

APPROPRIATE STANDARD PRACTICES

1. Correspondence, Pleadings and Other Documents (subsequent to original DPC):

A. Correspondence and Pleadings.

1). Correspondence. Hearing Officers shall require all correspondence to and from a Hearing Officer to include the Student name and the case number, including in the subject line of all emails.

2). Caption. Hearing Officers shall require every pleading subsequent to the original Due Process Complaint to contain a caption setting forth the name of the Student Hearing Office, the names of the parties, the case number, and the name of the Hearing Officer assigned to the case. The caption shall conform to Appendix A/Form 1.

3). Filing Party Information And Signature. Hearing Officers shall require all correspondence, pleadings and motions to state the filing party's mailing and/or email address and telephone number, if any. Hearing Officers shall require every pleading to be signed by the attorney of record, or if the party is not represented by an attorney, by the party. Hearing Officers may allow documents to be signed by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States (as per Fed. R. Civ. P. 5.2(d)(3)).

4). Rejected Pleadings. Hearing Officers may reject any pleading, motion or other document filed subsequent to a Due Process Complaint that does not comply with these practices or the SOP unless the Hearing Officer expressly approves its non-compliance. If Hearing Officers reject a pleading, motion or other document, the Hearing Officer shall issue an order providing the reasons for rejection.

B. Filings.

1). Filing With The Hearing Officer Defined. Hearing Officers shall require the filing of any papers after the original Due Process Complaint to be filed concurrently with the Student Hearing Office and the Hearing Officer assigned to the case. Hearing Officers shall note on all papers the filing date, if not otherwise indicated. Hearing Officers may permit papers to be filed by mail, fax, or email.

2). Resolution Meeting Waivers And Forms. If the parties agree in writing: (a) to waive the Resolution Meeting; or (b) after the Resolution Meeting or mediation starts the parties agree that no agreement is possible before the end of the 30-day resolution period, Hearing Officers shall require the parties to immediately file a copy of the agreement and/or disposition form with the Hearing Officer. If the parties desire to continue settlement discussions or mediation beyond the 30-day resolution period, they shall advise the Hearing Officer immediately in order that the hearing deadline may be addressed.

3). Notices To Appear. Hearing Officers shall require all requests for the issuance of a notice to appear, or to quash a notice to appear, to be filed solely with the Hearing Officer and not the Chief Hearing Officer. After reviewing the request, in accordance with the provisions of §800.1(4) of the SOP, Hearing Officers shall forward the request to the Chief Hearing Officer with the Hearing Officer's recommendation as to whether the Notice to Appear (Appendix A/Form 2) should be issued or not, based on the Hearing Officer's advice with regard to whether the witness would appear voluntarily and the relevance of the testimony to be presented or quashed, as the case may be.

2. **Representation by Attorney:**

A. Appearance by Attorney.

Hearing Officers shall permit only an attorney admitted to the Bar of the District of Columbia to appear before them, except as otherwise permitted by Rule 49(c)(4) and (8) of the District of Columbia Court of Appeals, and law students in accordance with Rule 48 of the District of Columbia Court of Appeals and §900 of the SOP.

B. Attorney Withdrawal.

1). Hearing Officers may approve the withdrawal of an attorney from representation of a party. Hearing Officers shall require the withdrawing attorney to provide the reason for withdrawal, the name, phone number, and email address of the new attorney who will be representing the party, or, if the party will be proceeding pro se, the name and phone number of the party.

3. **Due Process Complaint, Response, and Other Pleadings:**

A. In General.

1). Requirements. After the original Due Process Complaint, Hearing Officers shall require allegations and arguments in any subsequent pleadings, motions or other documents to be simple, concise, and direct. Hearing Officers shall require each pleading to be a separate document.

2). Extraneous Allegations Or Arguments. Hearing Officers may penalize any party who files, subsequent to the Due Process Complaint, a form pleading, motion or other document that contains extraneous factual allegations or legal arguments not applicable to the matter being heard. Hearing Officers may exercise discretion in assessing adverse consequences that are in accordance with IDEA, including rejecting the pleading under Practice 1-A-4 above.

3). Court Rules. Hearing Officers shall not use the rules of civil procedure utilized by District of Columbia and federal courts except by way of analogy or as prescribed in IDEA.

B. Signature of Petitioner.

Hearing Officers shall not require a Petitioner to sign a Due Process Complaint as a standard to determine whether the complaint is sufficient under IDEA. Hearing Officers shall have discretion whether to require a Petitioner to sign the complaint for other reasons.

C. Motion for Expedited Hearing.

Hearing Officers shall require, in accordance with §1008 of the SOP, a request for an expedited due process hearing in a non-discipline situation to be made in writing, in a separate motion, and state the specific reasons why expedited status should be granted. Hearing Officers shall reject all requests for a non-discipline expedited hearing included within a Due Process Complaint without an accompanying motion.

D. Responsive Pleading.

Hearing Officers may consider the failure of a Respondent to file, and serve on the opposing party, a responsive pleading within ten (10) days of receiving the Due Process Complaint (when a prior written notice has not been sent to the Parent on the subject matter in the DPC) an admission of the allegations in the Complaint. Hearing Officers may consider a Respondent's failure to comply with 34 CFR §300.508(e) or otherwise specifically address the allegations in the Complaint, in determining how to proceed at the due process hearing. The adverse consequences available to Hearing Officers include, but are not limited to, shifting the burden of production to a Respondent.

E. Withdrawal.

1). Timing, Consent, and Subsequent Withdrawal. Hearing Officers shall allow a Petitioner to withdraw a Due Process Complaint within fifteen (15) days of the service of the Complaint, or by written agreement of the parties. Unless otherwise requested in the withdrawal or agreement, the dismissal will be without prejudice. If a Petitioner withdraws the complaint after fifteen (15) days from the service of the Complaint, Hearing Officers will have discretion whether to dismiss the Complaint with prejudice. If a Petitioner withdraws a subsequent Due Process Complaint, and if the facts and claims in this Complaint are virtually identical to a previous Complaint that Petitioner also withdrew, Hearing Officers shall dismiss this Complaint with prejudice absent extraordinary circumstances.

2). Failure to Withdraw in Writing. If a Petitioner makes a verbal withdrawal that is not confirmed in writing, the Hearing Officer may confirm the withdrawal by dismissing the Complaint.

Hearing Officers shall require any withdrawal to expressly state whether it is based on a settlement. Hearing Officers may require a Petitioner to file the settlement agreement with the withdrawal notice.

4. Consolidation and Disqualification:

A. Consolidation.

The first Hearing Officer appointed shall make the determination whether to consolidate. In ordering the consolidation of any cases, Hearing Officers shall expressly state the applicable timelines in the order.

B. Disqualification.

In accordance with the provisions of §600.4-A-1 of the SOP, Hearing Officers shall require a party to submit any request for recusal of a Hearing Officer to the Hearing Officer.

5. General Responsibilities:

A. Professionalism.

Hearing Officer And Counsel/Parties. Hearing Officers shall adhere to follow and require counsel/parties to:

1). Timeliness. Be on time and prepared to proceed at the time set for prehearings and hearings. And, on the exceptional circumstance when an individual is not, the person will immediately advise counsel or the Hearing Officer, as the case may be, of the problem and when the person will be prepared to proceed.

2). Responsiveness. Respond to calls from counsel/parties and Hearing Officers within 24 hours or the next business day. Further, they shall endeavor to respond in the same amount of time to emails. At a minimum, the message shall be acknowledged and advice given as to when it will be returned.

3). Conduct. Comply with the applicable rules of professional conduct.

B. Adverse Consequences.

1). Party Or Counsel. Hearing Officers will have discretion should any breach of the applicable responsibilities by a party or counsel occur to subject the individual to adverse consequences in accordance with IDEA.

2). Hearing Officer. Hearing Officers shall notify any party who alleges that a Hearing Officer breached his or her applicable responsibilities that the party may file a grievance in accordance with the Grievance Procedures. See Appendix B, Guidelines for Handling Grievances Against Hearing Officers.

6. Security:

A. Consider at Prehearing.

If counsel raise any security concerns at the time of the prehearing conference and Hearing Officers find there is reasonable cause to believe there is a security concern, Hearing Officers shall request the Student Hearing Office to provide security services at the time of the hearing. On the day of the hearing, the Student Hearing Office will confirm that the security services are present at the time of the hearing and will remain readily available throughout the hearing.

B. Hearing Procedures.

If the security concern arises for the first time during the course of a hearing, Hearing Officers shall take such steps as deemed reasonably necessary to maintain safety and order. Among other steps, Hearing Officers might warn the party to act appropriately and instruct the party's counsel to confer with their party about appropriate conduct during a recess (possibly granting reasonable opportunities for counsel to confer with their client upon request) or request the presence of security services.

7. **Prehearings:**

A. Scheduling and Planning.

1). Prehearings Mandatory. Hearing Officers shall conduct a prehearing conference, either in person or by telephone, in every case, which shall be scheduled by the Hearing Officer and held after receipt of a Notice of Hearing Officer Appointment (Appendix A/Form 3). In non-expedited cases, Hearing Officers shall generally schedule the prehearing conference within one week of the termination of the resolution period. In an expedited hearing, Hearing Officers shall schedule the prehearing conference as soon as possible.

2). Discretion To Call Additional Conferences. Hearing Officers have the discretion to call additional prehearing conferences as deemed necessary to manage the hearing process.

3). Obligation To Request Hearing Officer Intervention. Hearing Officers shall require that if between the time of the prehearing conference and the time the HOD is issued any dispute arises: (a) counsel must first confer with opposing counsel; (b) in the unlikely event that counsel cannot resolve the dispute between themselves, counsel must immediately submit by email any appropriate written motion or documentation and arrange a status conference by telephone to present the matter to the Hearing Officer for decision after argument; and (c) if counsel are unable to resolve the dispute between themselves, they should be prepared to discuss at the telephone status conference whether the offending party should face adverse consequences.

B. Subjects for Consideration.

1). Notice Of Prehearing Conference/Subjects. Upon confirmation of the date and time for the prehearing conference, Hearing Officers shall send to the parties/counsel the content of Appendix A/Form 4 in an email or as an attachment to an email (Notice of Prehearing Conference), along with Appendix A/Form 5 (Prehearing Conference—Subjects To Be

Considered) unless counsel are familiar with the form. Each counsel who participates in any prehearing conference shall have authority to enter into stipulations, make admissions of fact, identify claims and defenses that the party will not be contesting, and settle all or part of the claims in the case, or have reasonable access by telephone to the party or the party representative having such authority.

2). Five-Day Disclosures—Witnesses. Hearing Officers shall require the five-day disclosures to provide the name, job title, address, and a phone number for each witness, as well as the general thrust of the testimony of each witness. Hearing Officers shall also require each party to distinguish the witnesses the party expects to testify in the party's case in chief from the witnesses the party will call only as necessary. Hearing Officers shall require, to the extent possible, the disclosure to distinguish the witnesses who will testify by telephone, if the Hearing Officer permits. Hearing Officers shall not permit a party to reserve the right to call witnesses listed on the opposing party's disclosure. Hearing Officers shall not permit a party to reserve the right to call rebuttal witnesses, since the party must make this request at the due process hearing and Hearing Officers have discretion whether to grant the request. Hearing Officers shall not permit a party to list or call a "designee" of any proposed witness, but rather require the parties to specifically identify every witness. Hearing Officers shall require the parties to provide curriculum vitae for each proposed expert witness in their five-day disclosures.

3). Five-Day Disclosures—Exhibits. Hearing Officers shall require copies of all proposed exhibits to be marked for the purpose of identification (e.g., Petitioner's as P-1, Respondent's as R-1, and Joint as J-1) and every exhibit to have sequential page numbers. Hearing Officers shall require in listing the proposed exhibits, the disclosure to distinguish the exhibits that the party expects to offer from the exhibits that the party may offer only if necessary. Hearing Officers shall not permit a party to reserve the right to offer exhibits listed on the opposing party's disclosure.

4). Five-Day Disclosures—To The Hearing Officer. Hearing Officers shall require each party or counsel to serve their disclosures on the opposing party five (5) business days before the due process hearing and concurrently send the Hearing Officer a copy in such manner as the Hearing Officer directs. Hearing Officers shall require the exhibits in the copy provided to the Hearing Officer to be divided by tabs.

5). Scheduling The Due Process Hearing. During the prehearing conference, Hearing Officers will discuss with counsel the time necessary for the hearing. Hearing Officers shall resolve all doubts in favor of scheduling more time than estimated necessary to avoid the possible need to continue the hearing to another date and thereby delay issuance of the HOD.

C. Prehearing Order.

Hearing Officers shall issue a prehearing order substantially in conformance to Appendix A/Form 6 within three (3) business days after the prehearing conference.

D. Failures.

If a party or a party's counsel fails to appear at a conference, is unprepared to participate in the conference, fails to participate in good faith, or fails to obey a prehearing conference order, Hearing Officers shall exercise discretion whether to subject the individual to adverse consequences.

8. Continuances:

A. In Writing.

1). Mandatory. Hearing Officers shall require every Motion for Continuance to be submitted in writing before the Hearing Officer may rule on the Motion. Hearing Officers shall require a Motion for Continuance to conform to Appendix A/Form 7. If a party verbally requests a continuance, Hearing Officers shall require the party to file a Motion for Continuance within two (2) business days of the request. If the party fails to follow up a verbal request with a written motion, Hearing Officers shall proceed with the hearing as originally scheduled absent extraordinary circumstances.

2). Where Good Cause/Timely Effort/Exceptional Circumstances Required. Pursuant to the Blackman/Jones Consent Decree, whenever a party is required to show good cause, make a "timely effort" or present "exceptional circumstances" in support of its request for a continuance, Hearing Officers shall require the party to provide specific facts concerning such good cause, timely effort or exceptional circumstance in the Motion for Continuance (Appendix A/Form 7).

B. Order.

Hearing Officers and/or the Chief Hearing Officer shall use the form Interim Order on Continuance Motion (Appendix A/Form 8) when granting or denying continuances. In doing so Hearing Officers and the Chief Hearing Officer shall note in detail the reasons which serve as the basis for good cause, exceptional circumstances and timely effort, as the case may be.

9. Due Process Hearings:

A. Hearing Room.

1). Requirements. Hearing Officers shall require counsel and all parties to meet the Hearing Officer in the assigned hearing room at or before the time the hearing is scheduled to commence. Hearing Officers shall not be expected to telephone or search for counsel or parties before starting the due process hearing. Any change in the hearing room on the day of a hearing shall be arranged by the Hearing Officer through the Receptionist in the SHO Office. Counsel should inform parties and witnesses of the name of the Hearing Officer and instruct them to check the posted schedule to ascertain the hearing room. If the parties and witnesses have any further questions, they should check with the Student Hearing Office Receptionist to confirm where they should appear for the hearing. Hearing Officers shall note the hearing room in the case file and in the HOD.

2). State Case Name/Number. Each time Hearing Officers go on the record in a hearing, and after each recess, the Hearing Officer shall state the names of the parties, case number, and the date and time of the hearing.

B. Qualification of Expert.

Whether a witness may be qualified as an expert is within the discretion of the Hearing Officers. When Hearing Officers qualify a witness as an expert, the Hearing Officer shall state on the record the area(s) of expertise in which the witness is being qualified.

C. Rules of Evidence.

Hearing Officers shall not apply the rules of evidence used in courts except by analogy in the discretion of the Hearing Officer. Hearing Officers may admit and give probative effect to evidence admissible in a state or federal court. When necessary, Hearing Officers may admit evidence not generally admissible in a court if the evidence is reliable and relevant. Hearing Officers may exclude irrelevant, immaterial, and unduly repetitious evidence. Hearing Officers may also exclude privileged information.

D. Testimony by Telephone.

Hearing Officers shall ask any witness testifying by telephone whether: a) the witness is in a setting that protects confidentiality, including whether anyone else is present where the witness is testifying; and (b) whether the witness has any documents. Hearing Officers may ask the witness to ensure that no one outside of the hearing can hear his/her testimony and to not refer to any documents without identifying the document and asking for permission from the Hearing Officer. Hearing Officers shall require counsel to provide all witnesses who testify by telephone with copies of all disclosures and any other documents in advance of the witness testifying. If counsel provides the witness documents that were not included in the party's five-day disclosures, Hearing Officers shall require counsel to bring copies of those documents to the hearing for the Hearing Officer and opposing counsel. Hearing Officers shall advise that counsel is responsible for ensuring the witness has access to a confidential setting in which to provide testimony.

E. Communications.

Hearing Officers may develop their own policies regarding the use of electronic devices in the hearing room. Hearing Officers have the discretion to ban the use of cell phones, PDAs, and laptop computers during the hearing to, among other things, avoid disrupting the hearing and address the "rule of witnesses" being violated.

F. Briefs/Closing Arguments.

Counsel may submit briefs and/or closing arguments in writing after the due process hearing, in the discretion of the Hearing Officer. Further, Hearing Officers may present counsel with the option of either filing a brief/closing argument under a very short timeline or filing a

motion for continuance to extend the HOD deadline to allow a longer timeline for filing a brief/closing argument. Hearing Officers have the discretion to deny a request by counsel to submit written briefs and/or closing arguments where good cause is not shown. Hearing Officers shall have no automatic “right” to have 10 days in which to issue a HOD.

10. Order of Withdrawal, Order of Dismissal and HOD:

A. Order of Withdrawal.

1). In The Absence Of Settlement. If counsel for a Petitioner withdraws a Due Process Complaint in the absence of a settlement, Hearing Officers shall issue an Order of Withdrawal that conforms to Appendix A/Form 9-Option 1.

2). As A Result Of Settlement. If counsel for a Petitioner withdraws a Due Process Complaint as a result of a settlement agreement, Hearing Officers shall issue an Order of Withdrawal that conforms to Appendix A/Form 9-Option 2 and include, if known, whether it was the result of a resolution meeting. Hearing Officers may request that the parties indicate whether the Hearing Officer should dismiss the Complaint with prejudice. Alternatively, the parties may provide the Hearing Officer with a copy of settlement agreement, or the Hearing Officer may require such, so that the Hearing Officer may determine from agreement of the parties whether to dismiss the Complaint with prejudice. Hearing Officers may incorporate the terms of an agreement between the parties in an order with the consent of the parties.

B. Order of Dismissal.

Any Dismissal Order without a hearing, withdrawal, or settlement shall be captioned by Hearing Officers as an Order of Dismissal and shall provide a Notice of Appeal.

C. HOD.

1). Definition. An HOD refers to final decisions Hearing Officers issue following a due process hearing, including, among other things, Findings of Fact and Conclusions of Law.

2). Format. Each HOD issued by Hearing Officers shall substantially conform to Form 10.

3). Orders. Any order directing a party to take action issued by Hearing Officers shall be specific and establish timelines for each directive or anticipated action.

4). Issuance. Hearing Officers shall issue HODs in accordance with Title 5, DCMR Section 3030.11. In addition, Hearing Officers shall send an electronic copy of the HOD to counsel for both parties. Hearing Officers shall send an electronic copy of the HOD to the Student Hearing Office, and, if DCPS is a party, to dueprocess@dc.gov.

5). Copy to Parties. Hearing Officers shall send an electronic copy of the HOD to each party, if all the parties consent and provide their email addresses.

