process.

Additionally, the parents of a child with a disability must be afforded an opportunity to inspect and review all educational records with respect to: (1) The identification, evaluation, and educational placement of the child. (2) The provision of FAPE to the child.

SECTION V: PREPARING FOR THE HEARING

§ 501 Pre-hearing Matters

A. Pre-hearing Conferences

Prior to a due process hearing, the Impartial Hearing Officer shall coordinate the scheduling of a pre-hearing conference. Conducting a pre-hearing conference provides the Impartial Hearing Officer the opportunity to advise all parties of how the hearing will be conducted. Establishing ground rules will result in a more efficient and focused due process hearing. At the Impartial Hearing Officer's discretion, the parties and/or their representatives, shall be directed to appear, either in person or by telephone, at a specific time for a conference prior to a due process hearing for the purposes of considering preliminary matters, including any of the following:

1. Setting the date and amount of time for the hearing;
2. The formulation or simplification of issues;
3. Admission of certain assertions of fact or stipulations;
4. The procedures at the hearing on the merits;
5. To establish any reasonable limitations on the number of witnesses and the time to be allotted each party to present their case in chief to support hearing efficiency and eliminate duplicative testimony;
6. Preliminary assignment of burden of proof;
7. Consideration of any motions; and/or
8. To discuss any other matter that may aid in simplifying the proceeding, disposing of any matter in controversy, up to and including settlement of the dispute.

At the discretion of the Impartial Hearing Officer or at the request of a party, a pre-hearing conference may be held on the record. An audio recording of the pre-hearing conference may be requested from ODR. No written transcript will be provided.

During the pre-hearing conference, the Impartial Hearing Officer shall not offer advice to any of the parties and/or their representatives, however, an Impartial Hearing Officer shall advise unrepresented parties that they have a right to counsel and where free and low-cost legal services may be obtained. The pre-hearing conference must be held in the presence of all parties to the due process complaint (either by telephone or in-person). No delay in the hearing date should result from scheduling delay of the pre-hearing conference absent the consent of both parties or an order of the Impartial Hearing Officer.

B. Pre-hearing Order

1. Following the pre-hearing conference, the Impartial Hearing Officer shall issue a pre-hearing order. The pre-hearing order must contain a confirmation of matters addressed during the pre-hearing conference including: (1) a statement of the issues to be resolved at the hearing, (2) the time, date, place, and other physical arrangements for the hearing, and (3) clarification of any procedural points including pre-hearing deadlines, and other various responsibilities of the parties. The order can also help avoid unnecessary issues arising at the hearing, such as (1) a party's failure to appear, (2) a party's failure to meet a pre-hearing deadline, (3) a party not being prepared to proceed with the provision of evidence, (4) a party seeking an extension of the timeline, and (5) confirming requests for accommodation, translation services, or interpretation services. The order does not have to be a verbatim recitation of everything discussed in the pre-hearing conference as its primary purpose is to set forth the matters either stipulated to by the parties or ordered by the Impartial Hearing Officer.
2. Unless otherwise agreed to by the parties, the Impartial Hearing Officer should transmit the order to the parties for receipt by each no more than five (5) business days after the pre-hearing conference or at least seven (7) business days prior to the hearing, whichever is earlier. The Impartial Hearing Officer must also file a copy with ODR.
3. Parties must file any objections or requests for clarification of the pre-hearing order not more than three (3) business days after the pre-hearing order has been issued.

§ 502 Resolution Meeting and Resolution Period (Parts B and C)

Under 34 CFR §300.510 and 34 CFR §303.442, within fifteen (15) days of receiving notice of the parent/legal guardian's due process complaint (seven (7) days if expedited), and prior to the initiation of a due process hearing, an LEA (or DC EIP) must convene a meeting with the parent and the relevant member or members of the IEP/IFSP team who have specific knowledge of the facts identified in the due process complaint. The parent and the LEA (or DC EIP) shall determine the relevant members of the IEP/IFSP team to attend the meeting. This meeting should include a representative of the public agency that has decision-making authority on behalf of that agency and may not include an attorney of the LEA or DC EIP unless the parent is accompanied by an attorney. The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has an

opportunity to resolve the dispute that is the basis for the complaint. This is called the resolution meeting.

By law, the parties may agree to waive the resolution meeting and go straight to hearing. However, ODR offers LEAs and parents an opportunity to benefit from the expertise of a skilled facilitator to participate in the meeting to help the parties discuss their positions in a more meaningful way. The presence of a neutral facilitator at the resolution session may produce a more effective discussion and successful outcome (see §303). If the parties are successful at resolving the due process complaint at the resolution meeting, the party that filed the complaint must send a notice of withdrawal to ODR and the Impartial Hearing Officer will issue an order of dismissal to close the case.

Consistent with 34 CFR §300.510, 34 CFR §303.442 and 5E DCMR § 3030 it is important to note the following with regard to the resolution process:

- A. If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of the receipt of the due process complaint, the due process hearing may occur.
- B. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held. 34 CFR §300.510(b)(3) and 34 CFR §303.442(b)(3).
- C. If the LEA/lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 34 CFR §300.322(d)), the LEA/lead agency may, at the conclusion of the 30-day period, request that an Impartial Hearing Officer dismiss the parent's due process complaint. 34 CFR §300.510(b)(4) and 34 CFR §303.442(b)(4).
- D. If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, a parent may seek the intervention of a hearing officer to begin the due process hearing timeline. 34 CFR §300.510(b)(5) and 34 CFR §303.442(b)(5).
- E. If a resolution to the dispute is reached at the resolution meeting or mediation, the parties must execute a legally binding agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States. 34 CFR §300.510(d)(2) and 34 CFR §303.442(d)(2).
- F. If the parties execute an agreement pursuant to 34 CFR §300.510(d) or 34 CFR § 303.442(d), a party may void the agreement within three (3) business days of the agreement's execution.

§ 503 Case Assignments and Scheduling the Hearing

ODR and the parties shall work reasonably in scheduling the case for a hearing. The following general guidelines shall apply:

- A. Not more than two (2) business days after the due process complaint is filed, the ODR Scheduling Coordinator shall issue a Notice of Impartial Hearing Officer Appointment. The notice will include the name of the assigned Impartial Hearing Officer as well as a provisional date and time for the pre-hearing conference and due process hearing. ODR will provisionally schedule all hearings for one (1) day. The Impartial Hearing Officer, in consultation with the parties, shall determine how much time is needed for the hearing.
- B. As usual practice, Impartial Hearing Officers are assigned to cases on a rotating basis, which means that each Impartial Hearing Officer is assigned cases in a regularly recurring order. However, ODR reserves the right to assign and reassign cases in consideration of workload distribution, experience, convenience, administrative considerations, geographic location, timeliness, accuracy, efficiency, compliance with applicable laws, rules, or regulations, or other appropriate considerations as determined by ODR.
- C. All Impartial Hearing Officers are required to report any personal or professional interest that conflicts with their objectivity in a hearing to the Director of the Office of Dispute Resolution at OSSE and all parties to the due process complaint.

§ 504 Disclosure of Evidence (Parts B and C)

In preparing for a hearing, a party must not only determine what issues need to be addressed by the Impartial Hearing Officer but also arrange to provide evidence to support the party's position on those issues during the hearing.

Five-Day Disclosure Rule:

- A. At least five (5) business days prior to a scheduled due process hearing, each party must disclose and provide to all other parties and ODR copies of all evidence which the party intends to use at the hearing. 34 CFR §300.512(b)(1), 34 CFR §303.444(b)(1) and 5E DCMR §3029.5. This rule requires specific disclosure of:
 - 1. All documents and tangible items the party wants admitted into evidence for the Impartial Hearing Officer's consideration;
 - 2. The names, addresses, and telephone numbers of all witnesses the party intends to call to testify during the hearing; and
 - 3. All completed evaluations and recommendations based upon the offering party's evaluations that the party intends to use at the hearing.
- B. Furthermore, pursuant to 5E DCMR §3029.5, an attorney who is submitting a Five-Day Disclosure must disclose any financial interest, of which he or she is aware, of any

participant in the proceeding in a non-public provider or service that may be at issue in that due process hearing.

- C. A party who does not receive adequate prior disclosure of evidence may ask the Impartial Hearing Officer to exclude the evidence from the hearing. It is within the discretion of the Impartial Hearing Officer to determine whether the evidence will be excluded. 34 CFR §300.512(b)(2) and 34 CFR §442(b)(2).

§ 505 Interpretation Services

Interpretation refers to the process of orally rendering communication from one language into another. While there is no express right to interpreter and translation services included in the IDEA statute or its implementing regulations for special education due process hearings, IDEA makes it clear that communicating with non-English speaking parents/legal guardians about special education demands very high standards in regards to interpretation and translation. Furthermore, Title VI of the Civil Rights Act of 1964 and the DC Language Access Act obligates the DC Government to provide equal access and participation in public services, programs and activities for residents of the District of Columbia who cannot (or have limited capacity to) speak, read or write English. DC Code §2-1901, *et seq.* As such, ODR shall provide a professionally qualified interpreter for Due Process Hearings, Mediations, Facilitated Resolution Meetings, and Facilitated IEP/IFSP Meetings, without cost. ODR shall provide a list of common abbreviations and their meanings to assist interpreters who may be unfamiliar with the subject matter. ODR shall provide oral or American Sign Language (ASL) interpretation services to a party, without cost and upon request, for persons seeking information regarding dispute resolution services or participating in a due process hearing, mediation, or facilitated IEP or resolution meeting. The party whose primary language is other than English is free to have their own interpreter present for confidential communications with their counsel; ODR is not required to incur the cost for these interpretation services.

§ 506 Ordering Interpreter Services

A party shall make a request for an interpreter on the due process complaint form. If the need for an interpreter arises before or after the complaint has been filed, a party shall notify ODR and the Impartial Hearing Officer, if one has been assigned, in writing as soon as possible, but at least ten (10) days before the hearing. Requests to ODR may be made by e-mail to hearing.office@dc.gov. ODR, the parties, and the Impartial Hearing Officer shall plan for the hearing duration with the recognition that adding an interpreter to this process requires approximately twice the amount of time that would otherwise be needed for the hearing.

§ 507 Cancellation of Interpreter Services

It is the responsibility of the party that requested interpreter services to notify ODR, at hearing.office@dc.gov, and the Impartial Hearing Officer a minimum of two (2) business days before the hearing is set to commence if interpreter services are no longer needed.

§ 508 Role of Interpreter

All vendors providing interpreter services used by ODR are contracted and certified to do business with the District of Columbia. An interpreter at a hearing shall swear or affirm under penalty of perjury to interpret accurately, completely, and impartially. When an interpreter is present, the Impartial Hearing Officer will allow time for a verbatim oral interpretation of all statements and all testimony at the hearing, stopping every two to three sentences to allow for such interpretation.

§ 509 Document Translation

Translation refers to the process of rendering written communications from one language to another. ODR shall provide translation of documents issued by ODR or an Impartial Hearing Officer into languages other than English, upon request of a party. Document translation requests shall be directed to ODR at hearing.office@dc.gov. Document translation requests may take up to thirty (30) business days to fulfill. ODR will nonetheless ensure adherence to the prescribed timelines noted in this manual upon receipt of a request for document translation.

§ 510 ADA Accommodations

The Americans with Disabilities Act of 1990 (ADA) is a Federal law that provides civil rights protections to individuals with disabilities. The ADA guarantees equal opportunity for individuals in accessing government services, programs, or activities. If you are a party or a witness to a due process complaint, mediation, or facilitation, and require an accommodation under the ADA to access any service offered by the Office of Dispute Resolution, please contact the office by phone at (202) 698-3819, by email at hearing.office@dc.gov, or include your request for accommodation on your request for a due process hearing.

SECTION VI: THE IMPARTIAL HEARING OFFICER

§ 601 Authority, Responsibilities, and Qualifications of Impartial Hearing Officers

The parties to a due process hearing have the right to “present evidence, confront, cross-examine, and compel the attendance of witnesses,” 34 CFR §300.512(a)(2) and 34 CFR §303.444(a)(2). The Office of Special Education Programs (OSEP) in the U.S. Department of Education has noted in its opinion letter, Letter to Anonymous, 23 IDELR 1073 (OSEP 1995), that it is the responsibility of the Impartial Hearing Officer to accord each party a “meaningful opportunity to exercise the aforementioned rights. To that end, Impartial Hearing Officers have discretionary authority to handle pre-hearing matters and conduct the hearing as long as they do so consistent with the parties’ rights under IDEA.” The Impartial Hearing Officer has the authority and responsibility to conduct the hearing with integrity and dignity; ensure the rights of all parties are protected; rule on procedural matters; take actions necessary to complete the hearing in an efficient and expeditious manner; to be fair and impartial, and to render a final independent administrative decision.

Impartial Hearing Officers are not employees of OSSE. Consistent with 34 CFR §300.511(c)(i)(A) and 34 CFR §303.443(c)(i)(A), at a minimum, an Impartial Hearing Officer must not be an

employee of the SEA, LEA, or DC EIP that is involved in the education or care of the child. Impartial Hearing Officers contract with OSSE to provide special education dispute resolution services. Impartial Hearing Officers are attorneys selected based on their academic achievement, background in special education and special education law, professional experiences, and legal writing ability. All Impartial Hearing Officers are members in good standing with the District of Columbia Bar and have at least five (5) years of active legal experience as an attorney. Attorneys selected to serve as Impartial Hearing Officers receive training in conducting administrative hearings, special education laws, regulations, procedures, and programs. The Office of Dispute Resolution shall maintain a statement of the qualifications of each attorney who serves as an Impartial Hearing Officer, and will make it available to the public without charge or undue delay, upon request.

Impartial Hearing Officers are independent and have discretion in managing a due process hearing. Impartial Hearing Officers may have individualized procedures or rules concerning the handling of documents, exhibits, and witnesses, which shall be communicated to the parties in writing in the Pre-Hearing Order at the latest, and must be consistent with this manual as well as all applicable federal and District laws, rules, and regulations. The Impartial Hearing Officer may grant extensions or exemptions to these procedures at their discretion on a case-by-case basis.

In selecting Impartial Hearing Officers for administering due process hearings, OSSE shall submit potential candidates for review to a 7-member community review panel in furtherance of DC Code §38-2572.02.

§ 602 Ex Parte Communications (Private Talks) Prohibited

To preserve the parties' right to a fair hearing, and to protect the impartiality and integrity of the due process hearing system and the Impartial Hearing Officer, communications made by one party outside the record without giving the other party notice or an opportunity to respond are prohibited.

This prohibition does not include communication regarding scheduling. If an unrepresented party is uncertain about what matters may or may not be discussed, they may ask the Impartial Hearing Officer what is appropriate. Especially when a parent/legal guardian or student is not represented, an Impartial Hearing Officer shall, to the extent possible, without becoming an advocate, assist the unrepresented party in developing the record. Counsel seeking clarification from an Impartial Hearing Officer shall always involve the other party.

§ 603 Disqualification of Impartial Hearing Officer

ODR shall ensure that the Impartial Hearing Officer assigned to a particular hearing is fair and impartial. The Impartial Hearing Officer shall disqualify him/herself from presiding over any case in which she or he has a personal or professional interest which might conflict with his or her objectivity in the hearing. For example, a personal interest that may conflict with the Impartial Hearing Officer's objectivity in a hearing is having a relative or close friend be a party to the due process hearing. Similarly, a professional conflict of interest may arise when an Impartial Hearing Officer presides over a matter where one of the parties employs the Impartial Hearing Officer as an attorney for their school. Any party who has a reasonable, good faith basis to believe that an

Impartial Hearing Officer has a personal or professional bias, or is otherwise disqualified from hearing a case, may make a motion to the Impartial Hearing Officer that the Impartial Hearing Officer withdraw from presiding over the case. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. A copy of the motion for recusal and accompanying affidavit shall be sent to the Director of Student Hearings at OSSE. If the Impartial Hearing Officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceedings. If an Impartial Hearing Officer is disqualified, ODR shall assign another Impartial Hearing Officer as a replacement.

SECTION VII: THE DUE PROCESS HEARING

§ 701 General Information

The regular business hours of ODR are 8:30 a.m. until 5:00 p.m., Monday-Friday. Hearings will normally be held during regular business hours. Hearings may be scheduled outside regular business hours upon request. Hearings will not be scheduled on weekends or holidays without the consent of all parties.

§ 702 Practice of Law

All attorneys and other persons who appear for the purpose of providing legal representation on behalf of a party must be licensed and in good standing to practice law in the District of Columbia. This provision is not intended to exclude law students who are working under the appropriate supervision of a licensed attorney.

§ 703 Function of Due Process Hearing

The function of the hearing is to allow all parties to present evidence supporting their positions and to explain to the Impartial Hearing Officer why they believe they should prevail on the issues in the hearing.

§ 704 Failure to Appear

If the party who requested the hearing (the petitioner) does not appear at the hearing, the complaint may be dismissed by the Impartial Hearing Officer. If the party who did not request the hearing (respondent) does not attend the hearing, the hearing may proceed without that party and a decision will be rendered based upon the evidence presented during the hearing. If for some unexpected reason, an Impartial Hearing Officer is absent from a scheduled hearing, ODR will expedite rescheduling by either rescheduling the hearing for the initial Impartial Hearing Officer's next available date or assigning another Impartial Hearing Officer who can hear the case sooner than the next available date.

§ 705 Conducting the Hearing

The Impartial Hearing Officer will attempt to ensure that all parties have an adequate opportunity to present their case. Although less formal than a court trial, the hearing will proceed in an orderly fashion. Timeliness is important. Unjustified delays that prevent hearings from starting on time

should be avoided. Impartial Hearing Officers may take such delays into consideration in determining how to proceed on a case-by-case basis, considering the equities of the circumstances.

At the beginning of the hearing, the Impartial Hearing Officer will turn on a recorder to make an audio record of the hearing and, after identifying the case and the parties for the record, briefly explain how the hearing will proceed. The Impartial Hearing Officer may then clarify the issues to be decided by discussing the case with the parties (and reviewing the prehearing conference stipulations). If the recorder malfunctions during the hearing, the proceedings must be stopped and an attempt made to remedy the situation. If functional recording equipment cannot be made available, the hearing must be rescheduled until such time when proper recording equipment can be provided. ODR will ensure that all equipment is in good working order and remedy any and all malfunctions in a timely manner.

The Impartial Hearing Officer will ask the parties whether they have discussed settlement of the case. The Impartial Hearing Officer may provide the parties an opportunity to discuss settlement off the record or to request a mediator, if desired by both parties. The Impartial Hearing Officer will ask whether there are preliminary issues to be decided before the hearing commences, and then will rule on accepting into evidence the documents that the parties have presented. The Impartial Hearing Officer will determine the order in which the witnesses will be presented.

Once preliminary matters are completed, the parties may be given an opportunity to make opening statements. During the hearing opening statements should provide the Impartial Hearing Officer with a brief summary of the parties' positions on the issues. Following opening statements, the party presenting first will call its witnesses. Oral evidence may be taken only after oath or affirmation is administered and may be provided via telephone. In cases where oral evidence is provided via telephone, the Impartial Hearing Officer shall use appropriate measures to ensure that the circumstances for the taking of that testimony are fair, appropriate, and designed to ensure accuracy and credibility. For example, an Impartial Hearing Officer may ask a witness testifying by telephone to state on the record, under oath, that no one is present in the room from which he or she is giving testimony by telephone. Telephone witnesses must also have access to all documents disclosed.

After one party has presented its witnesses and other evidence, the other party/parties will call their witnesses. Each party will be given an opportunity to ask questions of the other parties' witnesses, and the Impartial Hearing Officer may also ask questions of the witnesses. An Impartial Hearing Officer may also allow parties to present rebuttal evidence. The scope of rebuttal testimony is largely within the discretion of the Impartial Hearing Officer. The length of the due process hearing can vary, but the Impartial Hearing Officer shall run the hearing efficiently.

At the end of the hearing, each party is allowed to make a closing statement. The Impartial Hearing Officer may ask the parties to make oral closing statements, or, if necessary because of the complexity of the issues, submit them in writing after the hearing. The Impartial Hearing Officer may also continue the hearing to request written briefs on particular legal issues and schedule additional oral argument, if necessary. Parties may also request to submit written closing

arguments, however, no request for written closing statements or briefs shall be grounds for extending the timeline for issuing a hearing decision without the express consent of the parties/counsel. After closing statements are presented, the hearing record is closed. The Impartial Hearing Officer then must prepare a written decision, which will be provided to all parties.

§ 706 Burden of Proof

Pursuant to DC Code §38-2571.03(6)(A), in special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion, except that:

- A. Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.
- B. Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided that the Impartial Hearing Officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further that, if the Impartial Hearing Officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

§ 707 Evidence

Evidence is anything that helps a party prove a fact necessary for that party to prevail in the hearing. Common forms of evidence include testimony of witnesses, including the parent's own testimony, and documents. Often, many documents in the child's educational record are put into evidence.

While the Due Process Hearing is not governed by formal rules of evidence, all witnesses must give testimony under oath if their testimony is to be used as evidence in the hearing. The Impartial Hearing Officer will give affirmation or oath whether the matter is being heard by telephone or in person during a hearing. When there is a dispute as to what the facts are, the parties will need to present evidence or witnesses who have direct knowledge of the facts.

To enter documents into evidence, the party must present documents to the Impartial Hearing Officer and ask that they be put into evidence. Normally this is done at the beginning of the hearing. As indicated above, all parties must provide copies of the documents they wish to offer as evidence to the other party/parties at least five (5) business days prior to the hearing. Pursuant to 34 CFR §300.512(b)(2) and 34 CFR §303.444(b)(2), an Impartial Hearing Officer may bar any party that fails to disclose all evaluations and recommendations at least five (5) business days before the

hearing from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Documentary evidence is often cumbersome, and dealing with it in the hearing can be confusing and time-consuming. To avoid this problem, each party should logically organize its own documents. A bound and tabbed copy of the disclosures of each party is required to be provided to the Impartial Hearing Officer. All parties should also bring an extra copy of their evidence in a folder for use by witnesses.

ODR encourages parties to request the presence of witnesses they wish to call by contacting those witnesses and requesting they come to the hearing voluntarily.

§ 708 Expedited Due Process Hearing (Part B)

Special Rules for Expedited Due Process Hearings:

- A. A due process complaint involving a request for an expedited hearing shall be governed by the same rules as are applicable to due process hearings generally. Additionally, requirements for expedited due process hearings are found at 34 CFR §§300.532-533. Pursuant to 34 CFR §300.532, expedited hearings must be held when the dispute is related to a disagreement with regard to any change to the student's current placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under 34 CFR §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.
- B. An expedited hearing must occur within twenty (20) school days after the hearing is requested, and must result in a determination within ten (10) school days after the hearing. 34 CFR §300.532(c)(2).
- C. When an expedited hearing is requested, a resolution meeting must occur within seven (7) days of the date the hearing is requested, and the hearing must proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days after receipt of the request for an expedited hearing. 34 CFR §300.532(c)(3)(i) and (ii).
- D. Each party must disclose its list of prospective witnesses and documents no later than five (5) business days before the date of the hearing. 34 CFR §300.532 (c)(3); and
- E. **No continuances can be granted for expedited hearings.**

§ 709 Motions

- A. A motion is a request that an Impartial Hearing Officer rule or make a decision on a particular issue prior to or during a due process hearing. Pre-hearing motions are normally heard by the presiding Impartial Hearing Officer, but may be heard by another Impartial Hearing Officer for expediency.

B. The following are *some* examples of issues that may be appropriate for resolution through a pre-hearing motion:

1. Whether good cause exists for continuance (see §710);
2. The student's stay-put placement pending resolution of the dispute (in accordance with 34 CFR §300.518);
3. Dismissal of a party or parties to the hearing;
4. Recusal of the Impartial Hearing Officer;
5. Clarification of the issues in dispute; or
6. Consolidation of multiple cases into one hearing.

C. Procedures for Submitting Motions for Impartial Hearing Officer Consideration

1. A party may obtain a ruling on a pre-hearing issue by filing a motion in writing to the presiding Impartial Hearing Officer (with a copy to ODR).
2. A copy of the motion must be simultaneously transmitted to all other parties. Failure to timely transmit the motion to all other parties may result in denial of the motion or scheduling of a contested hearing on the motion at the discretion of the Impartial Hearing Officer.
3. The party making the motion must set forth the specific facts supporting the motion and attach supporting affidavits, declarations, or documents when appropriate.
4. All motions must be submitted to the Impartial Hearing Officer for consideration no later than the 5-day deadline for disclosing evidence and witnesses. Any motion submitted after that date shall be considered untimely, and may be denied at the discretion of the Impartial Hearing Officer without further consideration. This rule does not limit the Impartial Hearing Officer's discretion to consider a motion submitted after the Five-Day Disclosure deadline upon a showing of good cause by the party for the late filing.
5. Any party wishing to respond to or oppose a motion must file the response or opposition within three (3) business days of the filing of the motion. Any party wishing to file a response or opposition to a motion shall follow the procedures outlined above for transmitting a copy of the response or opposition to ODR, the assigned Impartial Hearing Officer, and the other party. Responses contesting facts shall so state and supply supporting affidavits, declarations, or documents as appropriate. Failure to timely respond may be taken as concession of the motion.
6. If the parties disagree as to the facts relating to the motion, and both parties have supported their positions with appropriate affidavits, declarations, or documents, if necessary, the Impartial Hearing Officer may convene a pre-hearing conference to receive sworn testimony related to the disputed facts, or delay ruling on the motion

until the hearing convenes to allow the parties to provide evidence relating to the disputed facts. In ruling on disputed facts, the Impartial Hearing Officer will not rely solely on statements made by an attorney or advocate representing a party.

§ 710 Continuances

A. Continuance Defined

A continuance is a request by one or more of the parties that a scheduled hearing be rescheduled to a later date, and may also request an extension of time for issuance of the final Impartial Hearing Officer's determination be granted. A party may only request a continuance for "good cause." In determining whether good cause exists for a continuance, the Impartial Hearing Officer will consider the facts supporting the request for the continuance, prior rulings, and the legal mandate for prompt resolution of special education disputes. The Impartial Hearing Officer may require documentation prior to granting a continuance request and an extension of time to issue a final determination.

B. An Impartial Hearing Officer may grant specific extensions of time beyond the periods set out in 34 CFR §300.515(c) and 34 CFR §303.447(c) at the request of either party.

C. Impartial Hearing Officers are required to issue final hearing decisions in accordance within all stated federal and local laws and regulations. Continuances often cause unreasonable delays in the resolution or development of an appropriate educational plan for the student. ODR discourages the use of continuances; the granting of an extension of time to render the final hearing decision is prohibited in the absence of an affirmative showing of good cause. Circumstances that may indicate good cause include, but are not limited to:

1. Unavailability of a witness;
2. Unavailability of a party; and/or
3. Unavailability of counsel

A finding of good cause rests solely with the Impartial Hearing Officer who has broad discretionary authority over the granting and denying of motions for continuance.

D. Procedures for Requesting a Continuance

1. A motion for continuance shall be submitted to ODR in writing. Only Impartial Hearing Officers may grant a continuance of hearings that have already been set on the hearing docket.
2. A copy of the request shall be transmitted simultaneously to all other parties. The requesting party shall make diligent efforts to confer with all other parties or counsel to seek agreement with the continuance. If the parties agree to a continuance, the agreed-upon motion should be filed with ODR and signed by all parties to the due

process hearing or include a statement indicating that all parties have in fact agreed to the continuance. In general, the parties' agreement to a continuance constitutes "good cause" to reschedule the hearing to another date and to extend the deadline for issuance of a final determination.

3. A certificate of service must be attached to the request or motion verifying that all other parties have been served and/or notified as provided above. Unless good cause is shown, failure to provide timely service of the motion to all other parties shall result in denial of the motion or scheduling of a hearing on the motion at the discretion of the Impartial Hearing Officer.
4. Parties opposed to a continuance must submit a written objection to the continuance within three (3) business days of the date the motion is filed with the Office of Dispute Resolution and provide service.
5. All motions for continuance shall be filed no later than the 5-day deadline set for disclosing witnesses and evidence. Any motion for continuance filed after that date shall be considered untimely, and may be denied at the discretion of the Impartial Hearing Officer without further consideration. This does not prohibit the Impartial Hearing Officer from granting a continuance filed after the Five-Day Disclosure deadline upon a showing of good cause by the party for the late request.

Exception: This rule imposing a deadline for filing a motion for continuance does not apply to motions that are based upon the unavailability of the student, or the student's parent/legal guardian. Such requests or motions shall be considered timely filed even if filed after the disclosure deadline.

6. Until a ruling has been made on the continuance request, the parties should be prepared to proceed on the date and time for hearing indicated on the Pre-hearing Order.
7. An Impartial Hearing Officer must rule upon all continuance motions within five (5) business days or sooner, if practicable. To comply with this provision, the Impartial Hearing Officer must issue a written determination whether to grant or deny the continuance stating the basis for the decision, including whether good cause was found. If the factual circumstances relating to the continuance are in dispute, the Impartial Hearing Officer may ask the parties to submit declarations, affidavits, or other evidence, including witness testimony, which may be taken by telephone.
8. When the Impartial Hearing Officer grants the motion, the hearing shall be rescheduled and the 45-day time limit will be extended for the duration of the continuance. The case must be rescheduled for a date certain, with notice to all counsel and unrepresented parties, and the final hearing decision must be issued within the extended timelines.

a. Continuance Granted

The Impartial Hearing Officer shall issue an order confirming that the continuance was granted and provide the parties with notice of the new hearing date. The order shall identify: (1) the good cause grounds for granting the extension of time, and (2) the new date for the hearing.

b. The extension of time for issuance of the final hearing determination will only be for the number of days covered by the extension. No open-ended continuance requests will be granted or permitted.

c. Continuance Denied

If the continuance request is denied, the hearing will proceed as scheduled and the original deadline for issuance of a final determination will apply.

d. Expedited Hearings

No continuance can be granted on any case set for an expedited hearing. However, a change in hearing date is permitted as long as timelines for the hearing and issuance of the final decision are unaffected.

SECTION VIII: OUTCOMES

§ 801 Settlement

It is the policy of ODR to encourage resolution of disputes in special education through negotiation and other alternative dispute options (see §301). The resolution process and mediation may prevent future costs to all participants by establishing a partnership between parents/legal guardians, educators, and public agencies, thereby protecting this cooperative relationship. Together, the parent(s) and the LEA or SEA may reach an agreement, thus eliminating the need for a due process hearing or any other resolution action. The Impartial Hearing Officer has authority to dismiss a complaint when informed by the parties that the case has been settled (other than those that have been formally mediated), and may, if requested, incorporate the terms of an agreement into an order with consent of both parties. Settlement negotiations are confidential and details of such shall not be brought to the attention of the Impartial Hearing Officer if the hearing goes forward.

§ 802 Involuntary Dismissal

The Impartial Hearing Officer shall dismiss the case if he/she determines that a hearing has been initiated for reasons other than those under the Impartial Hearing Officer's jurisdiction or authority to resolve under IDEA. If the case is dismissed, the Impartial Hearing Officer will issue an Order of Dismissal, noting the reason for dismissal of the complaint.

§ 803 Withdrawal

If the party who filed the due process complaint decides to forego proceeding to a hearing, that party shall inform, in writing, the Impartial Hearing Officer, any and all other parties, and ODR of the decision to withdraw the complaint at the earliest possible opportunity. If the party who filed the due process complaint wishes to withdraw the case after the hearing has begun and testimony has been heard, the party shall make a motion to the presiding Impartial Hearing Officer. It is within the discretion of the Impartial Hearing Officer whether to allow withdrawal of the complaint. Once a motion is made to withdraw a complaint, an Impartial Hearing Officer may dismiss a complaint “with prejudice”, which means the party would be forbidden from filing another complaint with the same issues, or “without prejudice”, which would mean the party is permitted to file another complaint citing the same issues.

§ 804 The Hearing Officer Determination

- A. The timeline for issuing a final Impartial Hearing Officer’s determination begins at the expiration of the 30-day resolution period, as further described in §402, §403 and §502 of this manual. Pursuant to 34 CFR §300.515(a) and 34 CFR §303.447(a), not later than forty-five (45) days after the expiration of the 30-day resolution period:
 1. A final hearing decision is reached in the hearing; and
 2. A copy of the decision shall be mailed to each of the parties (facsimile and email is permitted with consent by all of the parties to the due process complaint).
- B. The final decision of the Impartial Hearing Officer in the case is formalized in a document referred to as the Hearing Officer’s Determination (HOD). The decision must include the identity of the parties, the final determination, and appeal rights. The HOD must also include findings of fact and conclusions of law; identify who prevailed on what issue; and specify what the school system, the parent/legal guardian(s), and the child are expected to do to carry out the decision.
- C. The decision of the Impartial Hearing Officer shall be based solely upon the oral and written evidence presented at the hearing and any other additional written documents requested by the Impartial Hearing Officer prior to closing arguments.
- D. The final decision must be signed, dated, and issued no more than forty-five (45) days after the end of the resolution period. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. The Impartial Hearing Officer may render his or her decision orally at the conclusion of the hearing, which shall be followed by the written final decision. The Impartial Hearing Officer’s final decision is considered "issued" on the date that the Impartial Hearing Officer transmits the decision to the parties and the Office of Dispute Resolution by Certified Mail/Return Receipt Requested, in person, fax, or by email.
- E. Consistent with 34 CFR §300.514(c)(2) and 34 CFR §303.445(d), ODR shall make the HODs available to the public by posting all decisions issued within the previous five years

to OSSE's website, after redacting all personal identifiable information as required by ODR's redaction policy. ODR's redaction policy can be found on OSSE's website at <https://osse.dc.gov/publication/office-dispute-resolution-redaction-policy>. All earlier decisions are available upon written request to the Office of Dispute Resolution.

§ 805 Final Decision and Right of Appeal

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date the decision of the Impartial Hearing Officer is issued to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 CFR §300.516(b) and 34 CFR §303.448(b).

SECTION IX: CONCLUSION

It is the intent of the Office of Dispute Resolution (ODR), within the Office of the State Superintendent of Education (OSSE), in the execution of IDEA and its corresponding regulations, to resolve all disputes related to special education in as efficient and cooperative a manner as possible. ODR encourages the use of mediation processes and other less formal dispute resolution options to the maximum extent possible when a parent/legal guardian is dissatisfied with a decision or lack thereof, regarding identification, evaluation, the educational placement of a child, or the provision of a free appropriate public education.