




MEMORANDUM

TO: All Hearing, Mediation, and Facilitation Meeting Participants

FROM: Pamela Brown 
Deputy Director Office of Dispute Resolution
Office of the State Superintendent of Education (OSSE)

DATE: Effective Aug. 6, 2021

RE: Updated Guidance for parties regarding In-Person and Remote Proceedings

**Office of Dispute Resolution (ODR) Guidance
Individuals with Disabilities Education Act (IDEA)
Special Education Due Process and Alternative Dispute Part B and C Proceedings
Updated Aug. 6, 2021**

Background

The Office of Dispute Resolution (ODR) within the Office of the State Superintendent of Education (OSSE) is modifying, updating, and re-circulating certain policies pertaining to dispute resolution proceedings and operations.

Scope

This document contains details and guidance specifically relating to dispute resolution proceedings and the provision of dispute resolution services, and some Frequently Asked Questions (FAQs).

Effective Date

This guidance is in effect as of Aug. 6, 2021 and will remain in effect until further notice. All provisions contained in the federal IDEA (20 U.S.C. §1400, *et seq.*), relevant and applicable IDEA regulations (34 CFR §300.500 *et seq.*), relevant and applicable portions of the District of Columbia Municipal Regulations (DCMR) (5E DCMR §3000, *et seq.*), ODR's Standard Operating Procedures (SOP), as well as any guidance issued by the US Department of Education remain in full force and effect.

IN-PERSON PROCEEDINGS

Regarding conduct of the parties at 1050 First St. NE, given the agency's current floor plan and program location, ODR has instituted the following procedures to address concerns relating to confidentiality, privacy, and safety:

1. All participants who are not OSSE employees or Impartial Hearing Officers (IHO) are expected to check in at the first-floor main lobby security desk upon entry to 1050 First St. NE. If age 18 or older, they must present a current state issued photo ID bearing their name and agree to have their picture taken by building security prior to receiving their visitor's badge. Students younger than age 18 do not need to produce state issued identification.
2. The aforementioned participants are also expected to leave the building for extended breaks (e.g., lunch breaks). Participants may not use the OSSE's café or linger in the hallways during an extended recess. If you are unfamiliar with the area, ODR's Program Specialist James Catlin is happy to familiarize you with what lunch options are available to you.
3. Any participant in a Hearing, Mediation, and/or Facilitation meeting shall either make a request of the IHO/Mediator/Facilitator (if present) or, in the absence of an IHO/Mediator/Facilitator, of ODR's Program Specialist James Catlin to coordinate use of a private space in order to confer.
4. Participants are not permitted to stay in hearing rooms once the Hearing, Mediation, or Facilitation has concluded. Everyone is expected to exit the building.
5. During bathroom breaks, please only use the restrooms located on the first or fourth floors, where hearing rooms are located.
6. NO EATING OR DRINKING in hearing rooms and reception areas. Due to littering and drink spills that could possibly damage equipment or attract insects and rodents, eating and drinking is no longer allowed. Water is still permitted.
7. COVID GUIDANCE
 - All visitors to 1050 First St. NE must wear a facemask in the building at all times regardless of vaccination status.
 - Social distancing is no longer required within the building, but parties are encouraged to be mindful of various health and vaccination statuses and comfort levels of those sharing use of the space.

ODR encourages all parties to review and monitor reliable sources of information related to coronavirus (COVID-19). Below are links you may find helpful:

Government of the District of Columbia – coronavirus.dc.gov
United States Department of Education ed.gov/coronavirus

REMOTE PROCEEDINGS

ODR will hold video-conferenced Due Process Hearings, and teleconferenced or video-conferenced Prehearing Conferences and Mediation/Facilitation meetings, and asks all Parents/Parent Attorneys, local education agencies (LEAs)/LEA attorneys and other individuals involved to adhere to the following procedures until further notice.

NOTE: For answers to the most commonly asked questions, please see the **FAQs** page for the teleconferenced/video-conferenced Mediations/Facilitations, Prehearing Conferences and Due Process Hearings.

1. Teleconferenced/Video-Conferenced Meetings

Meetings may proceed with several options depending on the circumstances of the case. ODR may conduct meetings by video-conference (audio and video participation) and/or, in the case of Mediations/Facilitations and Prehearing Conferences, teleconference (audio participation only) at the discretion of the assigned Mediator/Facilitator/Impartial Hearing Officer (IHO).

The information in this section will allow the parties to familiarize themselves with this process. ODR will use Microsoft Teams to conduct its video-conferenced meetings, and dedicated conference bridges to conduct its teleconferenced meetings. For more information on the entirety of this process, please see below.

NOTE: This is an example of how a process may look. The assigned Mediator/Facilitator/IHO will provide you with detailed specifics on what to expect during your meeting.

A. Before the Meeting

1) Before a Mediation/Facilitation Meeting

Provide your Mediator/Facilitator with any updated or changed email addresses and/or direct telephone numbers for the attorney/advocate and all clients participating in the Mediation, no later than 24 hours before the scheduled Mediation/Facilitation.

2) Before a Prehearing Conference

Prior to a Prehearing Conference, the parties will determine, with the assigned IHO, if the meeting is to be conducted via teleconference or video-conference, and if it is to be recorded.

B. Joining the Meeting

ODR is using the Microsoft Teams conferencing platform to host video-conferenced

meetings and dedicated conference bridges to host teleconferenced meetings. Prior to the proceeding, Microsoft Teams meeting links, in the case of video-conferences, or phone numbers and passcodes, in the case of teleconferences, will be supplied electronically by the assigned IHO/Mediator/Facilitator. Microsoft Teams provides audio/video-conferencing but does not allow participants to dial in to a meeting. You will not have to purchase any products to participate in a meeting hosted by Microsoft Teams or conducted via a conference bridge. The parties are encouraged to download the Microsoft Teams application and conduct a test accessing Microsoft Teams before their scheduled video-conference. If you have not previously used the Microsoft Teams platform and you wish to familiarize yourself with the technology, further instruction is listed in **Appendix A**.

C. The Pre-Session

The meeting will start with a short pre-session where technology may be tested to make sure it is working properly. Parties will also be informed of confidentiality regulations.

1) Confidentiality

If a teleconferenced/video-conferenced Mediation/Facilitation, Prehearing Conference, Due Process or other proceeding will potentially involve discussing personally identifiable information contained within the student's educational records, then the Mediator/Facilitator/IHO, attorney and all others participating in the proceeding shall take the necessary precautions to ensure that others in their household or other computer location do not overhear the conversation before participating in a teleconferenced/video-conferenced proceeding. Headphones should be considered to ensure that others may not overhear the proceedings.

A) Mediation/Facilitation Confidentiality

The Mediator/Facilitator will have all participants sign an agreement to participate and confidentiality pledge, (this document will be provided by the Mediator/Facilitator). The same confidentiality rules will apply to teleconferenced or video-conferenced Mediations/Facilitations that apply to in-person Mediations/Facilitations. There will be no video or audio recording of any Mediation/Facilitation processes under any circumstances. The parties may not copy documents by any means, including by cell phone photograph, without the express permission of all parties to the Mediation/Facilitation.

B) Prehearing Conferences

Should a party wish to have the Prehearing Conference recorded, a request can be submitted to the IHO to be fulfilled at their discretion. Parties are prohibited from independently recording the Prehearing Conference.

C) Hearing Confidentiality

Parties are prohibited from independently recording any proceeding. The video-conferenced Hearing will remain confidential unless otherwise ordered. The audio recording made by the IHO will continue to be the official record. If a parent or student wishes to have an open Hearing, an audio recording of the Hearing can be made available once a signed Records Request Form has been submitted to ODR. Video files will not be provided by ODR even if requested.

D. Prehearing Conference, Due Process Hearing and Mediation/Facilitation Meeting

The Prehearing Conference, Due Process Hearing and Mediation/Facilitation Meeting will be conducted in the same manner as an in-person Prehearing Conference, Due Process Hearing and Mediation/Facilitation Meeting.

Questions?

Should you have questions pertaining to a specific Due Process Hearing/Mediation/Facilitation to which you are a party, please contact the assigned IHO/Mediator/Facilitator using the contact information provided at their assignment.

PROLONGED TELEWORK

In the event of a prolonged transition of ODR to fully remote telework, the following provisions will come into effect to provide continuation of services and ODR operations for those parties involved, or to be involved, in the dispute resolution processes.

1. Documents

A. Intake – Case Filing

While operating in a fully remote telework status, ODR will continue to accept documents and submissions from all parties in electronic format. These documents may be provided via eFax: (202) 478-2956, or via e-mail: hearing.office@dc.gov, as attachments or through a direct link. Electronic documents will not be accepted from third-party host services (such as Dropbox, or similar services), or any service which requires creation of an account to access.

Hard-copies (documents in any physical format) of documents cannot be accepted by the ODR main office, (1050 First St. NE). Should an Impartial Hearing Officer (IHO) require a five-day disclosure in hard-copy format, methods for submission of such documents shall be determined between the parties and the assigned IHO.

B. Provision of Documents

Documents, heretofore provided by ODR in hard-copy, will be provided in electronic format via e-mail, either as attachments or through a direct link. Regarding those documents for which a hard-copy has been requested, provision in the format of choice

will also be provided upon transition from fully remote telework to normal office operations.

2. Meetings

The ODR main office will be unavailable to host in-person meetings.

A. Prehearing Conferences/Due Process Hearings

All Prehearing Conferences/Due Process Hearings will be held remotely, either as a teleconference or video-conference, at the discretion of the assigned IHO.

B. Mediations/Facilitations

Remote teleconferencing, or video-conferencing, will be available for Mediations/Facilitations, however, should a Mediation/Facilitation be scheduled to take place in a location offsite from OSSE headquarters, it may continue as scheduled, provided the arrangement is agreeable to all parties and the assigned Mediator/Facilitator.

FREQUENTLY ASKED QUESTIONS (FAQs)

ODR has incorporated remote processes for Due Process Hearings and related services, to include Mediations/Facilitations, due to the COVID-19 pandemic and the continuation of providing timely services pursuant to IDEA (20 U.S.C. § 1415(f) and the implementing regulations found at (34 CFR §§ 300.500 et seq.), along with its in-person proceedings. ODR is empowered to conduct all or part of a Due Process Hearing, held under the IDEA, by teleconference, video-conference, or other electronic means, provided that each participant in the Hearing has an opportunity to fully participate in the entire proceeding and to view or have access to any exhibits offered into the record.

Q1. If I have already filed a due process complaint and ODR transitions to prolonged, fully remote telework, will the District still have to comply with the timeline?

Yes, to the extent possible both Resolution Sessions and Due Process Hearings are expected to proceed through remote (video or telephonic means) with the mutual consent and participation of all parties within the time-frames prescribed by the applicable provisions of the IDEA and its implementing regulations. Reasonable continuances requested will be considered by the IHO.

Q2. How will I connect to a remote proceeding?

ODR is using Microsoft Teams to hold the video-conferenced Prehearing Conferences, Due Process Hearings and Mediation/Facilitation Meetings. All participants must be in a quiet, private location unless otherwise ordered. All participants will be required to connect to the Microsoft Teams meetings by computer/tablet/smartphone, or other device with video capabilities, and appear in the video-conference using a webcam unless they do not have the required computer equipment. In that situation, at the IHO's discretion, parties may be permitted to appear using Microsoft Teams by audio-only, or by telephone.

Q3. May I opt out of an In-Person or Remote Due Process Hearing?

Parties will not have the option to "opt-out" of proceeding to a Due Process Hearing. A Due Process Hearing must be conducted, and a decision rendered within 45 days of the end of the resolution period unless an extension is granted for good cause or a withdrawal has been submitted and granted by the IHO. (34 C.F.R. § 300.515(a) & (c) (2006); 5E DCMR § 3030.11; 5E DCMR § 3030.12). Preference for the manner in which the Hearing is held (in-person/remote) may be offered by all parties to the Hearing, but the meeting location(s) will be determined at the discretion of the assigned IHO. Parties are encouraged to request Mediation to attempt to resolve their dispute before proceeding to a Hearing.

Q4. May I request a continuance?

The assigned IHO will consider timely and written continuance requests from parties on the basis of good cause shown. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for Hearing. The IHO may consider these and other bases for good cause if supported by a declaration. (SOP Sect. 710).

Q5. Do I still have a right to have an attorney?

Parties will, as usual, have the right at the Due Process Hearing and Mediation/Facilitation Meeting to be represented and advised by an attorney. If a party wants to have individuals who are not active members of the District of Columbia Bar, with special knowledge or training relating to the child with special needs, to advise them during the proceeding, the IHO will provide the conditions for that person's participation at the Mediation/Facilitation, Prehearing Conference and/or Due Process Hearing. (SOP Sects. 401(B), 702; Ct. Appeals Rule 49(c)(4)).

Q6. How do I arrange for witnesses at the remote Due Process Hearing?

Parties will continue to have the right to confront and cross-examine witnesses. (SOP Sect. 409(C)). The IHO will discuss the scheduling and appearance of witnesses at the Prehearing Conference and on each day of the Due Process Hearing. All witnesses will be required to connect to the Teams meeting by computer/tablet/smartphone, or other device with video capabilities, and appear by video-conference using a webcam unless they do not have the required computer equipment. In that situation, at the IHO's discretion, witnesses may be permitted to appear using Teams by audio-only, or by telephone. Parties who want to compel the appearance of a witness may contact the IHO. For a copy of the Notice to Appear Request Form please visit ODR's webpage: osse.dc.gov/service/office-dispute-resolution-odr

Q7. Will the video-conferenced Proceeding be confidential?

Parties are prohibited from independently recording, (video, audio, and/or otherwise), all proceedings. All video-conferenced proceedings will remain confidential unless otherwise ordered. The audio recording made by the IHO will continue to be the official record. The parties may request a copy of the audio-recorded Hearing. If a parent or student wishes to have an open Hearing, an audio recording of the Hearing will be made available at the end of the proceeding upon request. Video files will not be provided by ODR even if requested. For a copy of the Records

Request form please visit ODR's webpage: osse.dc.gov/service/office-dispute-resolution-odr

Q8. What about confidentiality issues (e.g., FERPA) if teachers and/or related service providers participate in a remote proceeding and a spouse or other children were to walk by or overhear the proceeding?

If remote Mediation/Facilitation Meeting, Prehearing Conference, Due Process Hearing or other proceedings will potentially involve discussing personally identifiable information contained within the student's educational records, then the Mediator/Facilitator, IHO, Attorney and all others participating in the proceeding should take the necessary precautions, such as wearing headphones, to ensure that others in their household or computer access location do not overhear the conversation before participating in a remote proceeding.

Q9. How will I communicate with my attorney or client during a remote proceeding?

Attorneys may arrange, at their sole discretion, for their client to attend the remote proceeding in the same location as the attorney. The client and the attorney must each have the required equipment to participate separately; however, if, in the same location, they may share the use of required equipment. Otherwise, where an attorney and client appear for a video-conference Hearing from different locations, the attorney and client may be provided a virtual break out room to have confidential communications, or the attorney and client can communicate by other means, which can be utilized throughout the Hearing, at the discretion of the IHO.

Q10. What if a party or witness requires the assistance of an interpreter during a remote proceeding?

ODR will continue to provide interpreters/translators for those participants who require such services. These interpreters will appear either by video-conference or via telephone. Please submit any request for interpreter/translation services by email to the IHO and copy ODR. If services have been scheduled and are no longer needed, please alert the IHO immediately.

Q11. Will I be able to introduce, offer and admit exhibits into the official hearing record, including for purposes of refreshing recollections, rebuttal or impeachment during a remote Due Process Hearing?

Yes. The parties may be required to upload their exhibits electronically or mail exhibits as set forth in the Prehearing Conference Order. The IHO will address the issue of exhibits offered for the purposes of refreshing recollection, rebuttal or impeachment on a case by case basis if and when such are raised at the Due Process Hearing.

Q12. Will I still be able to request a Facilitator to appear at my Resolution Session Meeting (RSM) or Individualized Education Program (IEP) Meeting?

Yes. You may still submit your request for a Facilitator to facilitate your meeting. Please be mindful that Facilitation is *optional* and **both** parties must agree for ODR to assign a Facilitator to your meeting. The IEP and RSM are processes that are managed by the LEA and alternative meeting guidance will come directly from the LEA. You may access the District of Columbia Public Schools or the Public Charter School Board websites to obtain additional information.

Q13. Will I be able to request a transcribed/audio copy of the recorded video-conferenced Mediation Meeting, Prehearing Conference, or Due Process Hearing?

- **Hearing:** Yes, parties will continue to have the right to request a free transcribed copy OR audio copy of the Hearing. Parties may submit a completed signed “Records Request Form” to ODR via fax (202) 478-2956 or email your request to hearing.office@dc.gov. To obtain a fillable copy of the “Records Request Form” please visit: osse.dc.gov/service/office-dispute-resolution-odr
- **Prehearing Conference:** Yes, if the meeting is recorded. Prehearing Conferences are not generally recorded. However, if a party requests it, the Prehearing Conference may be recorded at the discretion of the IHO. In these cases, *only* the audio copy of the conference will be available. You may find a fillable copy of the Record Request Form here: osse.dc.gov/service/office-dispute-resolution-odr
- **Mediation/Facilitation Meeting:** No, to protect the confidentiality of the meeting, Mediation Meetings are prohibited from being recorded; therefore, requests for audio or transcriptions are not needed and any request received will be denied.
- **Please note:** Requests for copies of the “video” portion of all recorded remote proceedings, including Prehearing Conferences and Due Process Hearings, will be denied.
- **Reminder:** Parties are prohibited from independently recording, (audio, video, and/or otherwise), any and all proceedings, whether they are in-person or remote.

If you have other questions, please contact:

ODR Contact	Contact	Responsibilities
Pamela Brown Deputy Director of Student Hearings Pamela.brown4@dc.gov	(202) 481-3437	Program Operations, Budget, and Procurement
James Catlin Program Specialist James.Catlin@dc.gov	(202) 698-3819	Front Office, ADR Coordinator, and Audio Recording Technical Support
Tawanda Owens Docketing Analyst Tawanda.Owens@dc.gov	(202) 481-3474	System Administrator, Data, Records, and Reports

APPENDIX A

1. Joining a Video-conference (Mediation, Prehearing Conference, Due Process Hearing)

Joining a video-conferenced meeting will require use of a computer/tablet/smartphone, or other device, with a camera, speaker, microphone and internet capability. Participants shall appear in the meeting from a location free from distractions. Participants will not be permitted to appear or participate while operating a moving vehicle. Participants should make reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images is at the discretion of the Mediator/IHO. Once

the meeting is scheduled, the Mediator/IHO will send the participants an invitation, via email, containing a link to join the meeting. In some cases, the participants may be able to see the email addresses for other participants. The meeting invitations are intended for the sole purpose of connecting parties to the meeting at the scheduled time. Replies should not be sent to invitation emails. The meeting invitations will be:

A. Mediation Meeting/Hearing

This will be the "joint room" where all parties and the Mediator/IHO will be able to meet together. At the scheduled time for the meeting, click on "Join Microsoft Teams Meeting" in the electronic invitation sent by the Mediator/IHO. A new screen will open in your browser inviting you to open Microsoft Teams and join the meeting. You may either download the Teams application to connect or join via your web browser. Downloading the Teams application is recommended. Once you connect to the meeting, enter your first and last name where indicated. You will see a message informing you that you will be allowed to enter the meeting shortly. The Mediator/IHO will open the meeting to you. You will join the Mediation Meeting/Hearing first and the Mediator/IHO will work to ensure that all parties can then access and move between the Mediation Meeting/Hearing and their own Caucus Meeting/Breakout Room, should the situation call for it.

1) Rooms for Individual Parties

These will be the private meeting "rooms" for parties and their representatives to meet.

A. Caucus Meeting

In the case of a Mediation, each party will receive an invitation to their own private Caucus Meeting in addition to the Mediation Meeting. There may be instances when the Caucus Meeting invitations are not sent to the parties until all parties have joined the Mediation Meeting. The Mediator may or may not be in the Caucus Meeting through the course of the Mediation. The Mediator will be using the computer software to move from the joint meeting to individual discussions in the separate caucus meetings. *Ex Parte* communication with a Mediator is permissible, unlike during a Due Process Hearing where such communication is not permissible with an IHO.

B. Breakout Room

In the case of a Due Process Hearing, parties may receive an invitation to an individual Breakout Rooms after requesting them from the IHO, and at the IHO's discretion, but the IHO will not enter these Breakout Rooms to avoid *Ex Parte* communication.

NOTE: Meeting invitations should not be forwarded to other parties unless explicit permission has been granted by the Mediator/IHO. If you feel that

additional parties or persons should be involved in the meeting, please contact your assigned Mediator/IHO.

2. Joining a Teleconference (Mediation and Prehearing Conference)

If joining a meeting by telephone only, your Mediator/IHO will contact you to provide the call-in number(s) and, if necessary, the Conference ID numbers you will need for your meeting.

In the case of a Mediation, you will receive information for the joint Mediation Meeting as well as for any private Caucus Meeting to be used, and, at the scheduled time, you will call into the Mediation Meeting first. Upon calling the number, you will hear a welcome message and be instructed to enter the Conference ID number, followed by the pound (#) sign. You will then be prompted to record your name, then press pound again. Your recorded name will be played when you join the meeting to alert others that you have joined. The Mediator will work with the parties to determine the most efficient means of connecting with each side individually and for joint discussions.

Helpful Suggestions:

1. To avoid connection failure, it is recommended that you directly connect your device with an ethernet cable for a video-conference. If that option is not available, you may want to get as close as possible to your wireless router to receive the best connection.
2. For quick multitasking, it may be helpful to use multiple devices such as your laptop and cell phone, or two laptops/computer monitors to access and review documents while continuing to maintain attention to the IHO and other participants in the meeting.
3. It may be helpful for participants and witnesses to have some familiarity with programs such as Microsoft Word and Adobe Acrobat. You may want to download any free viewing applications for you to access documents that are saved in those formats.
4. It may be helpful to review tutorials in advance of the scheduled video-conference to avoid any delays accessing the meeting. Things to make note of/familiarize yourself with:
 - A. Free account signup/downloading any necessary applications on devices you are using
 - B. Screen sharing (to share any documents)
 - C. Mute, volume, video, and speaker options
 - D. Accessing the breakout room
5. General Microsoft Teams tutorials can be found at the following links:
 - A. Microsoft's "How to Join a Teams Meeting" at support.office.com/en-us/article/join-a-teams-meeting-078e9868-f1aa-4414-8bb9-ee88e9236ee4
 - B. Tips on How to Customize Your View in Teams at youtube.com/watch?v=stLLb7EjLs4