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Via email: ossecomments.proposedregulations@dc.gov

December 28, 2012

Jamai Deuberry
Legal Administrative Specialist
Office of the State Superintendent of Education
810 First Street, NE, 9th Floor
Washington, DC 20002

Re: Comments on Proposed Chapter 32 (Special Education Dispute Resolution) to Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR)

Dear Ms. Deuberry:

Thank you for the opportunity to comment on the proposed rulemaking regarding special education dispute resolution that was published in the DC Register on November 30, 2012. I am submitting these comments on behalf of Children's Law Center (CLC),[1] which represents more than 2,000 low-income children and families in the District of Columbia every year. Many of the children we work with are eligible for special education. Our comments are based on our experience representing these children and their families.

Overview of comments

We appreciate the steps that these proposed regulations take toward clarifying and standardizing the conduct of due process hearings. While there remains work to be done to make the process truly fair and effective, we have seen significant improvements in recent years, and these regulations build on that good work. In particular, we appreciate that the regulations require pre-hearing conferences in all cases,[2] give parties the ability to subpoena witnesses,[3] and clarify that hearing officers may sanction parties who fail to respond to complaints,[4] participate in pre-hearing conferences,[5] or otherwise cooperate with the process.[6] We also appreciate that the regulations clarify the applicability of the rules of evidence in due process hearings[7] and allow for electronic filings.[8]

However, we have an overarching concern that the due process hearing system continues to put parents at a significant disadvantage when it comes to access to information. This is especially concerning for low-income parents and parents who have only a limited education, which unfortunately describes a large proportion of the parents in the DC public school system. Without access to information, parents cannot ensure that their children receive the free, appropriate public education (FAPE) to which they are entitled. While these regulations take a meaningful step toward leveling the playing field by making clear that parents may subpoena relevant witnesses and documents in the school system's control, they do not address many of the other ways that parents

are at a disadvantage compared to the school system. That disadvantage starts long before a parent files a due process complaint and it is reinforced at many points in the hearing process. We believe that these regulations need to go farther to redress the imbalance of access to information in order to create a hearing process that is truly fair.

The imbalance of information often starts very early on in a child's experience in special education. Most parents do not have specific training in child development, so they are not as well-positioned as school staff to recognize that a child may have a disability. Most parents do not have training in how to interpret evaluations to ensure that their child has received the necessary and appropriate assessments. Most parents also do not have training in how to decipher IEPs – which are documents that even many new lawyers struggle with – or the knowledge of educational methods necessary to assess whether proposed interventions are appropriate to meet a child's needs. The IDEA and local special education regulations do include several protections meant to redress these imbalances – the requirement that schools proactively identify children with disabilities,[9] the requirement that IEP teams include a member who is able to interpret assessment data,[10] and the requirement that IEPs include a mechanism for measuring a child's progress[11] – but in practice these protections are often not sufficient to provide parents with all the information that they need, whether because the requirements are not followed or are followed in only a pro forma way or because the information is simply too complex for a parent without clinical or educational training to fully comprehend.

Additionally, parents often have trouble obtaining information that they request from the school system. In our clients' experience, requests for records are sometimes met with long delays or even the response that the records cannot be found. Schools sometimes refuse to allow parents to observe their children in class, which means that parents cannot see firsthand how their child is responding to instruction and interacting with peers and staff. Schools also very regularly refuse to allow parents to send in a designee with more specific training to observe their child in the classroom. While it might not be necessary for parents of children in general education to ask a psychologist or other expert to observe their child in class, it is often absolutely essential for parents of children in special education who may have complicated and unique educational needs that far exceed the knowledge of the average parent.

While the right to file a due process complaint is meant to protect parents' and students' rights, the way that the due process hearing system is structured continues to disadvantage parents. Parents bear the burden of proving that the school system has failed to provide their children with a free, appropriate public education,[12] a difficult task when the witnesses with the most knowledge of the child's educational performance and progress are employees of the school system and the most relevant records are in the possession of the school system. Schools have on staff psychologists and other professionals with specific expertise in areas such as speech/language disorders and physical impairments, whereas parents must privately retain such experts and cannot recoup the experts' fees even if the hearing officer relies on the experts' testimony in ruling for the parent, as is often the case.

To redress the imbalance of information in favor of the school system, we recommend that these regulations be amended to take three important steps: (1) allow prevailing parents to recover expert fees, (2) give hearing officers the authority to order that parents and their designees be allowed to observe children in current and proposed placements, and (3) shift the burden of proof to the LEA. We also have a number of other recommendations aimed at making the process more clear, efficient, and fair.

Expert Fees

These proposed regulations should be amended to allow hearing officers in DC to order that LEAs reimburse parents for expert fees. Without such a provision, many parents do not have meaningful access to the special education dispute resolution process. Parents may not attempt filing complaints because they know that their own testimony will not be found persuasive when compared to the testimony of school witnesses with advanced degrees and extensive experience. Parents may also be less successful even when they bring meritorious claims because they are not able to find experts willing to testify for free or at a reduced cost. We acknowledge that the Supreme Court has interpreted the IDEA not to require school districts to reimburse parents for expert fees, but the federal law simply sets a floor on the procedural protections states must make available to parents.[13] States may extend greater rights to parents than required by the IDEA, and we urge DC to do so in this case.

Specifically, we urge OSSE to amend Section 3216 (Hearing Officer's Authority) of the proposed regulations to include a subsection within § 3216.1 stating that hearing officers have the authority to "**Award expert fees to a prevailing parent.**"[14] OSSE should also amend Section 3212 (Hearing Officer Determination (HOD)) to include a subsection within § 3212.1 stating that HODs shall include "**If the parent prevails and the hearing officer determines that the parent's expert witness provided credible testimony, a determination that the prevailing parent's expert fees shall be reimbursed by the public agency**."

School Observations

The proposed regulations should be amended to clearly give hearing officers the authority to order LEAs to allow parents and their agents to observe the child in his current placement and to observe any proposed placement. Again, while there is an argument that this would go beyond what is required by the IDEA, DC has the discretion to extend additional procedural rights to parents.[15] The ability to observe the classroom is particularly important because without it parents may have no ability to challenge the assertions of school staff about a child's performance in class or about the supports offered to the child in the classroom. In making decisions about whether a child has received FAPE, it is critical that hearing officers have presented to them all relevant evidence about a child's performance and an LEA's compliance with the child's IEP.

OSSE should amend Section 3216 (Hearing Officer's Authority) of the proposed regulations to include a subsection within § 3216.1 stating that hearing officers have the authority to "**Order the public agency to allow the parent or the parent's agent to observe the student in the current placement and to observe any proposed placement.**"

Burden of Proof

Parents are at a substantial disadvantage in access to information and in knowledge about appropriate educational techniques. If an LEA has developed an IEP and placement that it believes is adequate to provide a child with educational benefit, it should not be difficult for the LEA to present evidence in a hearing showing that the IEP and placement are in fact adequate. This does not run a risk of parents filing baseless claims because if the LEA believes that a parent has filed a frivolous claim, the LEA can seek attorney's fees from that parent.[16] As with the expert fees issue, we acknowledge that the Supreme Court has held that the IDEA sets a baseline in which the burden of proof rests on the moving party, but our interpretation of the law is that states are free to increase procedural protections for parents by allocating the burden of proof to the school district.[17] States including New York,[18] New Jersey,[19] Delaware,[20] and Connecticut[21] do so. We urge DC to do so as well.

Specifically, OSSE should amend § 3213.1 to state:

The burden of proof shall be the responsibility of ~~the party seeking relief~~ **the public agency which is a party to the hearing**. Based solely upon the evidence presented at the hearing, a hearing officer shall determine ~~whether the party seeking relief~~ t**he public agency** presented sufficient evidence to meet the burden of proof.

Assistance in Filling Out Complaints

The Standard Operating Procedures (SOP) provide at § 301.1(D)(2) that "if a parent or guardian is unable to read or write, is not fluent in English or has a disability that prevents a written request, Student Hearing Office personnel shall assist the parent or guardian in filling out the complaint." This procedural protection should be included in the proposed regulations. We suggest including it in Section 3202 (Filing a Due Process Complaint) at 3202.3, stating:

> **If a parent or guardian is unable to read or write, is not fluent in English, or has a disability that prevents a written request, OSSE shall ensure that staff from the Student Hearing Office shall assist the parent or guardian in filling out the complaint.**

The current § 3202.3 should be moved to § 3202.4 and the remaining subsections should be renumbered accordingly.

As we will discuss below, we also recommend that OSSE include in these regulations specific mention of the availability of model complaint forms, which is another of the procedural protections that IDEA provides for parents.

Resolution Sessions

In our experience, resolution sessions in DC often are not effective. One of the primary reasons that they are not effective is that the school system staff participating in the meeting usually do not know the student and have only minimal familiarity with the student's file. While this is largely an issue of compliance rather than regulatory drafting, we suggest that these proposed regulations make more clear that members of the IEP team are expected to attend the resolution session by conforming to the language of the IDEA at § 3203.2. Specifically, that section should be revised to read:

> The parent and the LEA shall determine the relevant members of the IEP team ~~invited to participate in~~ **to attend** the resolution meeting.[22]

Additionally, we suggest revising the language describing the purpose of the resolution session to make it more evenhanded. The current language focused on the parent discussing the complaint and the underlying facts. While this language does track the IDEA language, we are concerned that it reinforces the current practice of LEAs using resolution sessions as opportunities for LEAs to obtain discovery from the parent while not providing any relevant information to the parent. To redress this, we suggest amending § 3203.2(c) to state:

> The purpose of the meeting is for the parent of the child **and the LEA** to discuss the due process complaint and the facts that form the basis of the due process complaint, in order to provide the LEA with an opportunity to resolve the dispute that forms the basis of the due process complaint.

Expedited Hearings

As the regulations now stand, expedited due process hearings must be held within 20 school days of the date the complaint is filed. This is problematic because sometimes complaints must be filed shortly before a school holiday. This means that, for example, a complaint filed shortly before at the end of May might not be heard until mid-July, if going by the Extended School Year calendar,

or even September if going by the regular calendar. This vitiates the purpose of an expedited hearing.[23] Accordingly, we suggest that the regulations be revised at § 3210.1 to state:

> Whenever a due process hearing regarding discipline is requested under 34 C.F.R. § 300.532(a), the hearing shall occur within twenty (20) school days **or 30 business days, whichever is shortest,** of the date the complaint requesting the hearing is filed.

When a hearing is expedited, the disclosures should be required three business days before the hearing. The SOP included this requirement at § 1008(a)(3). A new § 3210.6 should be added stating:

> **Each party must disclose its list of prospective witnesses and documents no later than three (3) business days before the date of the hearing.**

In some cases, we have found that hearing officers inappropriately insist on bifurcating hearings when a parent files a complaint that alleges both a disciplinary violation, which requires an expedited hearing, and other related violations. To address this concern, we suggest that an additional § 3210.7 be added stating:

> **Hearing officers may not bifurcate the issues so as to hear only some of the issues raised in the complaint on an expedited timeline unless the parties so consent.**

Pre-Hearing Conferences

The section discussing pre-hearing conferences includes at § 3205.6 a list of the issues to be discussed at pre-hearing conferences. We suggest including on this list: (1) any anticipated need for translation for a party or witness, (2) any anticipated need for reasonable accommodations for a party or witness, and (3) any stipulations of fact upon which the parties can agree.

Continuances

In our experiences, LEAs often propose new placements or locations of service for a student long after the conclusion of the resolution period. When a new placement or location is suggested very close to the date of hearing, it can be impossible for a parent to obtain sufficient information about the placement or location of services. To make sure that parents have sufficient time to investigate any proposed placements or locations of services, we suggest that Section 3207 (Continuances) be amended to include a new § 3207.4 stating that:

> **If the public agency which is a party to the case proposes a new placement or location of services for the student after the end of the resolution period, the parent shall have the right to a continuance of up to 10 business days if the parent so requests.**

Withdrawal of Complaint

We are concerned that the proposed regulations place overly severe limits on the ability of a party to withdraw a complaint. In the SOP, withdrawals were allowed freely at any time before testimony was heard at the hearing. After that point, motions to withdraw had to be made to the hearing officer, who had the discretion to decide whether to grant the withdrawal with or without prejudice.[24] While we understand that such a liberal withdrawal policy might place a burden on the opposing party, who would have to prepare up to the day of the hearing, we believe that it is necessary to allow withdrawals more liberally than the proposed regulations contemplate. In our experience, LEAs often wait until late in the process to provide additional information or make new proposals for services and placement. Parents should not have to bear the risk of losing their right to re-file because an LEA delays providing relevant information. Accordingly, we suggest that:

- § 3208.1(a) be amended to read: "At any time prior to the filing of ~~a response to the due process complaint in accordance with 34 C.F.R. § 300.508(c) and (f)~~ **the five-day disclosures**; or"
- And § 3208.5 should be deleted in its entirety.

These recommendations are largely in accordance with the withdrawal provisions governing hearings conducted by the Office of Administrative Hearings (OAH). Those provisions operate from the assumption that withdrawals without prejudice should be allowed at any time unless there is a specific reason that a withdrawal without prejudice is not appropriate.[25] If OSSE declines to adopt the language we suggest above, we recommend that OSSE adopt the language governing withdrawals for OAH hearings.

Dismissal of Complaints

The proposed regulations allow hearing officers to dismiss complaints with prejudice if the party requesting the hearing "fails to provide information required or ordered by the hearing officer."[26] In our experience, there are times when a party has good cause for not being able to provide information requested by a hearing officer. In those cases, the party should not be denied the opportunity for a hearing. Accordingly, we suggest that § 3205.7 be revised to read:

> In accordance with § 3216.1, the hearing officer shall have the authority to take any action necessary to ensure compliance with all requirements of law and may dismiss the matter, with or without prejudice, when the party requesting the hearing fails to provide information required or order by the hearing officer **and does not show good cause for that failure**.

Testimony by Phone

The regulations should make clear that parties are allowed to have witnesses testify by phone.[27] We suggest that the regulations make explicit that witnesses may appear by phone as long as the parties so indicate in their five-day disclosures and are provided in advance with copies of both parties' disclosures. We suggest that an additional subsection be added to Section 3219 (Rules of Civil Procedure and Evidence) stating that:

> **Witnesses shall be allowed to testify by telephone. A party whose witness will testify by telephone must so indicate in that party's five-day disclosures. That party must also provide to the witness copies of all parties' five-day disclosures in advance of the hearing.**

Rules of Evidence

While we appreciate the intention of the proposed regulations to clarify the applicable rules of evidence for due process hearings, we find that the proposed regulations are still somewhat unclear. It appears that OSSE's intent is to continue the current practice in which hearings operate under relaxed rules of evidence that, for example, allow hearsay evidence and do not require all documents introduced at the hearing to be authenticated. In our experience, this approach strikes a successful balance between the risk on the one hand of slowing down the hearing process with a great deal of unnecessary formality and the risk on the other hand of allowing evidence that is not reliable. To make the proposed regulations clearer, we suggest revising § 3219.2 to read:

> A hearing officer ~~may~~ **shall** admit and give probative effect to evidence admissible in a District of Columbia or federal court. ~~When necessary~~ **Additionally**, a hearing officer ~~may~~ **shall** admit evidence not generally admissible over objection in civil actions **if the hearing officer finds that the** evidence is reliable and relevant.

Appearance by Attorneys

The proposed regulations do not allow attorneys practicing under Rule 49(c)(9) of the Rules of the District of Columbia Court of Appeals to enter appearances at due process hearings. The regulations do allow attorneys practicing under Rule 49(c)(8) to enter appearances. While Rule 49(c)(8) largely covers the same ground as 49(c)(9) since appearing at due process hearings should not trigger 49(c)(8)'s requirement that attorneys be admitted pro hac vice if providing legal services in court, we nonetheless suggest that the proposed regulations specifically include attorneys practicing under Rule 49(c)(9) to make clear that attorneys working at nonprofits and awaiting licensing in DC do not have to be admitted pro hac vice or limit their practice to five appearances per year. Specifically, we suggest that § 3218.1 be revised to state:

> 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), **and (9)** of the District of Columbia Court of Appeals, and law students in accordance with Rule 48 of the District of Columbia Court of Appeals.

Recusal of Hearing Officers

We recommend that the proposed regulations follow the SOP's approach of requiring that the director of the Student Hearing Office decide all requests for recusal of hearing officers based on allegations of bias.[28] It is more appropriate for these decisions to be made by the director of the Student Hearing Office than by the hearing officer himself or herself. Accordingly, we suggest that § 3217.4 should be revised to read:

> A hearing officer shall recuse himself or herself in any proceeding in which the hearing officer's impartiality might reasonably be questioned. By motion to the hearing officer, a party to a pending due process complaint may request the recusal of a hearing officer based on conflict of interest, ~~bias,~~ or other reason **except bias**~~. and t~~**T**he hearing officer shall timely rule by written order.

A new § 3217.5 should be added stating:

> **By motion to the director of the hearing office, a party to a pending due process complaint may request the recusal of a hearing officer based on bias. The director of the hearing office shall timely rule by written order.**

Hearing Officer Determination (HOD)

Hearing Officer Determinations (HODs) should include determinations of which party prevailed on each issue and of the credibility of witnesses. Subsection 3212.1 of the proposed regulations should be revised as follows:

> **(e) A determination of the credibility of each witness;**
> **(f) A determination of which party prevailed on each issue.**
> The subsections that follow should be re-lettered accordingly.

Timelines

These regulations should include specific timelines for events as follows:

- Responses to complaints should be due within 10 business days.[29]
- Responses to motions should be due within 3 business days.[30]
- Rulings on motions, including motions for expedited hearings, should be due within 5 business days.

- Prehearing notices should be provided to the parties 2 business days in advance of the pre-hearing conference.
- Prehearing orders should be provided to parties within 3 business days after the prehearing conference.[31]
- Ruling on continuance requests should be required within 5 business days.[32]

Most of these recommendations track the requirements of the SOP. All of them are necessary to ensure that due process hearings proceed in a timely way.

OSSE's Responsibilities

We note that these regulations lack much of the specific detail about how the due process hearing system works that was included in the SOP. While we understand that much of that material was not best suited for regulations, we believe it remains essential for parents to have access to that information. Accordingly, we suggest that the regulations include a § 3201.2 stating:

OSSE will provide, on its website and on paper, a parent handbook that describes how the hearing process works in order to assist the unrepresented parent.

Additionally, we suggest that OSSE's website have updated contact information for the Student Hearing Office and copies of model complaint forms and subpoenas. To formalize this, we suggest that the regulations include a § 3201.3 stating:

OSSE will provide on its website current contact information for the Student Hearing Office. OSSE will also provide on its website, and on paper upon request, copies of model complaint forms and subpoenas.

Technical Suggestions

The proposed regulations omit some elements of the IDEA that should be included for clarity. Specifically, we recommend that the regulations include the following elements of the IDEA:

- The elements required in a due process complaint.[33]
- Mention of the availability of model complaint forms.[34]
- Language regarding amending complaints.[35]
- Language regarding sufficiency challenges to complaints.[36]
- Parent's right to free transcript of hearing.[37]
- Requirements for 5-day disclosures.[38]

For ease of reading, we suggest that the regulations include a separate section for Five-Day Disclosures. Section 3202.6, regarding disclosures of financial interests, should be moved to that new section.

We note that the regulations generally discuss the filing of complaints against the LEA. However, complaints may also be filed against OSSE as the State Educational Agency (SEA). Given that, we suggest that references to "the LEA" throughout the regulations should be replaced with references to "the public agency," so as to include both the LEAs and the SEA.

The additional comma in § 3215.1 should be deleted.

Conclusion

Thank you for the opportunity to comment on these proposed regulations.

If you have any questions, please do not hesitate to contact me at (202) 467-4900, ext. 570 or etossell@childrenslawcenter.org.

Respectfully,

Elizabeth Tossell
Senior Policy Attorney

Cc: Jan Holland-Chatman, Acting Director of the Student Hearing Office

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[1] Children's Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children. Our 80-person staff partners with local pro bono attorneys to serve more than 2,000 at-risk children each year. We use this expertise to advocate for changes in the District's laws, policies and programs. Learn more at www.childrenslawcenter.org.
[2] 5 DCMR § A3205.1.
[3] 5 DCMR § A3216.1(c)
[4] 5 DCMR § A3209.1.
[5] 5 DCMR § A3205.8.
[6] 5 DCMR § A3216.1(o).
[7] 5 DCMR § A3219.
[8] 5 DCMR § A3202.5.
[9] 20 U.S.C. 1412(a)(3)
[10] 34 C.F.R. § 300.321(a)(5).
[11] 34 C.F.R. § 300.320(a)((3).
[12] The current regulations at 5 DCMR § E3030.14 and the proposed regulations at 5 DCMR § A3213.1 both place the burden of proof on the party seeking relief.
[13] In Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, the Supreme Court held that the IDEA does not require states to reimburse prevailing parents for expert fees. 548 U.S. 291 (U.S. 2006)
[14] **Bold** indicates proposed additions and ~~strikethrough~~ indicates proposed deletions.
[15] *See Letter to Mamas*, 42 IDELR 10 (OSEP 2004).
[16] 20 U.S.C. § 1415(i)(3)(B)(i)(II).
[17] In Schaffer v. Weast, the Supreme Court held that, in the absence of state statutes or regulations specifically assigning the burden of proof, it rests on the moving party. 546 U.S. 49 (U.S. 2005)
[18] NY CLS Educ § 4404 ("The board of education or trustees of the school district or the state agency responsible for providing education to students with disabilities shall have the burden of proof, including the burden of persuasion and burden of production, in any such impartial hearing, except that a parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion and burden of production on the appropriateness of such placement.")
[19] N.J. Stat. § 18A:46-1.1 ("Whenever a due process hearing is held pursuant to the provisions of the "Individuals with Disabilities Education Act," 20 U.S.C. § 1400 et seq., chapter 46 of Title 18A of the New Jersey Statutes, or regulations promulgated thereto, regarding the identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action, of a child with a disability, the school district shall have the burden of proof and the burden of production.")
[20] 14 Del. C. § 3140 ("The burden of proof and persuasion in any proceeding convened pursuant to § 3135 of this title shall be on the district or state agency which is a party to the proceeding.").

[21] Regs., Conn. State Agencies § 10-76h-14 ("The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency.").
[22] This proposed language tracks 34 C.F.R. § 300.510(a)(4).
[23] We acknowledge that the IDEA does use the "20 school day" language but believe DC can change the timeline to increase procedural protections for parents and students.
[24] SOP § 1002.3.
[25] 1 D.C.M.R. § 2817 (2817.1 The party initiating the case may move to dismiss the case at any time, and the Administrative Law Judge may grant the motion without waiting for a response from the opposing side. 2817.2 An opposing party who objects to the voluntary dismissal of a case may file a motion for reconsideration as provided in Subsection 2828. 2817.3 The parties may file a joint motion for dismissal of a case with or without prejudice. 2817.4 Dismissal under this Section shall be without prejudice, unless an Administrative Law Judge orders otherwise. A dismissal with prejudice may occur: (a) If the party requesting dismissal has previously dismissed the claim; (b) If the motion for dismissal is made pursuant to a settlement that does not specifically require dismissal without prejudice; or (c) In order to prevent harm to the other side.)
[26] Proposed § 3205.7.
[27] Proposed § 3216.1(l) states that hearing officers have the authority to "permit taking of evidence by telephone" but that wording leaves discretion for the hearing officer to refuse to allow taking of evidence by telephone.
[28] SOP § 600.4(A)(5).
[29] SOP § 303(B) required this, as does 34 C.F.R. § 300.508(e).
[30] SOP § 401(c)(5) required this.
[31] SOP § 304(A)(1) required this.
[32] SOP § 402(B)(8) required this.
[33] Specified at 34 C.F.R. § 300.508(b) and in the SOP at § 301.2(c).
[34] 34 C.F.R. § 300.509.
[35] 34 C.F.R. § 300.507(d)(3), included in SOP at § 301(A)(2).
[36] 34 C.F.R. § 300.507(d), included in SOP at § 303(A).
[37] 34 C.F.R. § 300.512(c)(3), included in SOP at § 800.2(4).
[38] 34 C.F.R. § 300.512(b), included in SOP at § 500(A).