

### **13. Dispute Resolution and Litigating a Special Education Case**

- a. CLC Tip Sheets
  - i. CLC: Dispute Resolution Cheat Sheet
  - ii. CLC: How to File a Due Process Complaint Cheat Sheet
  - iii. CLC Information Sheet: Types of Dispute Resolution
- b. OSSE State Complaint Information
  - i. OSSE Model State Complaint Form
  - ii. OSSE State Complaint Policy and Procedures (November 2009)
- c. Administrative Due Process Complaints Before the Office of Dispute Resolution (“ODR”)<sup>1</sup>
  - i. ODR Standard Operating Procedures (“SOP”)
  - ii. OSSE Memo on Due Process Hearing Notice
  - iii. OSSE Memo on Standard Practices
- d. Office of Dispute Resolution: Orders and Motions
  - i. Dispute Resolution Disposition Form (May 2014)
  - ii. Prehearing Conference
    - 1. Notice of Prehearing Conference
    - 2. Prehearing Conference: Subjects to be Considered
    - 3. Prehearing Conference Order
  - iii. Motion for Continuance Form Motion
  - iv. Notice to Appear Form Motion

---

<sup>1</sup> On January 16, 2018, the Office of Dispute Resolution relocated to 1050 First Street, NE, Washington, D.C. 20002, and is located on the 4<sup>th</sup> floor.

- v. Hearing Officer Determinations (database info)
- vi. Sample Motion to Invoke Stay Put

e. Litigation Samples and Documents

- i. Due Process Complaints (“DPC”) – (Please reach out to your mentor if you would like a fillable version of the due process complaint form)
  - 1. OSSE Due Process Complaint Form – Part B
  - 2. OSSE Due Process Complaint Form – Part C
  - 3. Sample Due Process Complaint for Placement (Student with ADHD)
  - 4. Sample Due Process Complaint for IEE
  - 5. Sample Due Process Complaint (long)
- ii. Motion for Expedited Hearing
- iii. 5-day Disclosure Letter
- iv. Compensatory Education Plan for Disclosure
- v. Direct Examination
  - 1. Direct of Psychologist
  - 2. Direct of Parent
  - 3. Direct of Parent of Teen
  - 4. Direct of Non-Public Placement Representative
  - 5. Direct of Educational Expert
- vi. Cross Examinations
  - 1. Cross of DCPS Psychologist
  - 2. Cross of DCPS Placement Specialist
  - 3. Cross of Special Education Coordinator
  - 4. Cross of Special Education Teacher
- vii. Opening Statements: Sample Oral Opening
- viii. Closing Statements: Sample Oral Closing
- ix. Rule 8(b)(6) Motion

## **Dispute Resolution Session Cheat Sheet**

### **Applicable Law**

- 20 USC §1415(f)(1)(B)
- 34 CFR §300.510
- Student Hearing Office Standard Operating Procedures (SOP)

### **What is a DRS?**

- After DP complaint is filed, parent is entitled to DRS with the school district to try to resolve the legal issues in the complaint prior to the hearing
- There is no mediator/arbiter present at a resolution session- simply an opportunity for parents and school officials to come to an early resolution
- The parents “discuss their complaint, and the facts that form the basis of the complaint, and the LEA is provided the opportunity to resolve the complaint.” 20 USC §1415(f)(1)(B)(i)(IV)
- DCPS often refers to this session as a Resolution Mediation Session (RMS)

### **When will the DRS take place?**

- Must occur within 15 days of the school district’s receipt of the parent’s due process complaint
- Can be waived if the parent and LEA agree in writing to waive the meeting or agree to use the mediation process instead (Due process hearing can then be scheduled to occur not later than 20 days after the waiver (SOP §400.1)).
- DCPS or the charter school will usually contact you to set up the DRS.

### **Who should be there?**

- Parents (but the child does not need to be there)
- Relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint (as determined by parent and LEA)
- A representative of the LEA who has decision-making authority on behalf of the LEA
- May not include an attorney for the LEA unless the parent is accompanied by an attorney

### **Where will the DRS take place?**

- Usually at the school
- If the child attends a private school through the voucher program or if it is during a school break, may take place at DCPS Headquarters or alternate location
- Can request to have the meeting at DCPS if there is a reason not to have it at the school

### **Preparing for the Dispute Resolution Session**

- Review each of the legal issues
- Review the facts, including the child’s school history
- Review the requirements for a dispute resolution session
- Be prepared to ask whether all of the right team members are present
- Be prepared to object on the record if the legal requirements are not met
- Bring a colleague with you to the meeting in case you need a witness later

### **Preparing With Your Client for the Dispute Resolution Session**

- Tell your client what to expect- the purpose of the DRS, who will be there
- Prepare your client for any questions he/she may be asked directly

- Discuss with your client what he/she is willing to settle for
- Explain to your client that he/she has the opportunity at any time to ask you questions/step out of the room with you

#### **The Realities (What to Expect)**

- DCPS sometimes fails to convene a resolution session
- Often no school official present with decision-making authority to resolve the issues in the complaint
- Often no school official present with knowledge of all of the legal issues/facts in the complaint
- Ask about the above issues on the record
- Often the LEA offers the status quo/another meeting
- Sometimes a DCPS lawyer will be there
- Don't give away your whole case!
- DCPS will ask you to sign a form indicating whether the case was resolved. You should get a copy of this form and send it to the Hearing Officer as soon as possible so that the resolution period will end.

#### **What if we actually succeed at a DRS?**

- Sometimes cases are actually resolved at a DRS. This is especially true where the case does not involve a private placement.
- DCPS will rarely settle just part of a case.
- If a settlement is reached, the parties should execute a written, legally binding settlement agreement. 20 USC § 1415(f)(1)(B)(iii)-(iv).
- Both parent and representative of the LEA with to bind the LEA should sign
- Settlement agreement is enforceable in any State court of competent jurisdiction.
- Review period: a party can void the agreement within three business days of its execution (execution = signing by both parties)

#### **What if the Dispute Resolution Session never happens?**

- If the LEA fails to convene the DRS, don't push them to do so- this failure strengthens your case in a pre-hearing motion or at due process hearing
- If the LEA fails to hold the DRS within 15 days, parent may seek intervention of a hearing officer to begin the 45 due process hearing timeline. 34 CFR § 300.510(b)(5) (i.e. file a motion to schedule the hearing).

## **Filing a Due Process Complaint – Cheat Sheet Timelines, How to File, Scheduling**

Consult All 3 Sources of Law

- IDEIA
- DCMR
- Student Hearing Office Standard Operating Procedures (SOP)

### **Timelines**

- 1) Within 10 days of the filing of the Complaint, DCPS must file a Response in conformity with 20 USC 1415(b)(7)(B), unless DCPS previously issued a Prior Written Notice pertaining to the matters in the Complaint
- 2) 30 days for resolution period:
  - a. Within 15 days DCPS must convene a Dispute Resolution Session
  - b. An additional 15 days is allotted for the parties to reach a resolution on their own
- 3) After the 30 day resolution period is completed (or sooner if parties agree no resolution is possible), a hearing must be scheduled and decision issued within 45 days.

### **How to File a Complaint**

- Fax or hand deliver a copy of the complaint to the Office of Dispute Resolution and DCPS Office of General Counsel (if the complaint is against DCPS). If the complaint is against an independent charter, follow instructions on form as to whom to serve (usually Principal, and charter's legal counsel)
- Keep the fax confirmation sheet as proof of filing or get a date stamp from SHO and ODR if hand delivering
- The complaint is considered filed on that day if it is served before 5pm.
- If filing against a charter school or non-public school, also file with the principal or director
- Contact information for the Office of Dispute Resolution  
Office of Dispute Resolution  
810 1st Street NE, 2<sup>nd</sup> Floor  
Washington, DC 20002  
Phone: (202) 698-3819  
Fax: (202) 478-2956
- Contact information for the DCPS Office of General Counsel  
1200 First St., NE, 10<sup>th</sup> Floor  
Washington, DC 20002

Phone: (202) 442-5000

Fax: (202) 442-5115 (for filings/serving documents)

Other fax: (202) 442-5097/5098

### **Scheduling the Hearing**

- If the LEA has not resolved the complaint within 30 days of receipt of the complaint, the hearing is scheduled so that HOD will be issued within 45 days.
- Once the resolution period ends, the Hearing Officer will convene a pre-hearing conference (PHC). During the PHC, the hearing will be scheduled, so you should be prepared with dates when you and your witnesses will be available. You should also be prepared to justify how much time you will need for the hearing.
- The hearing dates will be reflected in the Prehearing Order that will be issued after the PHC.

# CLC Information Sheet: Types of Dispute Resolution in DC

Complaint Type	Who can file?	What can you file on?	What is the process for resolving the dispute once the complaint is filed?	What relief is available?	What is the statute of limitations?	How long does it take?
Due Process Complaint	Parent or educational decision maker ( <i>pro se</i> or through counsel); Local Education Agency.	Disputes between the educational decision maker and education agency over anything related to a child's identification, evaluation, IEP development or placement under IDEIA.	Administrative hearing before an Impartial Hearing Officer.	No damages, but the Hearing Officer has broad discretion to award services (including placement in another school program).	Two years, but longer if there is demonstrable fraud.	Quickest dispute resolution option. Hearing Officer's Decision must be issued within 75 days of the filing of the complaint.
State Complaint	Anyone (parent, agency, concerned citizen).	Same as due process complaints; but state complaints can also be filed to challenge systemic failures (e.g., school that uses inappropriate restraint tactics).	State Agency investigates and issues a written report.	If the State Agency finds that there are violations, they issue a corrective action plan as part of their written recommendation. This can include requests that the non-compliant agency fund services, develop new policies etc.	One year.	OSSE has 60 days to complete the investigation and issue a decision, but can grant itself a continuance. Additionally, mediation may extend the timeline.

# CLC Information Sheet: Types of Dispute Resolution in DC

Formal Grievances	Student, or parent or other individual on behalf of the student.	Violations of Section 504, Title II (prohibits disability discrimination), Title IX (sex), Title VI (race, color, national origin), DC Human Rights Law, Age Discrimination Act of 1975, and also applies in situations described in 5 D.C.M.R. § 2405.2, and “any other violation of a right granted by law that does not have a specific grievance procedure or hearing process provided in this title.	The grievance process provides a three-tiered investigative review (where the grievant can appeal at each stage), and a final review before a grievance review panel of three. <i>See 5 D.C.M.R. § 2405.1 et. seq.</i>	The regulations only discuss resolution of the complaint (and not specific types of relief available). However, in practice, grievances have been used to request, among other things: firing or training of staff, failure to respond to school transfer requests (with the transfer requested as relief).	No statute of limitations is given in the grievance procedures for the initial grievance, but review the regulations for appeal timelines.	Each tier of investigation has a ten day window to complete the investigation and propose resolution.
Complaints with the Office of Civil Rights (“OCR”).	A victim of the discrimination or someone complaining about the	Discrimination on the basis of race, color, national origin, sex, disability or	OCR conducts an investigation of the allegations as a neutral-fact finder.	OCR issues a Letter of Findings after the investigation and if it is determined	No more than 180 calendar days (6 months) from when the incident	Generally takes up to 6 months for OCR to investigate



# CLC Information Sheet: Types of Dispute Resolution in DC

	discrimination on behalf of an individual or group.	age by an educational institution that receives federal funding.		that a party failed to comply with a civil rights law OCR enforces, OCR will attempt to secure the party's willingness to negotiate a voluntary resolution agreement; if the party refuses to negotiate a resolution agreement, OCR will issue a Letter of Impending Enforcement Action and may initiate administrative enforcement proceedings to suspend, terminate or refuse to grant federal financial assistance to the school or refer the case to the Department of Justice.	occurred.	the complaint and issue a Letter of Findings.
--	---	--	--	---	-----------	---



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

## State Complaint Form

An individual or organization may file a written, signed complaint alleging a violation of special education requirements under Part B or Part C of the Individuals with Disabilities Education Act (IDEA). For a complete description of the State complaint procedures, see 34 C.F.R. §§ 300.151-300.153 for IDEA Part B and 34 C.F.R. §§ 303.432-303.434 for IDEA Part C.

*Please Note: This is a model form that was developed to assist you in filing a state complaint. You are not required to use this form to request an investigation; however, all of the information listed below must be included in your complaint.*

### Complainant Information (person or organization filing the state complaint)

Name:	Primary Phone Number:
Address:	Hours when you may be reached at primary number:
	Alternate phone number, if available:
	Email address, if available:
Relationship to child, if alleging violations with respect to a specific child ( <i>optional</i> ):	

### Child Information (if alleging violations about a specific child)

Name:	Name of school or Early Intervention Service (EIS) provider the child attends:
Date of birth ( <i>optional</i> ):	
Address:	If the child is homeless, available contact address or phone number for the parent:

### Mediation

Mediation is a voluntary process where a neutral individual assists the parties in a discussion of the disputed issues with the goal of resolving the dispute in a binding written agreement. Mediation services are available through OSSE's Office of Dispute Resolution (ODR).

Would you be interested in mediation to try to resolve the complaint?

☐

Yes

☐

No

## Statement of Complaint

**Name of Local Education Agency (LEA), school, EIS provider, or other public agency you allege violated the IDEA:**

---

**Please describe the alleged violation(s).** Describe the specific facts that relate to the violation, including dates, names, and locations. If available, you may attach copies of any relevant documentation that supports the allegation(s) made in the complaint.

---

---

---

---

---

---

---

---

---

---

**Please describe your proposed resolution of the problem(s).**

---

---

---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

You may file a signed, completed complaint and any attachments or supporting documentation by mail or email. You must also submit a copy of the complaint to the LEA/school, EIS provider, or other applicable public agency at the same time you file your complaint with the OSSE State Complaint Office.

**BY MAIL:**

Office of the State Superintendent of Education  
Division of Elementary, Secondary, and Specialized Education  
Attn: Victoria Glick  
810 First St. NE, Eighth Floor  
Washington, DC 20002

**BY EMAIL ATTACHMENT:**

[osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)



Office of the State Superintendent of Education



DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

---

# **DISTRICT OF COLUMBIA**

## **FORMAL STATE COMPLAINT**

### **POLICY & PROCEDURES**

**Revised November 2009**

**District of Columbia Office of the State Superintendent of Education  
State Complaint Office**

## INTRODUCTION

The Individuals with Disabilities Education Act (IDEA), 34 CFR §300.151 through §300.153 require the State Education Agency, the Office of the State Superintendent of Education (OSSE)<sup>1</sup>, to adopt written procedures for the investigation and resolution of any complaint alleging that a public agency has violated a requirement of the IDEA.

The State Complaint Office (SCO) of the OSSE will investigate and resolve complaints that allege a violation of Part B of IDEA or the District of Columbia's laws and policies regarding special education. The IDEA, 34 CFR § 303.510 through § 303.512 also require the lead agency for Part C of the IDEA to adopt written procedures for resolving any complaint that alleges a violation of Part C of the IDEA by a public agency or private service provider. The OSSE is the lead agency for Part C in the District of Columbia. This policy and procedures is intended to govern complaints alleging violations of both Part B and Part C of the IDEA, unless indicated otherwise.

As required by IDEA regulations, 34 CFR § 300.151(a)(2) and 34 CFR § 303.510(a)(2), this document will be distributed to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures will also be available on the OSSE website (<http://www.osse.dc.gov>). In addition, the SCO will mail or e-mail a copy of these procedures to individuals and organizations upon request.

### **Complaints filed with the SCO should be directed to:**

#### **BY MAIL:**

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436

#### **BY FAX:**

Fax: (202) 741-0227

#### **BY E-MAIL ATTACHMENT**

**(See Section I of this policy for the procedures for e-mailed complaints):**

[osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

***NOTICE: All complaints must be signed and dated.*** Any questions regarding the State Complaint Policy and Procedures or requests for copies of this document should also be directed to the SCO by mail or fax as indicated above.

---

<sup>1</sup> In compliance with federal law, including but not limited to the provisions of Title IX of the Education Amendment of 1972 (20 U.S.C. § 1681 et seq.), Titles VI and VII of the Civil Rights Acts of 1964 (42 U.S.C. § 2000d et seq., 2000e et seq.), the Age Discrimination Act of 1967 (29 U.S.C. § 621 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101), the OSSE administers all state-operated programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color age, military service, disability or gender, except where exemption is appropriate and allowed by law.

**District of Columbia Office of the State Superintendent of Education**  
**State Complaint Office**  
**Procedures for Complaints Regarding Special Education**

Any individual or organization (“complainant”) may submit to the State Complaint Office (SCO) a written complaint that claims that any District of Columbia public agency, as defined in the glossary of this policy and procedure, has failed to comply with a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or the District’s laws and regulations regarding special education, including the identification, evaluation, educational placement of the child or the provision of a Free and Appropriate Public Education (FAPE) to such child. With respect to Part C of the IDEA, an individual or organization may file a written complaint that a public agency, as well as a private service provider, has not met the requirements of the IDEA or District of Columbia law regarding Part C.

A complaint alleging that a public agency in Part B matters, or a public agency or private service provider in Part C matters, has failed to implement a special education due process hearing officer decision resolving a due process hearing request will be reviewed and resolved by the SCO. Additionally, complaints alleging a failure to implement a settlement agreement resolving a due process hearing request may be reviewed and resolved through the State Complaint process but nothing herein shall delay or deny a party the right to seek enforcement of a settlement agreement in a court of competent jurisdiction.

**I. FILING A STATE COMPLAINT**

---

Any individual or organization (including but not limited to individuals or organizations outside of the District of Columbia) may file a signed, written complaint with the SCO.<sup>2</sup> A model complaint form is attached to these procedures; however, this form does not have to be used to submit a complaint. The SCO will accept complaints submitted by mail or fax. A faxed complaint received for filing by 5:00 p.m. (Eastern Time) will be accepted for filing on that day. A faxed complaint received after 5:00 p.m. (Eastern Time) will be accepted for filing on the next business day. The SCO will also accept complaints submitted by e-mail. However, a complaint submitted by e-mail must be signed, scanned, and attached to an e-mail to enable receipt of a signed complaint. **(Electronic or digital signatures are NOT accepted at this time.)** A complaint submitted by e-mail will be deemed filed/received when it arrives at the SCO, except that e-mailed complaints that arrive at the SCO after 5:00 p.m. will be deemed filed/received on the next business day.

**BY MAIL:**

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002

Telephone: (202) 727-6436

**BY FAX:**

Fax: (202) 741-0227

**BY E-MAIL ATTACHMENT:**

[osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

---

<sup>2</sup> Complaint(s) submitted by an organization must be signed by an individual authorized to represent the organization.

An individual who is unable to file a written complaint by mail, fax, or e-mail may contact the SCO for further assistance. The SCO has a maximum of 60 days after a complaint is filed to investigate the allegation(s) and issue a final written decision.

1. Under Part B of IDEA, the complainant filing a complaint must forward a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the SCO. The SCO will not investigate complaints alleging violations that occurred more than one (1) year prior to the date that the complaint is received by the SCO.
  - a. For complaints involving a District of Columbia Public School (DCPS), a copy of the complaint should be submitted to the DCPS Central Office.
  - b. For complaints involving charter schools, contact the respective charter school or SCO to determine where to submit a copy of the complaint.
  - c. For complaints involving any other education agencies, contact the respective agency for further information.
2. Under Part C of IDEA, the complainant filing a complaint must forward a copy of the complaint to the public agency or private service provider serving the child. The one year limitations period for complaints regarding Part B is not applicable to Part C. For complaints alleging a violation of Part C, the SCO will investigate complaints alleging violations that occurred more than one (1) year prior to the date the complaint is received by the SCO if a longer period is reasonable because the alleged violation continues for that child or other children, or the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

A complaint regarding Part B must include:

- a. A statement that a public agency has violated a requirement of Part B of the IDEA and/or a requirement of District of Columbia law regarding special education;
- b. The facts on which the statement is based;
- c. The signature and contact information for the complainant; and
- d. If alleging violations with respect to a specific child,<sup>3</sup> the complaint must include:
  - i. the name and address of the residence of the child;
  - ii. the name of the school the child is attending;
  - iii. 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;
  - iv. a description of the nature of the problem affecting the child, including facts relating to the problem; and
  - v. a proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

A complaint regarding Part C must include:

---

<sup>3</sup> If a complaint regarding a specific child is filed by someone other than the child's parent or an eligible adult student to whom rights under Part B of the IDEA have transferred pursuant to the IDEA and District of Columbia law, the SCO will notify and provide copies of the complaint and any relevant correspondence to the parent of the child or eligible adult student.

- a. A statement that a public agency, or private service provider has violated a requirement of Part C of the IDEA and/or a requirement of District of Columbia law regarding early intervention services;
- b. The facts on which the statement is based; and
- c. The signature and contact information for the complainant.

It is encouraged, but not required, that the complainant attach copies of any relevant documentation that supports the allegation(s) made in the complaint.

## **II. COMPLAINT PROCEDURES/RESOLUTIONS**

---

### Initiation of a Complaint Investigation

1. Upon the filing of a complaint, the SCO will assign an investigator to take responsibility for the complaint.
2. If the SCO determines that the complaint does not meet the requirements in Section I, the SCO will not investigate the complaint but will notify the complainant of the basis for the SCO's determination. The complainant may re-file, if desired. Re-submitted complaints will be treated as a new complaint.
3. If a complaint is received that is the subject of a due process complaint or contains multiple issues of which one or more are currently the subject of a due process complaint, the SCO will set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. The SCO will notify the complainant and the relevant public agency or private service provider of any issues that will be set aside until the conclusion of the hearing. The SCO will investigate those issues that are not the subject of a due process complaint using the timeline and procedures in this policy.
4. If an issue raised in the complaint has previously been decided through a due process hearing involving the same parties:
  - i. The due process hearing decision is binding on that issue; and
  - ii. The SEA will inform the complainant to that effect.
5. If the SCO determines that an investigation will **NOT** be conducted:
  - a. The SCO will send a notification to the complainant; and
  - b. A copy of the notice will be forwarded to the relevant public agency or private service provider.
6. If the investigator determines that an investigation is warranted, the SCO will take the following action:
  - a. The SCO will send a written notification of receipt of the complaint to the complainant, along with copies of the Procedural Safeguards Notices for Part B and/or Part C. The written notification will include the date that the complaint was filed with the SCO, the individual or organization that filed the complaint, and the issue(s) raised in the complaint that will be investigated. See Section V regarding the process and procedures for the investigation.



- b. The SCO will send a notice as described below, along with a copy of the complaint, to the public agency or private service provider involved, with a request for a written response to the alleged violation(s) and supporting documentation. The notice will:
  - i. include the date that the complaint was filed with the SCO, the individual or organization that filed the complaint, and the issue(s) being addressed;
  - ii. provide an opportunity for the public agency or private service provider to include in its response to the complaint, at the discretion of the public agency or private service provider, a proposal to resolve the complaint;
  - iii. provide an opportunity for the public agency or private service provider to include in its response to the complaint a statement that the public agency or private service provider will voluntarily engage in mediation consistent with 34 C.F.R. § 300.506 with the complainant;
  - iv. request the public agency or private service provider to review the issue(s) and determine action(s) to resolve the issue; and
  - v. request the public agency or private service provider to provide the child's relevant records or other documentation within a specified time frame.
- c. The SCO will send a copy of the notice provided in Section II.4.b. to the complainant.
- d. The complainant and the public agency may submit additional information about the allegation(s) in the complaint, either orally or in writing. If the complainant raises new issues unrelated to the complaint, the investigator will immediately notify the SCO. The new issue(s) is treated as a new complaint and must follow the same procedures as a new complaint.

#### Public Agency: Response to Complaint Requirements

The public agency or private service provider must provide a written response to the SCO within ten (10) business days upon receipt of the complaint from the SCO. The public agency or private service provider must simultaneously send a copy of the written response (not supporting documentation) to the complainant consistent with the confidentiality requirements in federal and District of Columbia law and regulation. If the complaint was filed by an organization or individual who is not the parent of a child or an eligible adult student, the public agency or private service provider must also simultaneously send the response to the parent or eligible adult student.

Failure to respond within the allotted ten (10) business days may result in a finding of noncompliance or sanctions against the public agency or private service provider in question.

An extension of the ten (10) day timeline for a response may be granted if necessary to allow the complainant and public agency or private service provider to resolve the complaint themselves. A request for such an extension must be submitted in writing to the SCO by the public agency or private service provider. Both the complainant and the public agency or private service provider will be notified by the SCO of any extension granted.

### **III. MEDIATION SERVICES**

---

As an alternative to filing a state complaint or after a complaint is filed, mediation services, in accordance with the IDEA 34 CFR §300.506 and 34 CFR § 303.419 are available, at no cost to the complainant, through the OSSE. Mediation is a voluntary process and both the complainant and public agency or private service provider must be willing to participate. Either the complainant or the public agency or private service provider may initially suggest this option by asking the other party if they are

willing to mediate the disputed issue. If a complaint is filed, mediation will not delay the issuance of the final decision unless, in complaints alleging a violation of Part B, the complainant and the agency agree to extend the timeline to engage in mediation. For more information about mediation contact:

Office of the State Superintendent of Education  
Division of Special Education  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436  
**BY FAX:** (202) 741-0227  
**BY E-MAIL ATTACHMENT:** [osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

OR  
Student Hearing Office  
810 First Street, NE – 2<sup>nd</sup> Floor  
Room 2001  
Washington, DC 20003  
Phone: (202) 698-3819  
Fax: (202) 478-2956

#### **IV. EARLY RESOLUTION**

---

If the complainant and public agency or private service provider are able to resolve the complaint within 60 days after the complaint is filed, and so inform the SCO, the SCO will close the case without issuing a decision.

#### **V. INVESTIGATION**

---

Within 60 days following the SCO's receipt of a properly filed complaint that meets the requirements of Section I, the SCO will:

1. Conduct an independent investigation of the complaint which may include an on-site investigation, if necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency or private service provider with the opportunity to respond to the complaint, including, at a minimum:
  - a. at the discretion of the public agency or private service provider, submission of a proposal to resolve the complaint; and
  - b. an opportunity for the complainant and the public agency or private service provider to voluntarily engage in mediation.
4. Review all relevant information and make an independent determination as to whether the public agency or private service provider violated a requirement of Part B or Part C of IDEA or corresponding District of Columbia law;

## **VI. FINAL DECISION**

---

Upon completion of the investigation and within 60 days of the filing of the complaint, the SCO will determine whether the public agency or private service provider complied with the applicable provisions of Part B or Part C of the IDEA and regulations in a final written decision. The SCO will:

1. Issue and send the final written decision to the complainant and agency involved that addresses each issue raised in the complaint, except those excluded from consideration because they are the subject of a pending due process hearing. The final decision will include the following information:
  - a. summary of complaint issues, parties involved, and the investigatory process;
  - b. findings of facts, based on the information received during the investigation;
  - c. conclusions based on federal and District of Columbia law regarding whether the public agency is in compliance with the law;
  - d. corrective action(s) ordered by the SCO if the public agency or private service provider is found in non-compliance;
  - e. time lines by which the public agency or private service provider is required to respond to the letter and initiate the corrective action(s); and
2. Indicate the date the file was closed and that a decision was made with respect to compliance.
3. If in resolving a complaint, the SCO determines that the public agency or private service provider has failed to provide appropriate services, the OSSE, pursuant to its general supervisory authority under the IDEA will address:
  - a. the failure to provide appropriate services, including corrective action to address the needs of the child (such as compensatory services or monetary reimbursement), and
  - b. appropriate future provision of services for all children with disabilities.
4. To facilitate effective implementation of the SCO's final decision, the SCO may provide assistance to the complainant and public agency or private service provider with any negotiations between those parties that may be useful for implementation of the final decision.

The SCO may extend the 60-day deadline:

1. If exceptional circumstances exist; or
2. In complaints alleging a violation of Part B, the complainant and public agency involved agree to an extension in order to engage in mediation.

## **VII. CORRECTIVE ACTION PLANS**

---

1. If in resolving a complaint the SCO finds the public agency or private service provider has failed to provide appropriate services to address the needs of a child with disability, and to facilitate effective implementation of the SCO's final decision, the SCO may require the public agency or private service provider to access training and technical assistance by the OSSE or other public agency.
2. In some cases the SCO may require the public agency to develop a corrective action plan (CAP) and may also require that it be submitted to the SCO for approval.

3. The complainant may also submit comments concerning the plan. The SCO may require revisions to the CAP before approving it. A copy of all communications concerning the plan will be provided to the complainant.

#### **VIII. ENFORCEMENT**

---

1. The SCO is responsible for tracking and ensuring that the final written decision, including any CAP, is enforced.
2. Upon verification of completion of all corrective action outlined in the CAP, the SCO will notify the public agency or private service provider. The SCO may, at its discretion, continue to monitor the public agency or private service provider and request additional action to ensure full compliance with federal and state regulations.

#### **VIII. WITHDRAWAL OF COMPLAINT**

---

At any time prior to the date that the SCO issues the final decision regarding a complaint, the complaint may be withdrawn by the complainant. Upon withdrawal of a complaint, the SCO will not take further action regarding the matter and will close the file.

The withdrawal of a complaint must be made in writing. If the complaint is withdrawn, the investigator will send a written confirmation of the withdrawal to the complainant and a copy of the confirmation to the other parties. Withdrawal of a complaint does not preclude the complainant from re-filing the complaint at a later date.

#### **X. DISSEMINATION OF THE STATE COMPLAINT RESOLUTION PROCEDURES**

---

This document will be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures will also be available on the OSSE website (<http://www.osse.dc.gov>). In addition, the SCO will mail or e-mail a copy of these procedures to individuals and organizations upon request. If you have any questions or need assistance regarding this State Complaint Policy and Procedures, please contact the OSSE-SCO.

## GLOSSARY

---

<b>CAP</b>	Corrective Action Plan; plan of action to correct violations committed
<b>Complaint</b>	A signed, written document indicating that a District of Columbia public agency has failed to comply with a requirement of the Individuals with Disabilities Education Act (IDEA) Part B or with a requirement of the District's laws and regulations regarding special education (including the identification, evaluation, educational placement of the student(s) or the provision of a free and appropriate public education (FAPE) to such student(s)) or that a public agency or private service provider failed to comply with a requirement of IDEA Part C or of the District's laws and regulations regarding early intervention services.
<b>Complainant</b>	The student (aged 18-21 years inclusive or an emancipated minor), parent/guardian, advocate or other interested party or organization who has submitted the complaint to the Office of the State Superintendent of Education-State Complaint Office.
<b>Day</b>	Calendar day, unless specified otherwise
<b>DC</b>	District of Columbia
<b>DCPS</b>	District of Columbia Public School
<b>Due Process Hearing</b>	A formal adjudicatory hearing before an impartial Hearing Officer which is guaranteed under the IDEA and relevant state law and in which both parties may be represented by legal counsel and may present evidence and sworn testimony to be considered by the Hearing Officer.
<b>Due Process Complaint</b>	A request for a due process hearing that must be filed with the Student Hearing Office and copies served on all other parties.
<b>FAPE</b>	Free Appropriate Public Education, which is defined as an individualized education program, provided at public expense that emphasizes special education and related services designed to meet the unique needs of the student.
<b>IDEA</b>	Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., 34 CFR Part B and C.
<b>Mediation</b>	A voluntary process in which a neutral individual (mediator) assists the parties in having a full discussion and reaching an agreement.
<b>LEA</b>	Local Education Agency. In the District of Columbia, LEAs also include public charter schools that have elected to be treated as an LEA for purposes of the IDEA.

<b>Private Service Providers</b>	A private, non-public entity that provides early intervention services under Part C of the IDEA.
<b>Public agency</b>	Any agency responsible for providing a free, appropriate public education (FAPE) to any child who is a resident of the District of Columbia. Public agencies include the SEA, LEA, educational service agencies, nonprofit public charter schools that are not otherwise included as LEAs or educational service agencies and are not a school of an LEA or educational service agency, and any other political subdivisions of the District of Columbia that are responsible for providing education to children with disabilities.
<b>OSSE</b>	Office of the State Superintendent of Education, the District of Columbia's state education agency
<b>SEA</b>	State Education Agency. In the District of Columbia the SEA is the Office the State Superintendent of Education.
<b>SCO</b>	State Complaint Office, where complaints are filed and investigated
<b>Special Education</b>	Specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disability.
<b>Student Hearing Office</b>	The office within the OSSE that coordinates that provision of due process hearings and mediation services.



# Office of the State Superintendent of Education



DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

## Model State Complaint Form

If you believe that a public agency has failed to comply with the Individuals with Disabilities Education Improvement Act (IDEA) or with a requirement of District of Columbia law regarding special education under Part B of IDEA or a public agency or private service provider with regard to early intervention services under Part C of the IDEA, you may file a complaint to initiate an investigation of the matter. Should you need assistance completing this form, please contact the State Complaint Office (SCO) for sources to contact to obtain assistance.

**INSTRUCTIONS:** This form has been developed to assist you in filing a state complaint. You do not need to use this form to request a complaint investigation; however, unless indicated otherwise all of the information in this form must be included in a written request for a complaint investigation. Failure to provide all required information may result in a determination by the SCO that the complaint will not be investigated by the SCO. Requests for complaint investigations **MUST be signed and dated and filed with the SCO and, for IDEA Part B, a copy must be forwarded to the public agency at the same time the complaint is filed with the SCO.**

FOR OFFICE USE	Case No.	Assigned To:	Date Received:	Due Date:

### Complainant Information

Name of Complainant:	Date:
	Relationship to child, if alleging violations with respect to specific child ( <i>Optional</i> ):
Address (Street, City, State, Zip):	Phone Number:
	Alternate Phone Number, if available ( <i>Optional</i> ):
	E-mail, if available:

### PART B (children 3 through 21) ONLY:

**Child Information**, if alleging violations with respect to a specific child.

Name of Child:	Date of Birth (MM/DD/YYYY, if known ( <i>Optional</i> )):
Address of the residence of the child(Street, City, State, Zip):	If the child is homeless, available contact information of the child:
Name of Parent or Guardian (if other than person filing complaint), if known ( <i>Optional</i> ):	



DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

## This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

---

---

---

---

---





## Office of the State Superintendent of Education

DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

### Mediation<sup>4</sup>

Would you be interested in mediation to try to resolve the complaint? ☐ Yes ☐ No

Would you like more information about mediation? ☐ Yes ☐ No

### Signature(s)

*By federal regulation, you must sign the request for a complaint investigation.*

Signature of the person(s) filing the complaint: \_\_\_\_\_

Date: \_\_\_\_\_

### Checklist

Before mailing/faxing/e-mailing your request for a complaint investigation, make sure the items below have been completed.

\_\_\_\_\_ You have completed all sections

\_\_\_\_\_ You have provided detailed information in regard to the allegation (attached additional pages if needed).

\_\_\_\_\_ You have provided a proposed resolution of the problem if alleging violations with respect to a specific child and to the extent known and available.

\_\_\_\_\_ You have signed your complaint.

### Please submit complaint to:

#### BY MAIL:

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436

**BY FAX:** (202) 741-0227

**BY E-MAIL ATTACHMENT:** [osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

<sup>4</sup> Mediation is a voluntary process in which a neutral individual (mediator) assists the parties in having a full discussion and reaching an agreement. As an alternative to filing a state complaint or after a complaint is filed, mediation services are available, at no cost to the complainant, through the OSSE's Student Hearing Office. Mediation is a voluntary process and both the complainant and public agency or private service provider must be willing to participate. Mediation will not delay the issuance of the final decision unless, in complaints alleging a violation of Part B, the complainant and the agency agree to extend the timeline to engage in mediation.



---

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

---

*District of Columbia Office of the State Superintendent of Education*

*Superintendent Hanseul Kang*

## Table of Contents

SECTION I: INTRODUCTION & PURPOSE .....	4
SECTION II: THE OSSE OFFICE OF DISPUTE RESOLUTION .....	5
§ 201 General Responsibilities .....	5
§ 202 Hours of Operation .....	6
§ 203 Filing of Complaints and Other Papers.....	6
§ 204 Service of Documents .....	7
§ 205 Fairness and Impartiality.....	7
§ 206 Civility and Decorum.....	8
SECTION III: ALTERNATIVE DISPUTE RESOLUTION .....	8
§ 301 Alternatives to a Due Process Hearing .....	8
§ 302 Facilitated IEP/IFSP Meeting .....	8
§ 303 Facilitated Resolution Meeting .....	9
§ 304 Mediation .....	9
SECTION IV: THE DUE PROCESS COMPLAINT .....	10
§ 401 Overview.....	10
§ 402 Due Process Procedures – Children under Age 3 (Part C) and Due Process Procedures Regarding Services from Strong Start/DC Early Intervention Program.....	11
§ 403 Due Process Procedures – Students Ages 3 to 22 (Part B) .....	14
§ 404 Notice and Service .....	15
§ 405 Contents & Timeline for Filing Complaint (Parts B and C) .....	17
§ 406 Sufficiency of Complaint.....	18
§ 407 Amending a Due Process Complaint .....	19
§ 408 Response to a Due Process Complaint (Parts B and C).....	19
§ 409 Rights of All Parties (Parts B and C).....	20
§ 410 Special Rights of Parents (Parts B and C).....	22
SECTION V: PREPARING FOR THE HEARING .....	23
§ 501 Pre-hearing Matters.....	23
§ 502 Resolution Meeting and Resolution Period (Parts B and C).....	24
§ 503 Case Assignments and Scheduling the Hearing.....	26

§ 504 Disclosure of Evidence (Parts B and C).....	26
§ 505 Interpretation Services .....	27
§ 506 Ordering Interpreter Services.....	27
§ 507 Cancellation of Interpreter Services.....	27
§ 508 Role of Interpreter.....	28
§ 509 Document Translation.....	28
§ 510 ADA Accommodations.....	28
SECTION VI: THE IMPARTIAL HEARING OFFICER.....	28
§ 601 Authority, Responsibilities, and Qualifications of Impartial Hearing Officers .....	28
§ 602 Ex Parte Communications (Private Talks) Prohibited .....	29
§ 603 Disqualification of Impartial Hearing Officer.....	29
SECTION VII: THE DUE PROCESS HEARING .....	30
§ 701 General Information.....	30
§ 702 Practice of Law .....	30
§ 703 Function of Due Process Hearing .....	30
§ 704 Failure to Appear .....	30
§ 705 Conducting the Hearing .....	30
§ 706 Burden of Proof.....	32
§ 707 Evidence.....	32
§ 708 Expedited Due Process Hearing (Part B) .....	33
§ 709 Motions .....	33
§ 710 Continuances.....	35
SECTION VIII: OUTCOMES.....	37
§ 801 Settlement .....	37
§ 802 Involuntary Dismissal .....	37
§ 803 Withdrawal.....	38
§ 804 The Hearing Officer Determination.....	38
§ 805 Final Decision and Right of Appeal.....	39
SECTION IX: CONCLUSION.....	39

## 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 disabilities<sup>1</sup>, 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.

---

<sup>1</sup> 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.)<sup>2</sup>. 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.

---

<sup>2</sup> 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](mailto: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](mailto: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](mailto: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.<sup>3</sup>

#### 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.

---

<sup>3</sup> 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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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.

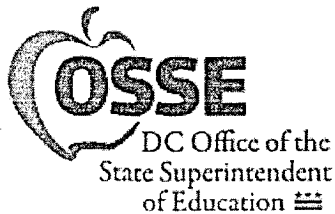
### **§ 805 Final Decision and Right of Appeal**

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.





---

## Memorandum

**To:** Stakeholders to the District of Columbia Special Education Administrative Due Process Hearing System

**From:** Dakarai Thompson, Student Hearing Office

**CC:** Lyn Beekman, Chief Hearing Officer  
Special Education Administrative Due Process Hearing Officers  
Student Hearing Office

**Date:** 20 August 2010

**Re:** Due Process Hearing Notice/ Notice of Hearing Officer Appointment

---

This memorandum serves as notice that the Student Hearing Office (SHO) is moving forward with a programmatic and process reform re the information contained in the "Due Process Hearing Notice" that the office issues after a due process complaint is filed (see sample attached).

This programmatic reform is consistent with the training of the Independent Hearing Officers (IHO) noticed in the "Appropriate Standard Practices" document.<sup>1</sup>

Undergirding aspects of the standard practices is the principle that parties and IHOs must communicate at integral points in the due process hearing system to ensure fair, effective, and timely hearings and decisions. Some of these vital case management junctures include 1. contact upon the filing of a due process complaint, 2. contact to schedule a pre-hearing conference, and 3. contact to schedule a due process hearing.

In support of this principle, the SHO has substituted the office's "Due Process Hearing Notice" with the "Notice of Hearing Officer Appointment" (see attached.)

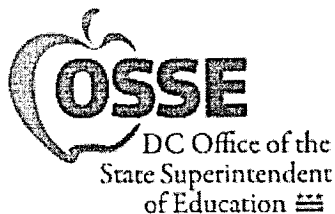
### Appointment Notices

Upon receipt of a due process complaint, the SHO will issue a "Notice of Hearing Officer Appointment." This document, noticed and attached to the "Appropriate Standard Practices", will provide all parties to a due process hearing complaint with the name and contact information of their assigned IHO. This document will not provide parties with provisionally scheduled pre-hearing conference and due process hearing dates and times.

---

<sup>1</sup> The final version of the "Appropriate Standards Practices" was forwarded to all IHOs on 4/19/10. The same final version was forwarded to a listserve of practitioners to the due process hearing system on 4/28/10.

---



After an IHO has been assigned to a due process complaint, they will contact parties to the matter and schedule the pre-hearing conference. In scheduling a pre-hearing conference, IHOs have been trained and directed that the date of the pre-hearing conference must consider the expedited or non-expedited nature of the case; any timeline adjustments as a result of the resolution process; and be early enough in the hearing timeline to provide for an effective and efficient hearing and a timely hearing decision. This change in process also allows for consideration of the schedules of parties and the IHO at the commencement of the process and will avoid unnecessary rescheduling<sup>2</sup>.

[Note: Pre-hearing conferences are mandatory in every matter where the entire case is not resolved prior to the commencement of the hearing timeline.]

#### Pre-Hearing Conferences

Either before or no later than the scheduled pre-hearing conference, IHOs will also schedule the due process hearing. In scheduling due process hearings, IHOs have been trained and directed to consider the above factors and the timeline for the issuance of the hearing decision. In addition to the consideration of the schedules of parties to the matter, this reform will also the IHO to schedule the hearing to ensure the availability of any necessary witnesses, clients, etc., the required length of the due process hearing<sup>3</sup>, and the due date of the hearing decision. To memorialize the pre-hearing conference, IHOs must issue a pre-hearing order within three (3) business days after the pre-hearing conference.

To ensure that pre-hearing conferences and due process hearings are properly and timely scheduled and adjudicated, the SHO has implemented a number of measures, both in our electronic docketing system and our office business process, to monitor and examine every case.

The new "Notice of Hearing Officer Appointment" will be used for all due process complaints filed on and after Friday, August 27, 2010. If you have any questions/comments re this revised practice, please don't hesitate to contact me by phone at 202-481-3444 or by email at [Dakarai.thompson@dc.gov](mailto:Dakarai.thompson@dc.gov), or Chief Hearing Officer Lyn Beekman by phone at 202-481-3448 or by email at [Lyn.Beekman@dc.gov](mailto:Lyn.Beekman@dc.gov)

Thank you and please have a nice day.

---

<sup>2</sup> In non-expedited cases, Hearing Officers shall generally schedule the pre-hearing conference within one week of the termination of the resolution period. In an expedited hearing, Hearing Officers shall schedule the pre-hearing conference as soon as possible.

<sup>3</sup> Hearing Officers have also been trained and directed to resolve all doubts as to the length of time for a due process hearing 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 hearing decision.

## 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 I-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.

## RESOLUTION PERIOD DISPOSITION FORM

This form is designed to assist the LEA in notifying the Hearing Officer and the QFT regarding the outcome of the resolution meeting(s). **Failure to notify the Hearing Officer and the QFT within 3 calendar days after the termination of the resolution period may result in a finding of noncompliance by the Office of the State Superintendent of Education, Quality Assurance and Monitoring Division.**

### Student and Case Information

Student Name:

Student Date of Birth:

Student ID:

QFT Case Number:

### Parent Information

Parent Name:

Parent Address:

Parent Phone Number:

### LEA Information

Name of LEA:

LEA Representative:

LEA Address:

LEA Representative Phone Number:

LEA Representative Fax:

### Resolution Meeting Information

Date Due Process Complaint Filed:

Date of Resolution Meeting(s):

Was meeting held within 15 calendar days or, in the case of an expedited discipline hearing, within 7 days?

Yes      No      [check one]

If Meeting was not held within 15/7 days, reason for delay (*reason does not excuse the LEA from the obligation to comply with the 15/7 day timeline*):

## Resolution Outcome

### I. Resolution Agreement

Resolution Agreement reached that satisfies all issues in the complaint. (All issues in the complaint have been resolved and an agreement has been reached to the satisfaction of the parties.) The parties agree the due process complaint should be dismissed.<sup>1</sup>

**A copy of the Resolution Agreement must be forwarded to the Hearing Officer and the QFT.**

### II. Partial Resolution Agreement

Resolution Agreement reached that satisfies one or more of the issues in the complaint, but does not satisfy all issues in the complaint. (The issues in the complaint have been partially resolved and an agreement has been reached on these issues to the satisfaction of the parties.) The parties agree that the resolved issues should be dismissed and all outstanding issues should proceed to a due process hearing.<sup>2</sup>

### III. No Resolution Agreement

- A. No agreement was reached by the end of the 30 day resolution period and the case should proceed to a due process hearing.
- B. Although an agreement was not reached at the resolution meeting, the LEA and parent agree to continue to attempt to resolve the complaint prior to the end of the 30 day resolution period. The 45 day timeline will not begin until the 30 day resolution period has expired.
- C. Although the 30 day resolution period has not yet expired, the LEA has not resolved the issues in the complaint to the satisfaction of the parent and the LEA and parent agree no agreement is possible prior to hearing. The LEA and parent agree that the case should proceed to due process hearing.

<sup>1</sup> If all issues in the due process complaint were resolved to the satisfaction of the parties, provide a copy of the Resolution Agreement to the Hearing Officer, the QFT, and the Blackman/Jones Database email address below.

<sup>2</sup> If some, but not all, issues in the due process complaint were resolved to the satisfaction of the parties, provide a copy of the Resolution Agreement to the Hearing Officer, the QFT, and the Blackman/Jones Database email address below.

## Signatures and Affirmation

I affirm that if an offer of substantive relief was made, and one or more issues in the complaint are resolved at the resolution meeting, a legally binding agreement was executed on or before the date of this form. I further affirm that the information provided in this form is true and correct.

Date,

Signature of Parent/guardian

Date,

Signature of LEA Representative

### **Mail, fax, e-mail, or deliver this form to:**

Office of the State Superintendent of Education  
Office of Dispute Resolution  
810 First Street, NE 2nd floor  
Washington, DC 20002  
(202) 478-2956  
[hearing.office@dc.gov](mailto:hearing.office@dc.gov)

In addition, please email this form to the Blackman Jones Database: [dueprocess@dc.gov](mailto:dueprocess@dc.gov)

## **Mandatory Notice Regarding Mediation**

### **You Have a Right to Resolve Your Dispute through Mediation**

If, after attempting to resolve your dispute through Resolution, you are still not satisfied with the results, the Office of the State Superintendent of Education provides a mediation process which is voluntary on the part of all participants and is in compliance with the INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA). Participating in a Due Process Hearing can be stressful, and in the end, a Hearing Officer determines the results. With Mediation, both sides have the opportunity to frame what the results will ultimately be.

Under IDEA, the Office of the State Superintendent of Education must ensure that procedures are established and implemented to allow parties to disputes involving any matter under 34 CFR Part 300, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. [34 CFR 300.506(a)] [20 U.S.C. 1415(e)(1)]

By law, Mediation cannot be used to deny or delay any participant's right to a due process hearing, or to deny any other rights afforded under IDEA. Mediations are conducted by qualified and impartial mediators who are trained in effective mediation techniques. At the agreement of both parties to participate in mediation, the Office of the State Superintendent of Education will assign a mediator. The purpose of mediation is to provide a way for people who are parties to a dispute to discuss and resolve their concerns openly, without fear that what they say will be used against them.

If you are interested in mediating your dispute, OSSE will provide a fair, impartial mediator who is both qualified and knowledgeable in the laws and regulations of IDEA to mediate your concerns. This service is absolutely FREE to parents, and will be scheduled in a location and at a time that is convenient to the parties to the dispute. [34 CFR 300.506(b)(5)] [20 U.S.C. 1415(e)(2)(E)]

**Your Mediation Agreement is Enforceable by Law: A written, signed mediation agreement under 34 CFR 300.506(b) is enforceable in any State court of competent jurisdiction or in a district court of the United States. [34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(F)]**

### **Why Choose Mediation?**

**SPEED:** In resolving or narrowing disputes through mediation, parties avoid the delay of a third party or judicially decided outcome.

**ECONOMY:** In resolving or narrowing areas of disputes through mediation, parties save an enormous amount of time, energy, and expense associated with hearings, protracted conflict and litigation.

**QUALITY OF SETTLEMENT:** Studies indicate parties entering into voluntary agreements through mediation are far more likely to adhere to and fulfill commitments made in such agreements than they are with judicially imposed resolutions.

**PROMOTE COOPERATIVE OUTCOMES:** Through mediation, parties avoid the "win-lose" outcome that may result from a hearing because the parties work together to create a "win-win" for everyone.

**YES:**

Parent: I, \_\_\_\_\_, am interested in resolving this complaint through Mediation.

LEA Representative: I, \_\_\_\_\_, on behalf of \_\_\_\_\_  
am interested in resolving this complaint through Mediation.

If you checked “yes”, you will be contacted by a representative from the OSSE Office of Dispute Resolution’s Mediation Team.

**NO:**

Parent: I, \_\_\_\_\_, am not interested in resolving this complaint through Mediation.

LEA Representative: I, \_\_\_\_\_, on behalf of \_\_\_\_\_  
am not interested in resolving this complaint through Mediation.

Date,

Signature of Parent/guardian

Date,

Signature of LEA Representative

For more information about Mediating a Dispute, contact the OSSE Office of Dispute Resolution at (202) 698-3819.



**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
1150 Fifth Street, S.E.  
Washington, DC 20003

---

Parent Name on behalf of  
Student

Petitioner,

Hearing Officer: Seymour DuBow

v.

Case No:

DCPS

Respondent

---

**NOTICE OF PRE-HEARING CONFERENCE**

A pre-hearing conference by telephone has been scheduled for July 19<sup>th</sup> 2010 at 3:30 p.m.

**Please be advised that the purpose of this Notice is two-fold.** The first purpose of this notice is to advise you of the various matters that I will discuss with you during the pre-hearing conference. The second purpose is to provide you an opportunity to confer with your client prior to the pre-hearing conference and take such other steps as may be necessary in order to meaningfully address these matters and otherwise participate in the pre-hearing conference.

**Note: The attorney for each party participating in any conference shall have the 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 having such authority.**

At the time of the pre-hearing conference, it is my expectation that the parties will be in a position to discuss and address all of the items on the enclosed Subjects To Be Considered.\*

Within three business days of the pre-hearing conference, I will issue a pre-hearing order including stipulations, admissions of fact, agreements reached, and ruling made during the pre-hearing conference. If either party believes that the pre-hearing order contains omissions or misstatements, the party must bring them to my attention

within three business days of the date of the Order with a copy to opposing counsel. I will address your concerns promptly.

Date: June 28, 2010

Seymour DuBow

\* If counsel is already familiar with Subjects To Be Considered it will not be enclosed.

## **PREHEARING CONFERENCE – SUBJECTS TO BE CONSIDERED**

1. If a party is not represented by counsel, does the party plan to retain counsel before the due process hearing? If so, the party or new counsel must immediately advise the Hearing Officer and opposing counsel of the counsel's appearance in the case.  
  
If not represented by counsel, did the parent receive notice of any free or low cost legal services that may be available?
2. When did the Resolution Meeting process conclude? What was the agreement reached by the parties, if any? If DCPS is the LEA, did it file the disposition form and was it signed by the parties? Are the parties willing to pursue/considering pursuing in good faith mediation or further settlement discussions? When does the 20/45-day deadline start running?
3. Please indicate whether the student's name, date of birth, school of attendance, and student number are accurately reflected on the due process complaint notice.
4. What are the specific issues to be determined (e.g., what aspects of the IEP are alleged to be inappropriate?) and what is the specific proposed relief (e.g., what type/amount of compensation is sought?) During the prehearing the Hearing Officer may require the parties to provide further clarification of their claims, defenses and relief requested.
5. Did the Respondent file a response? If not, how will the Hearing Officer address Respondent's failure to file it?
6. Are there any admissions of fact or stipulations? Did the parties reach an agreement on any of the claims in the complaint? The Hearing Officer may ask counsel to certify in the 5 day disclosures or start of the due process hearing that they have attempted in good faith to stipulate to facts that are not in dispute.
7. If this is an expedited hearing in the context of discipline, are there other issues presented that require bifurcation (given the different timelines)?
8. What witnesses does each party plan to call at the due process hearing i.e., description of each witness and the subject matter of his/her testimony. How much time is needed to hear the case? What additional time, if any, should be scheduled to deal with unanticipated problems/delays?
9. When will the hearing be held (i.e., dates and times)?
10. Is any continuance of the 45-day timeline anticipated? If so, how might it be avoided?

11. What is the due date for the five-day disclosures of proposed exhibits, witness lists (including a name, role/position, address, phone number, and general thrust of the testimony), and evaluations/written recommendations that may be used at the due process hearing?

**Note:** (1) The disclosure must separately identify those witnesses whom, and exhibits which, the party expects to present/offer and those whom/which the party may call/offer if the need arises; (2) the disclosure must designate witnesses expected to be presented by telephone if allowed in the discretion of the Hearing Officer; (3) copies of all proposed exhibits shall be marked (Petitioner as P-1, Respondent as R-1 and Joint as J-1); (4) each party shall at the 5-day deadline send the Hearing Officer a copy of the disclosure with the exhibits divided by tabs, in such manner as the Hearing Officers directs; (5) in their five day disclosures, each party must provide a curriculum vitae for all proposed expert witnesses.

Hearing Officers may require counsel to provide written objections to the opposing party's exhibits within two business days of their receipt of the five day disclosures. Hearing Officers may also encourage counsel to submit joint exhibits when possible.

12. Has either party had or anticipate having a problem accessing or obtaining witnesses or records (e.g., the need to compel witnesses or the production of documents)? The requesting party should be prepared to explain the relevance of the witness testimony or records requested.

If yes, the party that refuses to produce the witness or records should explain why they will not voluntarily ensure the appearance of the witness or production of the documents. Will the LEA make current employees voluntarily available at the due process hearing?

13. Does either party anticipate any witness scheduling or other logistical problems? How does the party propose to resolve them?
14. Have counsel provided the Hearing Officer all known (to both counsel and his/her firm/organization) pending due process complaints and all HODs rendered and settlement agreements reached in the last 18 months regarding the Student?
15. Do the parties anticipate any motions or other disputes that should be addressed during the prehearing conference? If so, how will they be addressed i.e., the dates on which motions must be filed and the timeline for decisions on the motions?
16. Should a date and time be set for a second prehearing conference, and if so, when?
17. Any other matters that the Hearing Officer deems appropriate.

**NOTE:** When the parties are represented by counsel, it will be presumed (and included in the Prehearing Order), unless counsel objects at the prehearing conference, that:

- There are no objections to the appointed Hearing Officer.
- The Parent opts for a hearing to be closed.
- The Parent will participate in the due process hearing.
- The Student will not be present at the due process hearing.
- Neither party requires interpreter services or other accommodations.
- The Petitioner shall proceed first at the hearing.
- The Petitioner shall carry the burden of proof.
- The parties shall be prepared to present oral closing argument
- The Parent elects to be provided a written decision.
- The parties consent to a copy of the decision being transmitted electronically or by facsimile.

**DIRECTIVE:** Counsel are directed that, between now and the time the HOD is issued, should any dispute arise, counsel must first confer with opposing counsel. In the unlikely event that counsel cannot resolve the dispute between themselves, counsel must immediately submit by e-mail 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. 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.

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 5<sup>th</sup> Street, S.E.  
Washington, DC 20003

---

PA, on behalf of  
STUDENT,\*

Petitioner,

Hearing Officer: Seymour DuBow

v

Case No: 2010-

DCPS

Respondent.

---

**PREHEARING ORDER**

On July 19, 2010 at 3:30 p.m., a prehearing conference was held in the above matter. Participating in the conference were: Petitioner's counsel, Katherine Zeisel; Respondent's counsel, Linda Smalls; and this hearing officer.

The following matters were addressed:

1. The parties concluded the Resolution Meeting process by failing to reach an agreement. Accordingly, the parties agreed that the 45-day timeline started to run on June 30, 2010.

2. The issues raised by the Petitioner, including the relief requested, and the response of the Respondent, present the following issues, defenses and requested relief for determination by the Hearing Officer: The issues and relief raised by petitioner's counsel are first, Did DCPS deny a Free Appropriate Public Education (FAPE) to the student by failing to provide an appropriate placement for the 2010-2011 School Year by proposing Hamilton Center as the student's placement. Counsel for the Petitioner requested as relief DCPS to place and fund the student including providing transportation to Children's Guild in Chillum, Maryland or to a substantially similar non-public placement. Counsel for the Respondent denies DCPS failed to provide a FAPE in that the proposed placement at Hamilton Center is appropriate. Counsel for Petitioner has raised as the second issue that the April 23, 2010 IEP is inappropriate for not containing appropriate accommodations or modifications to address the student's attention issues such as frequent breaks, extended time, preferential seating, chunking of work and not including testing accommodations. Counsel for the Respondent stated DCPS would provide these appropriate modifications and accommodations in the student's IEP and counsel for both parties will inform this hearing officer prior to the hearing if this issue has been resolved. The final and

third issue raised is did DCPS deny a FAPE to the student by failing to include the parent in the placement decision through failure to consider other options than Hamilton Center, failing to provide the parent with sufficient information about the Hamilton Center placement after the parent raised questions after her site visit and by failing to provide a written Prior Notice of Placement at Hamilton Center. Counsel for the Respondent denied this third issue and both counsel agreed that at both the February and April IEP meetings that Hamilton Center was proposed as the student's placement by DCPS. Counsel for the Respondent makes admissions as to the Jackie Robinson placement and the student's need for a full-time therapeutic setting in her response.

3. After discussing the time necessary to hear this matter, counsel agreed that the due process hearing will be held from 9 a.m. to 5 p.m. on August 5, 2010. Counsel shall immediately advise the Hearing Officer if a party will request a continuance or plans to withdraw a complaint.

4. The deadline for the parties to exchange their five day disclosures, i.e., the lists of their potential witnesses, copies of potential exhibits, and copies of available evaluations and written recommendations intended to be used, is July 28, 2010 by close of business. A curriculum vitae will be filed for any expert witness. Both counsel shall concurrently mail a copy of their five day disclosures to the Hearing Officer with exhibits divided by tabs at [REDACTED]. Counsel are directed to adhere to the specific requirements for disclosures as set forth in Practice 8-B-2 through 4 in the Uniform Standard Practices.

5. Counsel for the Petitioner will call as witnesses, the parent, Dr. Sheila Iseman an expert witness, who will testify about placements for the student, an investigator who attended the IEP meetings and will testify about those meetings and a representative of the Children's Guild who will testify about their placement. Counsel for the Respondent will call a representative of Jackie Robinson Center to testify about the IEPs for the student and the assistant principal of Hamilton Center who will testify about the Hamilton Center placement.

6. Counsel advised that they are not aware of any due process complaints, HODs, and settlement agreements regarding the Student within the last 18 months:

7. Counsel were asked if they had any objections to the presumptions regarding the various procedural items set forth in the "Note" near the close of the "Prehearing Conference—Subjects To Be Considered" form, which was enclosed in the Prehearing Notice. Counsel agreed:

- There are no objections to the appointed Hearing Officer.
- The Parent opts for a hearing to be closed.
- The Parent will participate in the due process hearing.
- The Student will not be present at the due process hearing.
- Neither party requires interpreter services or other accommodations.
- The Petitioner shall proceed first at the hearing.
- The Petitioner shall carry the burden of proof.

- The parties shall be prepared to present oral closing argument
- The Parent elects to be provided a written decision.
- The parties consent to a copy of the decision being transmitted electronically or by facsimile.

8. With regard to any motions or other problems to be addressed or anticipated, counsel advised neither would file any motions.

9. Counsel are directed that, between now and the time the HOD is issued, should any dispute arise, counsel must first confer with opposing counsel. In the unlikely event that counsel cannot resolve the dispute between themselves, counsel must immediately submit by e-mail 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. 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.

10. The parties and their counsel will be held to the matters agreed upon, ordered, or otherwise set forth in this Order. If either party believes this Hearing Officer has overlooked or misstated any item, the party is directed to advise this Hearing Officer of the omission or misstatement within three (3) business days of the date of this Order (and provide a copy to opposing counsel). The Hearing Officer will address the party's concern promptly.

IT IS SO ORDERED.

Date: July 19, 2010 *Seymour DuBow*  
Hearing Officer

Copies to: All Counsel





PARENT NAME \_\_\_\_\_, on behalf of

STUDENT,\*

Petitioner,

V

LEA,

Hearing Officer:

Case No:

Respondent,

### MOTION FOR CONTINUANCE

This Motion by the Petitioner Respondent [check one] is to request a continuance of the due process hearing currently scheduled to take place on \_\_\_\_\_ for \_\_\_\_\_ days.

**The reason of the continuance is:**

The Parent Parent representative [check one] is not prepared to proceed with the properly scheduled hearing because:

The Parent Student Parent representative Parent witness [check those not applicable] is unavailable because:

**\*If the Student is a minor.**

The LEA representative LEA witness LEA counsel [check those applicable] is unavailable because:

Further, the timely efforts made by the LEA to have such person(s) appear were:

Other reason for request of Parent    LEA    [check one]:

**Second Or Greater Continuances.**

This is the second or more continuance for the party requesting it in this matter. Within the meaning of the Blackman /Jones Consent Decree, the following “exceptional circumstance” warrants it being granted:

I have contacted opposing counsel who does    does not    [check one] object to the continuance requested.

By my signature below I certify that I have provided the opposing party with a copy of this Motion.

Signature,

Date,

Petitioner    Respondent    [check one] Counsel

Mailing Address

Phone Number

Email Address



**District Of Columbia**  
**Office of the State Superintendent of Education**  
**Office of Dispute Resolution**  
810 First Street, NE, 2nd Floor, Washington, DC 20002  
(202) 698-3819 • [www.osse.dc.gov](http://www.osse.dc.gov)



PARENT NAME \_\_\_\_\_, on behalf of

STUDENT,\*

Petitioner,

V

LEA,

Hearing Officer:

Case No:

Respondent,

## **NOTICE TO APPEAR**

To:

This is to notify you that you are required to appear and under oath to give testimony as a witness at the Special Education Due Process hearing in the above cause. The relevance of the requested testimony to this cause is:

Date,

Time,

Place: Special Education Student Hearing Office  
810 First Street, NE, 2nd Floor, Washington, DC 20002

This is a Notice to Appear is issued under the authority of the Individuals with Disabilities Education Act, 20 U.S. C. §1415(h)(2), 5 D.C.M.R. §800.1(4), Student hearing Office Standard Operating Procedures. Any party to a special education administrative hearing has the right to present evidence and compel the attendance of witnesses who have knowledge of relevant facts or whose opinions are important for reaching an appropriate disposition on the merits of this case.. If you refuse to appear, the party who requested this subpoena may seek the Order of an appropriate court with jurisdiction, pursuant to statute, to force your attendance and compliance. If you have any questions or objections to appearing, please call the person who requested this subpoena noted below.

The exact time of your testimony cannot be determined prior to the date of the hearing. Under the hearing rules please be advised that you might be excluded from the hearing room prior to your testimony. You are welcome to bring reading material or such other activities as you may need to pass the time while waiting.

Your appearance has been requested by:

Name:

Address:

Phone:

Date:

Hearing Officer:

### **PROOF OF SERVICE**

This will certify that a true and correct copy of this Notice to Appear was served on:

Name of Witness:

Date:

Time:

Manner of Service: [check one]      Certified mail, return receipt requested  
Fax transmission  
Hand delivery

By:

(Person executing service)

Date:

---

**Office of the State Superintendent of Education**  
**Office of Dispute Resolution**

810 First Street, NE, 2nd Floor, Washington, DC 20002  
(202) 698-3819 • [www.osse.dc.gov](http://www.osse.dc.gov)

103



**Office of the State Superintendent of Education Hearing Officer  
Determinations (2007 – Present)**

Hearing Officer Determinations are available on OSSE's website at:

<https://osse.dc.gov/service/hearing-officer-determinations>

(Last accessed May 2019)

D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
SPECIAL EDUCATION STUDENT HEARING OFFICE

<hr/>	)	
, on behalf of	)	
Petitioner,	)	
	)	Hearing Officer:¶
v.	)	Date: August 22, 2013
	)	Hearing Date: To be determined
D.C. Public Schools,	)	Case Number: -
	)	
Respondent.	)	
<hr/>	)	

**PETITIONER’S MOTION TO INVOKE “STAY PUT”**

Comes now \_\_\_\_\_ on behalf of \_\_\_\_\_ through her counsel Jani S. Tillery, Esq. of the Children’s Law Center, to hereby move this tribunal to invoke her right to “stay put” during pending litigation pursuant to 20 USC §1415(j);5 DCMR §3033.

\_\_\_\_\_ has been identified as having Multiple Disabilities (Emotional Disturbance, Specific Learning Disability, Speech and Language Impairment, and ADHD). \_\_\_\_\_ needs a highly structured therapeutic program with extensive supports that can implement her IEP. DCPS has made a unilateral decision to change \_\_\_\_\_ placement to a less restrictive environment at Kelly Miller Middle School. \_\_\_\_\_ has aged out of Episcopal Center for Children, and therefore \_\_\_\_\_ is invoking her right for \_\_\_\_\_ to “stay put” at Phillips Programs in Annandale. \_\_\_\_\_ is invoking her right for \_\_\_\_\_ to “stay put” at similar placement that can implement her IEP. (See Laster v. District of Columbia, 394 F. Supp. 2d 60, 65 (D.D.C. 2005) explaining that “if a child’s then-current educational placement is not available, the school system must provide the student with placement in a similar program during the pendency of administrative and judicial proceedings”.) (See

also Thomas v. Cincinnati Bd. Of Educ., 918 F.2d 618, 625 (6th Cir. 1990) stating that “for purposes of stay put, the current educational placement is typically the placement called for in the student’s IEP, which has been implemented prior to the dispute arising.”) Phillips Programs in Annandale can address [redacted] disabilities. Phillips Programs in Annandale is a non-public therapeutic day school that offers a full time program for students K-12 with multiple disabilities. [redacted] and [redacted] have visited Phillips Programs in Annandale and [redacted] was accepted at Phillips Programs in Annandale and she may start on August 29, 2013. (See Exhibit A).

### **CONCLUSION**

For all of the above reasons, Petitioner respectfully requests that the motion to “stay put” at Phillips Programs in Annandale be granted.

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Jani S. Tillery, Esq.

Attorney for Petitioner  
Children’s Law Center  
616 H Street, NW Ste 300  
Washington, DC 20001

(  
(

## Certificate of Service

I hereby certify that on this 22<sup>nd</sup> day of August, 2013 this document was served on the following party by email:

Maya L. Washington, Esq.  
Attorney Advisor  
DC Office of the Attorney General  
Office of the General Counsel  
DC Public Schools  
202.478.5767 (o)  
202.442.5097 (f)  
maya.washington@dc.gov

/s/  
Jani S. Tillery, Esq.





DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

## **ADMINISTRATIVE DUE PROCESS COMPLAINT NOTICE IDEA Part B (ages 3-22)**

This form is used to provide notice of a due process complaint to the Local Educational Agency (LEA) and/or State Educational Agency (SEA) and/or parents with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child, ages 3-22. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Act (IDEA).** See 34 CFR Part 300 (IDEA Part B).

Parents initiating a complaint must provide a completed administrative due process complaint notice to the Local Educational Agency (LEA) and/or State Educational Agency (SEA), whomever the complaint is filed against. The Office of the State Superintendent (OSSE) is the SEA for the District of Columbia.

If the complaint is filed against a traditional public school, non-public day school, residential treatment facility or Public Charter School for which District of Columbia Public Schools (DCPS) is the LEA, notice to DCPS shall be provided to DCPS by e-fax at (202) 442-5115, with a copy to the Office of Dispute Resolution (ODR), 810 First Street, NE, 2<sup>nd</sup> Floor, Washington DC 20002 by hand delivery or by e-fax to (202) 478-2956.

If the complaint is filed against a Public Charter School and the Public Charter School is its own LEA, the due process complaint must be provided to the principal or director of the Public Charter School, with a copy to the ODR. You must contact the Public Charter School directly to find out how to provide the complaint to the Public Charter School.

If the complaint is filed against the Department of Youth Rehabilitation Services (DYRS), the due process complaint must be provided to James Brooks, Educational Specialist, Office of Education, DYRS, by email at [JamesS.Brooks@dc.gov](mailto:JamesS.Brooks@dc.gov) or fax at (202) 299-3622, with a copy to ODR.

If the complaint is filed against OSSE, the due process complaint must be provided to the OSSE's Office of General Counsel by fax at (202) 299-2134 (for more information call OSSE at (202) 724-7756), with a copy to ODR.

**A copy of the complaint must be provided to the Office of Dispute Resolution (ODR) on the same day that it is provided to the LEA, SEA and/or parent against whom the complaint was filed.** Failure to provide a copy to the ODR on the same day may result in a delay of assigning the case to a hearing officer. The due process complaint must describe an alleged violation that occurred not more than two (2) years before the date that the parent, school system and/or OSSE knew or should have known about the alleged action that is the basis of the complaint.

Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Administrative Due Process Complaint Notice. Therefore, please be thorough in providing the information requested.

### **LEGAL ASSISTANCE:**

A list of free legal help is available at [www.osse.dc.gov](http://www.osse.dc.gov) >Programs > Office of Dispute Resolution > For Parents and Students > Free Legal Services. A paper copy of the list may be obtained by contacting the ODR at (202) 698-3819.

**A. STUDENT INFORMATION**

Name of Student: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Student's Gender (optional): \_\_\_\_\_ Race (optional): \_\_\_\_\_  
Student's Address (if student is homeless, please provide available contact information): Ward (1-8): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Home School: \_\_\_\_\_ Attending School: \_\_\_\_\_  
Parent(s)/Guardian(s) of the Student: \_\_\_\_\_

**B. INDIVIDUAL MAKING COMPLAINT/REQUEST FOR DUE PROCESS HEARING**

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

**Relationship to Student:**

- ☐ Parent ☐ Self/Adult Student (age 18-22)  
☐ Legal Guardian ☐ Local Education Agency (LEA)  
☐ Parent Surrogate

**C. LEGAL REPRESENTATIVE/ATTORNEY INFORMATION (if applicable):**

Name/Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Work Phone: \_\_\_\_\_ Email: \_\_\_\_\_ Fax: \_\_\_\_\_

**D. COMPLAINT INFORMATION (check all that apply):**

**Complaint made against (check all that apply):**

- ☐ DCPS Public School(s) (name): \_\_\_\_\_  
☐ Residential Treatment Facility (name): \_\_\_\_\_  
☐ Public Charter School (when the Public Charter School is its own LEA) (name): \_\_\_\_\_  
☐ Public Charter School (when DCPS is the LEA) (name): \_\_\_\_\_  
☐ DYRS  
☐ Non-public school (s) (name): \_\_\_\_\_  
☐ Office of the State Superintendent of Education (OSSE)  
☐ Parent

## Mediation

IDEA requires that any time a party requests a due process hearing that mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Meeting. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a due process complaint. Please check all that apply:

- ☐ **I am requesting mediation as an alternative to the resolution session meeting.**
- ☐ **I do not wish to use a mediator at this time.**

## Resolution Meeting

Prior to the opportunity for an impartial due process hearing, the LEA shall convene a meeting (called a "Resolution Meeting") with the parent(s) unless the parent(s) and the LEA agree in writing to waive this meeting. If the complaint is against the school system, you will be contacted by a representative of the school system to schedule the meeting with the school system. If the complaint is against OSSE, no resolution meeting is required.

*I understand that it is my right to have a Resolution Meeting to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the Resolution Meeting to avoid having this meeting).*

### As the Parent (please check one)

- ☐ I do not wish to waive the Resolution Meeting.
  - **Will attorney/legal representative attend the Resolution Meeting?** ☐ Yes ☐ No
  - **Would you like to request a Facilitator to facilitate the Resolution Meeting?** ☐ Yes ☐ No  
(Facilitation is a voluntary process that brings people together to address the student's educational needs. A facilitator is a neutral person that helps participants communicate with each other so that everyone has an opportunity to express concerns and offer solutions).
- ☐ I wish to waive the Resolution Meeting and keep the 30-day resolution period open.
- ☐ I wish to waive the Resolution Meeting, end the 30-day resolution period and proceed directly to a due process hearing.
- ☐ **Not Applicable (LEA is filing the due process complaint).**
- ☐ **Not Applicable (complaint filed by parent against the Office of State Superintendent of Education (OSSE)).**

## Request for Expedited Hearing

All requests for expedited due process hearings must be made in writing, in a separate motion or request that accompanies the complaint, and must state the reason why expedited status should be granted.

### I request the following type of Expedited Hearing:

- ☐ **Discipline** issues are raised in the complaint and an expedited hearing must be held. See 34 CFR 300.532(a).
- ☐ **Non-Discipline** issues are raised in the complaint that affects the physical or emotional health or safety of the student or others, or there is other substantial justification for expediting the hearing. Note: The Hearing Officer will determine whether the hearing will be expedited based on the reasons stated in the accompanying motion. See Student Hearing Office Standard Operating Procedures 1008.B.

**E. FACTS AND REASONS FOR THE COMPLAINT:**

In accordance with the Individuals with Disabilities Education Act (IDEA), please complete the following questions. Provide complete details about all the facts supporting your claims. Please be thorough in providing the information requested. **(If more space is needed, additional pages have been added to the end of this document).**

**1. What is the nature of the problem, including the facts relating to the problem that will need to be addressed at a Resolution Meeting, a Mediation Conference, and/or a Due Process Hearing?**

**2. To the extent known to you at this time, how can this problem be resolved?**

**3. Issues presented: (Be specific. Any issue not identified in this complaint cannot be raised at the due process hearing unless the other party agrees).**

**F. HEARING ACCOMMODATIONS:**

Estimated amount of time (hours/days) needed for hearing: \_\_\_\_\_

Special Accommodations needed (check all that apply):

☐ **Interpreter (language):** \_\_\_\_\_

☐ **Disability assistance (please describe):** \_\_\_\_\_

☐ **Other (please describe):** \_\_\_\_\_

**G. AFFIRMATIONS:**

**Waiver of Procedural Safeguards (Optional):**

☐ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this complaint.

I (parent/guardian) would like to receive a copy of the Hearing Officer's Determination by:

☐ Email (provide email address) \_\_\_\_\_

☐ Certified Mail

**Parent, Attorney or Local Educational Agency Signature and Affirmation:** By signing you affirm that the information provided on this form is true and correct:

\_\_\_\_\_  
Signature of Parent/Guardian or Adult Student

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Attorney/Legal Representation (not required if filing party is not represented by an attorney/advocate)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of representative of the Local Education Agency (LEA) (if the hearing is requested by a LEA)

\_\_\_\_\_  
Date

**Mail, fax, email, or hand-deliver this Complaint Notice to:**

Office of the State Superintendent of Education

Office of Dispute Resolution

810 First Street, NE, 2<sup>nd</sup> Floor, Washington, DC 20002

Fax: (202) 478-2956

Email: Hearing.Office@dc.gov

Additional space



**ADMINISTRATIVE DUE PROCESS COMPLAINT NOTICE**  
**IDEA Part C (ages Birth - 2)**

This form is used to give notice of a due process complaint to the Office of the State Superintendent of Education (OSSE) as the Lead Agency or as the Early Intervention Services (EIS) provider, or parents with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to a child, ages birth – 2 years. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Act (IDEA).** See 34 CFR Part 303 (IDEA Part C).

Parents initiating a complaint against the OSSE must provide a completed administrative due process complaint notice to the OSSE's Office of General Counsel by fax at (202) 299-2134 (for more information call OSSE at (202) 724-7756).

**A copy of the complaint must be provided to the Office of Dispute Resolution (ODR) on the same day that it is provided to the OSSE.** The complaint will be deemed filed on the business day that it is received by the ODR between 8:30 a.m. – 5:00 p.m. Failure to provide a copy to the ODR on the same day will result in a delay of the start of the due process hearing timeline to resolve the complaint. The due process complaint must describe an alleged violation that occurred not more than two (2) years before the date that the OSSE or parents knew or should have known about the alleged action that is the basis of the complaint.

**Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Administrative Due Process Complaint Notice.** Therefore, please be thorough in providing the information requested.

Prior to the opportunity for an impartial due process hearing, the OSSE shall convene a meeting (called a "Resolution Meeting") with the parent(s) unless the parent(s) and the OSSE agree in writing to waive this meeting. You will be contacted by the ODR to schedule a meeting with the OSSE.

I understand that it is my right to have a Resolution Meeting to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the Resolution Meeting to avoid having this meeting).

- ☐ As the parent, I wish to waive the Resolution Meeting and keep the 30 day resolution period open.
- ☐ As the parent, I wish to waive the Resolution Meeting, end the 30 day resolution period and proceed directly to a Due Process Hearing.

IDEA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Meeting. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint. Please check all that apply.

- ☐ I am requesting mediation as an alternative to the resolution session meeting.



- ☐ I am requesting mediation services **only**.
- ☐ I do not wish to use a mediator at this time.

**A. Information About The Child:**

Name of Child: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Address:<sup>1</sup> \_\_\_\_\_ Race: (optional) \_\_\_\_\_  
 \_\_\_\_\_ Gender: (optional) \_\_\_\_\_  
 \_\_\_\_\_  
 Ward of residence: (1-8) \_\_\_\_\_

<sup>2</sup>Parent(s)/Guardian(s) of the Student: \_\_\_\_\_  
 \_\_\_\_\_

Name of the EIS provider serving the Child: OSSE  
 (Also name the specific contractual EIS provider serving the Child): \_\_\_\_\_  
 \_\_\_\_\_

**B. Individual Making the Complaint/Request for Due Process Hearing**

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
 \_\_\_\_\_ Fax: \_\_\_\_\_  
 \_\_\_\_\_ Email: \_\_\_\_\_

Relationship to the Child: ☐ Parent ☐ OSSE (as Lead Agency or EIS provider)  
☐ Legal Guardian ☐ Parent Surrogate  
☐ Parent Advocate

**C. Legal Representative/Attorney (if applicable):**

Name: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Fax: \_\_\_\_\_  
 \_\_\_\_\_ Email: \_\_\_\_\_  
 \_\_\_\_\_

Will attorney/legal representative attend the Resolution Meeting? [check one] ☐ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

- ☐ OSSE (as Lead Agency or EIS provider)  
☐ Parent

**E. Facts and Reasons for the Complaint:**

<sup>1</sup> If Student is homeless, please provide available contact information for Student and the name of the school that Student is attending.

<sup>2</sup> If Student is a minor.

In accordance with the Individuals with Disabilities Education Act (IDEA), please complete the following questions. Provide complete details about all the facts supporting your claims. Please be thorough in providing the information requested. (You may attach additional pages if needed):

1. What is the nature of the problem, including the facts relating to the problem that will need to be addressed at a Resolution Meeting, a Mediation Conference, and/or a Due Process Hearing? (You may attach additional pages if needed):

---

---

---

---

2. To the extent known to you at this time, how can this problem be resolved?

---

---

---

---

3. Issues presented: (Be specific. Any issue not identified in this complaint cannot be raised at the due process hearing unless the other party agrees).

---

---

---

---

**F. Estimated amount of time needed for the hearing:**

The Office of Dispute Resolution (ODR) will schedule hearings in blocks of 8 hours. If you need more or less time, please indicate below how much time you will need:

I will need \_\_\_\_\_ hours / \_\_\_\_\_ days for the hearing to be completed.

**G. Accommodations and Assistance Needed:**

Please list any accommodations you may require for a Resolution Meeting, Mediation Conference or Due Process Hearing:

---

---

Interpreter (please specify the type): \_\_\_\_\_

Special Communication (please describe the type): \_\_\_\_\_

Special Accommodations for Disability (please describe the type): \_\_\_\_\_

---

Other: \_\_\_\_\_

**H. Waiver of Procedural Safeguards (Optional):**

- ☐ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this complaint.

**I. Parent or OSSE provider Signature and Affirmation:**

I affirm that the information provided on this form is true and correct.

\_\_\_\_\_  
Signature of Parent/Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of representative of the OSSE  
as Lead Agency or EIS provider  
(If hearing is requested by the OSSE)

\_\_\_\_\_  
Date

**J. Signature of Attorney/Legal Representative (not required if the filing party is not represented by an attorney/advocate):**

\_\_\_\_\_  
Signature of Attorney/Legal Representative

\_\_\_\_\_  
Date

**K. Legal Assistance**

A list of free legal help is available at [www.osse.dc.gov](http://www.osse.dc.gov) >Programs > Office of Dispute Resolution > For Parents and Students > Free Legal Services. A paper copy of the list may be obtained by contacting the ODR at (202) 698-3819.

**Mail, e-fax, or hand deliver this Complaint Notice to:**

Office of the State Superintendent of Education  
Office of Dispute Resolution  
810 First Street, NE, 2<sup>nd</sup> Floor, Washington, DC 20002  
E-fax: (202) 478-2956

*State Education Agency for the District of Columbia  
State Enforcement and Investigation Division (SEID)  
Special Education Programs*



## ***Due Process Complaint Notice***

- The form is used to give notice of a due process complaint to the **District of Columbia Public Schools, District of Columbia Public Charter Schools (DCPS or LEA) and/or parents** with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).**
- Parents initiating a complaint must provide a completed due process complaint form to the Local Education Agency ("LEA"). For students in traditional public schools, nonpublic day school, or residential treatment facility, notice to the LEA shall be provided to the Office of the General Counsel, 825 N. Capitol St. NE, Washington, D.C. 20002, with a copy to the Student Hearing Office. If a charter school is a named party, the due process complaint must be provided to the principal or director of the charter school, with a copy to the Student Hearing Office.
- Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Due Process Complaint Notice. Therefore, please be thorough in providing the information requested.
- Prior to the opportunity for an impartial due process hearing, the Local Educational Agency (LEA) shall convene a meeting (**called a "Resolution Session"**) with the parent(s) unless the parent(s) and the Local Educational Agency agree in writing to waive this meeting. You will be contacted by a representative of the Local Educational Agency to schedule the meeting. **The Student Hearing Office does NOT schedule resolution sessions.**
- Mediation is also available to all parties as an alternative to a resolution meeting or a Due Process Hearing.
- Policies and Procedures governing due process hearings are contained in federal and local law and the SHO SOP. You may obtain a copy of the SOP from the Student Hearing Office or any D.C. Public or Charter School without cost. The SOP is also at the DCPS website.

**A. Information About the Student:**

Student Name: Jane Smith Birth Date: 1/01/01

Address: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Home School: Turner at Green Elementary School

Present School of Attendance: AB Elementary School

Is this a charter school? No (If yes, you must also provide a copy of this notice to the charter school principal or director.)

Parent/Guardian of the Student: Jill Smith

Address (if different from the student's above): n/a

Phone/Contact Number: XXXXXXXX Fax Number (if applicable): n/a

**B. Individual Making the Complaint/Request for Due Process Hearing:**

Name: Jill Smith

Complete Address: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Phone: (h) XXXXXXXXXX (c) XXXXXXXXXX (Fax) n/a (e-mail) n/a

Relationship to the Student:

<input checked="" type="checkbox"/> Parent	<input type="checkbox"/> Legal Guardian	<input type="checkbox"/> Parent Surrogate
<input type="checkbox"/> Self/Student	<input type="checkbox"/> Local Education Agency (LEA)	<input type="checkbox"/> Parent Advocate

**C. Legal Representative/Attorney (if applicable):**

Name: Joy Purcell, The Children's Law Center

Address: 616 H Street, NW, Suite 300, Washington, DC 20001

Phone: (w) (202) 467-4900, ext. 525 (Fax) (202) 552-7125 (e-mail) jpurcell@childrenslawcenter.org

Will attorney /Legal representative attend the resolution session? ☒ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

☒ DCPS school (name of the school if different from page one) AB Elementary School  
☐ Charter school (name of the charter school if different from page one) \_\_\_\_\_  
☐ Non-public school or residential treatment facility (name) \_\_\_\_\_  
☐ Parent

**E. Resolution Session Between Parent and LEA:**

I understand that it is my right to have a resolution session to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the resolution session to avoid having this meeting.)

☒ I wish to waive the Resolution Session.

## **F. Mediation Process:**

IDEA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Session. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint. Please check all that apply:

☐ I am requesting mediation as an alternative to the resolution session meeting.

☐ I am requesting mediation services only.

☒ I do not wish to use a mediator at this time.

## **G. Facts and Reasons for the Complaint:**

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA), please complete the following questions. Provide complete details about all the facts supporting your claims. (You may attach additional pages if needed):

1. What is the nature of the problem, including the facts relating to the problem, that will need to be addressed at a Resolution Session meeting, a Mediation Conference, and/or a Due Process Hearing?

### **The relevant facts include, but are not limited to the following:**

Jane is an eight year old year girl with many special needs that affect her academic progress. Jane has been diagnosed with Attention-deficit Hyperactivity Disorder (*hereinafter* "ADHD") which undeniably affects her ability to focus, complete class work, and control her behavior in school. Jane's ability to control her behavior and participate in class is further complicated by her history of trauma which resulted in a diagnosis of Post-traumatic Stress Disorder (*hereinafter* "PTSD"). Jane also has diagnoses of Mood Disorder Not Otherwise Specified, Disruptive Behavior Disorder, Dysthymic Disorder, and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.

Getting Jane to AB Elementary School (*hereinafter*, "AB Elementary") every morning is a battle—she begs to stay home because she is afraid of the girls in her class and cannot emotionally handle the everyday stresses at school. When at school, she is unable to participate in class. She cannot stay focused on her school work and she is frequently involved in fights with other students. She often runs crying to the front office to call her mother and request that she pick her up from school. When Jane is disciplined or redirected she will erupt with anger, using profanity towards school staff nearly every day and frequently running away from school authorities. On one occasion this school year Jane injured her teacher when the teacher attempted to intervene in a fight between Jane and another student.

This is not the first time that Jane has struggled at AB Elementary . In fact, she has exhibited these difficulties since she was in the first grade during the 2007-2008 school year. Throughout the 2007-2008 school year Jane struggled to develop the skills required of first graders and she required frequent prompting to complete all work habits and personal and social skills. Jane's first grade teacher described her as a "very active child" who "exhibits sudden and extreme mood changes" and "unpredictable behavior." By the end of the 2007-2008 school year her teacher eventually concluded that "Jane was unable to access her education and gain the skills required of a first grader.

Throughout the 2008-2009 school year, when Jane was in 2<sup>nd</sup> grade, Jane continued to struggle academically and behaviorally, exhibiting an inability to follow directions from school authorities and displaying aggressive behavior towards her teachers and classmates. During the 2008-2009 school year her aggressive erratic behavior only escalated while her academic progress continued to stagnate. In the fall of 2008, Jane was expelled from the AB Elementary afterschool program for aggressive behavior towards the staff and in October 2008 she was suspended from school for fighting with other children in her class. Even more startling, in the spring of 2009 Jane began exhibiting suicidal ideations, in one instance, wrapping a belt around her neck and attempting to hang herself. After repeated instances of suicidal behavior Jane was eventually hospitalized in the inpatient psychiatry department of Children's National Medical Center.

Despite Jane's lack of academic progress, uncontrollable mood swings at school, and her mother's specific request that Jane be evaluated for special education services in December 2008, the District of Columbia Public Schools (*hereinafter*, "DCPS") did not identify, locate, and evaluate Jane. Consequently Jane's mother, Ms. S. filed a due process complaint in June 2009 requesting payment for an independent Psychological/Psychoeducational Evaluation completed by Dr. David Missar. Through a Settlement Agreement, DCPS agreed to pay for the independent evaluation.

On August 4, 2009 DCPS convened a Multidisciplinary meeting to review Dr. Missar's evaluation to determine Jane's eligibility for special education services, develop an Individual Education Program (*hereinafter*, "IEP"), and discuss placement. However, the IEP Team was unable to develop an IEP and discuss placement at the August 4<sup>th</sup> meeting because DCPS failed to ensure that all necessary members of the IEP Team were present. Notably, neither Jane's general education teacher, Ms. Butler, nor any special education teacher from AB Elementary was present at the meeting.

After reviewing the results of Dr. Missar's evaluation and the recommendations of Jane's treating physicians, the Team agreed that Jane was eligible for special education services as of August 4, 2009. However, DCPS disregarded the recommendations of Dr. Missar and her doctors and instead inappropriately classified Jane as a student with "Other Health Impairment." This classification is inappropriate because it does not address all of Jane's special needs, and led DCPS to deny Jane the specialized instruction and related services that she requires to access her education.

After determining that Jane was eligible for services at the August 4<sup>th</sup> meeting, the IEP Team reconvened on August 20, 2009 to develop an IEP for Jane and to discuss placement. The IEP developed by DCPS at the August 20, 2009 meeting is inappropriate for many reasons, including but not limited to, an inappropriate classification, inappropriate mathematics, reading, writing, and social-emotional annual goals, and an insufficient level of specialized instruction. Though Jane requires a full-time therapeutic placement, DCPS has refused to provide Jane with the level of specialized instruction and therapeutic supports she requires to access her education.

Further, the IEP is inappropriate because it lacks the related services and accommodations that Jane requires, including but not limited to, group counseling with social skills instruction, social work services, and psychiatric services. The IEP is also inappropriate because it lacks a Behavior Intervention Plan (*hereinafter* "BIP") with appropriate intervention strategies, positive behavioral supports, and consequences that Jane requires to control her behavior so that she can participate in class.

Since the start of the 2009-2010 school year Jane's behaviors have continued to escalate, resulting in frequent calls home to Ms. S. and multiple suspensions. On at least one occasion, DCPS failed to provide Ms. S. with any written notice of the suspension. In Fall 2009 Jane was again expelled from the AB Elementary afterschool program for uncontrollable behavior. She uses profanity towards school staff nearly every day, frequently fights with her peers and frequently runs unaccompanied throughout the school. On at least one occasion, Jane ran outside of the school and down Alabama Avenue—a busy artery of Southeast Washington, D.C.

As a result of Jane's chronic behavioral difficulties, there are very few instances when Jane is able to participate in class. Consequently, her behavior has directly impacted her academic progress. She is still functioning below grade level in all academic subjects and is rarely able to complete any work habits, personal or social skills. At the filing of this complaint, Jane continues to languish in an inappropriate placement, without sufficient related services and the therapeutic supports that she needs so that she may access her education and make academic progress. As a result, DCPS has denied and continues to deny Jane the free appropriate public education (*hereinafter*, “FAPE”) to which she is entitled.

2. To the extent known to you at this time, how can this problem be resolved?

DCPS will immediately place, fund, and provide transportation for Jane to attend The Children’s Guild in Chillum Maryland, or another similar nonpublic full time therapeutic psychoeducational day school for children with emotional disturbance.

3. Issues presented:

The central issue to be addressed is DCPS’s past and continuing failure to provide Jane with a FAPE. The particular issues are specifically, but not limited to, the following:

- 1) Did DCPS fail to follow the legally mandated disciplinary procedures when it suspended Jane during the 2009-2010 school year?
- 2) Did DCPS fail to consider the independent educational evaluation obtained by Ms. R. when making decisions regarding the provision of FAPE to Jane?
- 3) Has DCPS failed to provide Jane with an appropriate Individualized Education Program?
- 4) Has DCPS failed to provide Jane with an appropriate special education placement?

**H. Estimated amount of time needed for the hearing: 8 hours**

Note: In the absence of a specified amount of time, the SHO schedules hearings in two hour blocks of time and will allocate two hours to conduct the hearing. Please indicate if you believe more than two hours will be needed.

**I. Accommodations and Assistance Needed:**

Please list any special accommodations you may require for a Resolution Session Meeting/Mediation Conference/Due Process Hearing.



- Interpreter (please specify the type) N/A
- Special Communication (please describe the type) \_\_\_\_\_
- Special Accommodations for Disability (please be specific) \_\_\_\_\_
- Other \_\_\_\_\_

**J. Waiver of Procedural Safeguards (Optional):**

**X** I Ms. R. waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this Complaint.

**K. Requirement to Consider Compensatory Education:**

If a hearing is held on a date that is past the date on which the Hearing Officer's Determination was required to be issued, there is a rebuttable presumption of harm and compensatory education must be an issue considered by the Hearing Officer during the hearing.

**L. Parent or Local Educational Agency Signature and Affirmation:**

I affirm that the information provided on this form is true and correct.

\_\_\_\_\_  
Signature of Parent or Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Representative of the Local Educational Agency      Date  
(if hearing requested by a LEA)

**M. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Legal Representative / Advocate

\_\_\_\_\_  
Date

**Mail, fax or deliver this complaint notice to:  
State Enforcement and Investigation Division  
For Special Education Programs (SEID)  
Student Hearing Office (SHO)  
1150 5<sup>th</sup> Street, SE  
Washington, DC 20003  
Fax number: 202/698-3825**



## DUE PROCESS COMPLAINT

**PURPOSE:** This model form can be used to request a due process hearing under the Individuals with Disabilities Education Act (IDEA). The party, or the attorney representing a party, must file a Due Process Complaint with the other party and forward a copy of the Complaint to the OSSE, c/o the Student Hearing Office: 810 First St., NE, 2nd Floor Washington, DC 20002 or email a copy to [Hearing.Office@dc.gov](mailto:Hearing.Office@dc.gov) or fax at (202) 478-2956. You are not required to use this form; however, you may not have a hearing on a Due Process Complaint until a Complaint is filed that meets the requirements of the IDEA (34 C.F.R. §300.508(b)). Filling out this form will meet those requirements and provide additional important information to the Hearing Officer.

### A. INFORMATION ABOUT THE STUDENT

Name of the student:<sup>1</sup> : Janice Smith Date of Birth: X/XX/XXXX

Address of the residence of the student:<sup>2</sup> \_\_\_\_\_  
XXXX, Washington DC 20032

Present School of Attendance: Savoy Elementary School

Uniform Student Identification Number: XXXX

### B. INFORMATION REGARDING THE PARENT OF THE STUDENT (IF THE STUDENT IS A MINOR OR DETERMINED LEGALLY INCOMPETENT)

Name of the Parent(s): Ellen Smith

Address of the Parent(s), (if different from the student's above):  
\_\_\_\_\_

Home Phone Number(s): \_\_\_\_\_

(240)XXX

Mobile Phone Number(s): \_\_\_\_\_

(240) XXX

Fax Number:

Email Address(es): \_\_\_\_\_

---

<sup>1</sup> In the case of a child who is a ward of the District of Columbia, the request must so state, provided, that a child who is a ward of the District shall be listed "c/o Child and Family Services". (DCMR, Chapter 5-E30-§3029.3(b))

<sup>2</sup> In the case of a homeless child or youth, provide the available contact information for the child for residence.



**Office of the  
State Superintendent of Education**

---

**C. ATTORNEY, (IF APPLICABLE)\***

Name: Renee Murphy  
Address: Children's Law Center, 616 H Street NW, Suite 300  
Washington, DC 20001  
Office Phone Number(s): (202) 467-4900 x580  
Mobile Phone Number(s):   
Fax Number(s): (202) 552-6018  
Email Address (es): rmurphy@childrenslawcenter.org

*\*If this section is completed all further communication from the Student Hearing Office and the Hearing Officer will be with the attorney.*

Ms. Smith's attorney will be attending the Resolution Session.

**D. COMPLAINT MADE AGAINST**

☐ Public Educational Agency:

Name(s) of the agency(s) and known contact information: District of Columbia Public Schools, 1200 First Street NE, Washington, DC 20002, Fax (202) 442-5115 or (202) 442-5198/7 Phone: (202) 442-5885

**Or**

☐ Parent or Eligible Student:

Name(s) and contact information, if not provided above:

**E. AVAILABILITY Of MEDIATION**

Notice: The Individuals with Disabilities Education Act (IDEA) requires that any time a party requests a due process hearing; mediation must be available at no cost to allow the parties to resolve the dispute. In addition the parties may agree to use mediation instead of the Resolution Session Meeting.

**H. ACCOMMODATIONS AND ASSISTANCE NEEDED:**

Please note any accommodations you may require.

- Interpreter (please specify the type):
- Special Communication (please describe the type):
- Special Accommodations for Disability (please describe the type):
- Other:



**F. DESCRIPTION OF THE PROBLEM**

Provide a description of the nature of the problem of the student relating to the proposed or refused initiation or change of the identification, evaluation, or educational placement of the student or the provision of Free Appropriate Public Education to the student, **including** facts relating to the problem.

Janice Smith is a kindergarten student at Savoy Elementary School. Janice has Attention Deficit Hyperactivity Disorder (ADHD) symptoms along with documented deficits in her fine motor and sensory skills, emotional and behavioral issues and difficulty in recalling short stories, working with sequencing and categorizing words. Ms. Smith referred Janice for a comprehensive evaluation on or about March 28, 2012. On July 5, 2012, DCPS conducted evaluations under the IDEIA, consisting only of an Educational Evaluation and Occupational Therapy Evaluation of Janice. Ms. Smith disagrees with DCPS's insufficient initial evaluations of Janice. Therefore, on April 19, 2013, Ms. Smith, by and through her attorney, requested the following independent educational evaluations (IEEs) at public expense for Janice: Cognitive Evaluation, Clinical Psychological Evaluation, Educational Evaluation, Functional Behavior Assessment, Occupational Therapy Evaluation, and Speech-Language Evaluation. The request was sent to Anthony Bowden, DCPS Office of Compliance. On May 30, 2013 and June 7, 2013, Ms. Smith, via counsel, emailed Mr. Bowden because DCPS had not authorized public funding for the IEEs. Mr. Bowden responded stating that he would have IEEs authorized shortly. Despite having apologized for a delay and acknowledging intent to authorize the IEEs, to date DCPS has not provided Ms. Smith or undersigned counsel with authorization for public funding for the requested IEEs.

This Complaint is limited to DCPS's failure to provide the independent evaluation at public expense or file a Due Process Complaint to defend its evaluation. DCPS's failure to provide the independent educational evaluation at public expense or file a Due Process Complaint to defend its evaluation violates Ms. Smith's right to an independent educational evaluation at public expense under 34 CFR § 300.502.

Ms. Smith reserves the right to file future Due Process Complaints regarding any and all other claims under the IDEIA and reserves the right to file future Due Process Complaints regarding Janice's educational needs as revealed by any evaluations.



Office of the



State Superintendent of Education

**G. DESCRIPTION OF THE PROPOSED RESOLUTION OF THE PROBLEM**

To the extent known and available at this time

This Complaint can be resolved by authorization of public payment for the independent educational evaluations, specifically a Cognitive Evaluation, Clinical Psychological Evaluation, Educational Evaluation, Functional Behavior Assessment, Occupational Therapy Evaluation, and Speech-Language Evaluation, and child care and transportation assistance in order to get the evaluations completed.

**H. NAME AND SIGNATURE OF REQUESTING PARTY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**I. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

---

Mail, fax or hands deliver this Complaint Notice to:  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor, Suite 2001  
Washington, DC 20002  
Fax: (202) 478-2956  
Email Address: [Hearing.Office@dc.gov](mailto:Hearing.Office@dc.gov)

**A. STUDENT INFORMATION**

Name of Student: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Student's Gender (optional): \_\_\_\_\_ Race (optional): \_\_\_\_\_  
Student's Address (if student is homeless, please provide available contact information): Ward (1-8): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Home School: Deal Middle School Attending School: Deal MS  
Parent(s)/Guardian(s) of the Student: \_\_\_\_\_

**B. INDIVIDUAL MAKING COMPLAINT/REQUEST FOR DUE PROCESS HEARING**

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_  
Relationship to Student:  
☒ Parent ☐ Self/Adult Student (age 18-22)  
☐ Legal Guardian ☐ Local Education Agency (LEA)  
☐ Parent Surrogate

**C. LEGAL REPRESENTATIVE/ATTORNEY INFORMATION (if applicable):**

Name/Firm: Evan Cass, Children's Law Center  
Address: 501 3rd St. NW 8th Floor  
Washington, DC 20001  
Work Phone: 202-467-4900 ext. 631 Email: ecass@childrenslawcenter.org Fax: 202-467-4949

**D. COMPLAINT INFORMATION (check all that apply):**

**Complaint made against (check all that apply):**  
☒ DCPS Public School(s) (name): Alice Deal Middle School  
☐ Residential Treatment Facility (name): \_\_\_\_\_  
☐ Public Charter School (when the Public Charter School is its own LEA) (name): \_\_\_\_\_  
☐ Public Charter School (when DCPS is the LEA) (name): \_\_\_\_\_  
☐ DYRS  
☐ Non-public school (s) (name): \_\_\_\_\_  
☐ Office of the State Superintendent of Education (OSSE)  
☐ Parent

## Mediation

IDEA requires that any time a party requests a due process hearing that mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Meeting. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a due process complaint. Please check all that apply:

- ☐ I am requesting mediation as an alternative to the resolution session meeting.  
☒ I do not wish to use a mediator at this time.

## Resolution Meeting

Prior to the opportunity for an impartial due process hearing, the LEA shall convene a meeting (called a "Resolution Meeting") with the parent(s) unless the parent(s) and the LEA agree in writing to waive this meeting. If the complaint is against the school system, you will be contacted by a representative of the school system to schedule the meeting with the school system. If the complaint is against OSSE, no resolution meeting is required.

*I understand that it is my right to have a Resolution Meeting to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the Resolution Meeting to avoid having this meeting).*

### As the Parent (please check one)

- ☒ I do not wish to waive the Resolution Meeting.
- Will attorney/legal representative attend the Resolution Meeting? ☒ Yes ☐ No
  - Would you like to request a Facilitator to facilitate the Resolution Meeting? ☐ Yes ☒ No  
(Facilitation is a voluntary process that brings people together to address the student's educational needs. A facilitator is a neutral person that helps participants communicate with each other so that everyone has an opportunity to express concerns and offer solutions).
- ☐ I wish to waive the Resolution Meeting and keep the 30-day resolution period open.  
☐ I wish to waive the Resolution Meeting, end the 30-day resolution period and proceed directly to a due process hearing.  
☐ Not Applicable (LEA is filing the due process complaint).  
☐ Not Applicable (complaint filed by parent against the Office of State Superintendent of Education (OSSE)).

## Request for Expedited Hearing

All requests for expedited due process hearings must be made in writing, in a separate motion or request that accompanies the complaint, and must state the reason why expedited status should be granted.

### I request the following type of Expedited Hearing:

☐ Discipline issues are raised in the complaint and an expedited hearing must be held. See 34 CFR 300.532(a).

☒ Non-Discipline issues are raised in the complaint that affects the physical or emotional health or safety of the student or others, or there is other substantial justification for expediting the hearing. Note: The Hearing Officer will determine whether the hearing will be expedited based on the reasons stated in the accompanying motion. See Student Hearing Office Standard Operating Procedures 1008.B.

**E. FACTS AND REASONS FOR THE COMPLAINT:**

In accordance with the Individuals with Disabilities Education Act (IDEA), please complete the following questions. Provide complete details about all the facts supporting your claims. Please be thorough in providing the information requested. (If more space is needed, additional pages have been added to the end of this document).

**1. What is the nature of the problem, including the facts relating to the problem that will need to be addressed at a Resolution Meeting, a Mediation Conference, and/or a Due Process Hearing?**

See attached.

**2. To the extent known to you at this time, how can this problem be resolved?**

As relief, the parent is requesting that the Hearing Officer:

- 1) Order that DCPS place and provide transportation for the student in a special education program that provides all instruction outside of general education (i.e., a non-public school)
- 2) Order compensatory education due to DCPS's failure to serve s educational needs from June 2017 to present and her consequential loss of educational benefit.
- 3) Order DCPS to pay reasonable expert fees.

**3. Issues presented: (Be specific. Any issue not identified in this complaint cannot be raised at the due process hearing unless the other party agrees).**

Whether DCPS, from June 2017 to present:

- failed to provide the student with an appropriate placement
- failed to provide an appropriate IEP
- failed to review and revise the IEP in light of new data



**F. HEARING ACCOMMODATIONS:**

Estimated amount of time (hours/days) needed for hearing: 2

Special Accommodations needed (check all that apply):

☐ Interpreter (language): \_\_\_\_\_

☐ Disability assistance (please describe): \_\_\_\_\_

☐ Other (please describe): \_\_\_\_\_

**G. AFFIRMATIONS:**

**Waiver of Procedural Safeguards (Optional):**

☒ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this complaint.

I (parent/guardian) would like to receive a copy of the Hearing Officer's Determination by:

☒ Email (provide email address) \_\_\_\_\_

☐ Certified Mail

**Parent, Attorney or Local Educational Agency Signature and Affirmation:** By signing you affirm that the information provided on this form is true and correct:

\_\_\_\_\_

Signature of Parent/Guardian or Adult Student

\_\_\_\_\_

Date

 \_\_\_\_\_

Signature of Attorney/Legal Representation (not required if filing party is not represented by an attorney/advocate)

5/22/2019

Date

\_\_\_\_\_

Signature of representative of the Local Education Agency (LEA)  
(if the hearing is requested by a LEA)

\_\_\_\_\_

Date

**Mail, fax, email, or hand-deliver this Complaint Notice to:**

Office of the State Superintendent of Education

Office of Dispute Resolution

810 First Street, NE, 2<sup>nd</sup> Floor, Washington, DC 20002

Fax: (202) 478-2956

Email: [Hearing.Office@dc.gov](mailto:Hearing.Office@dc.gov)

**1. What is the nature of the problem, including the facts relating to the problem that will need to be addressed at a Resolution Meeting, a Mediation Conference, and/or Due Process Hearing?**

\_\_\_\_\_ is a fourteen-year-old eighth grade student at DCPS's Alice Deal Middle School ("Deal"). \_\_\_\_\_ has an IEP for Specific Learning Disability that provides twenty hours of specialized instruction per week, which is insufficient to meet her needs. Despite low average cognitive abilities, \_\_\_\_\_ has fallen progressively further behind her peers and is now a minimum of four years below grade level in all academic areas. She struggles with basic phonics and decoding, and she has not mastered third grade sight words. To make appropriate progress, \_\_\_\_\_ requires a full-time IEP and placement in a non-public school. In June 2018, Dr. Jessica Hasson, a licensed psychologist, recommended an increase to \_\_\_\_\_'s specialized instruction hours and placement in a nonpublic school. Despite knowledge of this recommendation, DCPS continues to provide insufficient specialized instruction to permit \_\_\_\_\_ to make adequate progress.

Throughout \_\_\_\_\_'s educational career, DCPS has failed to provide an IEP that is reasonably calculated to allow her to make appropriate progress. *See* *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 999 (2017) ("To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."). \_\_\_\_\_'s past and current IEPs provide insufficient specialized instruction and provide that instruction in a setting that is inappropriate for her disabilities. Because of these deficiencies, \_\_\_\_\_'s math and writing skills regressed, and she has made minimal progress in reading, between June 2017 and today. To appropriately meet her academic needs, DCPS should place \_\_\_\_\_ in a non-public school where she can receive the

intensive specialized instruction she requires for all her coursework, and provide her compensatory education.

## **I. Background**

enrolled at DCPS's Shepherd Elementary School in the fall of 2006 at the beginning of Pre-K4. At the request of Ms. , DCPS conducted an initial comprehensive psychological evaluation in March 2011 when was in first grade. DCPS found eligible for an IEP under the disability classification of Specific Learning Disability on May 3, 2011. After repeating the second grade, continued to attend Shepherd through the end of 5<sup>th</sup> grade. began attending Deal in the fall of 2016 and she continues to attend Deal today.

DCPS conducted psychological evaluations of in March 2011, October 2013, and October 2016. In addition, Dr. Jessica Hasson (née Gurley) conducted an independent psychological evaluation in May 2018. Each evaluation found ; full-scale IQ to be in the low average range (84-89), except for the October 2013 evaluation, which did not include cognitive testing. Each evaluation also found a disparity between ; cognitive scores and her academic achievement. The evaluations show that this disparity has increased over time. For example, ; was 1.6 years behind in reading fluency in third grade; she was 5.4 years behind by seventh grade. In spelling, she was 2.1 years behind in third grade; by the end of seventh grade, she was 5.8 years behind.

### Woodcock-Johnson Scores Over Time

PL = performance level at time of testing

YB = years behind grade level

Domain	March 2011 (grade 1.7)		Oct. 2013 (grade 3.2)		May 2018 (grade 7.9)	
	PL	YB	PL	YB	PL	YB
Letter-Word Identification	k.3	1.4	1.4	1.8	1.8	6.1
Reading Fluency	N/A		1.6	1.6	2.5	5.4
Calculation	1.4	0.3	3.5	0	4.4	3.5
Math Fluency	k.4	1.3	2.0	1.2	2.8	5.1
Spelling	k.9	0.8	1.1	2.1	2.1	5.8
Writing Fluency	N/A		1.6	1.6	2.9	5.0
Passage Comprehension	k.6	1.1	1.5	1.7	2.5	5.4
Applied Problems	k.5	1.2	1.7	1.5	4.7	3.2
Writing Samples	k.2	1.5	1.4	1.8	2.5	5.4
Picture Vocabulary	k.7	1.0	N/A		N/A	

*\*The October 2016 evaluation did not provide grade equivalents, so it is not included here.*

DCPS has provided fifteen hours or more of specialized instruction per week since second grade, but this has been inadequate to allow to make appropriate academic progress. DCPS increased 's specialized instruction to 20 hours per week outside general education on March 28, 2019. However, for reasons discussed below, this amount remains insufficient to address s growing academic deficits.

### Specialized Instruction Hours on Annual IEPs

OGE = outside general education

IGE = inside general education

Grade	Date of IEP	Specialized Instruction Per Week
1 <sup>st</sup>	5/03/2011	8.5 hours OGE
2 <sup>nd</sup>	3/12/2012	18 hours OGE
2 <sup>nd</sup> (repeated)	1/25/2013	18 hours OGE
3 <sup>rd</sup>	12/06/2013	15 hours OGE
4 <sup>th</sup>	10/31/2014	17 hours OGE
5 <sup>th</sup>	10/02/2015	17 hours OGE
5 <sup>th</sup>	4/28/2016	17 hours OGE
6 <sup>th</sup>	11/17/2016	10 hours OGE / 10 hours IGE
7 <sup>th</sup>	11/07/2017	10 hours OGE / 10 hours IGE
8 <sup>th</sup>	10/29/2018	10 hours OGE / 10 hours IGE
8 <sup>th</sup>	3/28/2019	20 hours OGE

*\*This chart does not include amended IEPs. No changes to specialized instruction were made on any amended IEP.*

**II. Since June 2017, DCPS has failed to provide an IEP that was reasonably calculated to permit [redacted] to make appropriate progress in light of her circumstances.**

**1. The IEP in place in June 2017 was not reasonably calculated to enable [redacted] to make appropriate progress.**

The IEP in place in June 2017 was developed during an annual review meeting on November 17, 2016 when [redacted] was in the sixth grade. By the time of this meeting, DCPS had conducted and reviewed a comprehensive psychological evaluation from October 2016 that included Woodcock-Johnson IV Tests of Achievement. On broad reading [redacted] had a scaled score of 50, which placed her in the less than 0.1 percentile. In writing, [redacted] scored a 61, placing her in the 0.5 percentile among her peers. In math, [redacted] was in the 14<sup>th</sup> percentile.

The IEP produced during the November 2016 meeting reflected DCPS's awareness that [redacted] was significantly behind her peers. For example, it stated that, "[redacted] has very little phonological awareness as she often spells words that when read phonically are not recognizable." Despite these serious deficits, DCPS maintained [redacted]'s specialized instruction at 10 hours per week inside general education and 10 hours per week outside general education.<sup>1</sup> By maintaining [redacted] in the general education setting for most of the school day, [redacted] was not able to receive necessary intensive remedial instruction to obtain the foundational academic skills she lacked. Therefore, the IEP in place in June 2017 was not reasonably calculated to allow [redacted] to make appropriate progress.

---

<sup>1</sup> Although DCPS amended this IEP on June 13, 2017, DCPS only added a classroom accommodation (calculation device permitted on non-calculator sections); no additional specialized instruction hours were added.

**2. The November 2017 IEP was not reasonably calculated to enable [redacted] to make appropriate progress.**

DCPS convened an annual review meeting on November 1, 2017 when [redacted] was in seventh grade. At the time of the meeting, DCPS had data demonstrating that [redacted] required a smaller setting. An IEP Progress Report from 1/25/17 stated, “Classes that are too large or uncomfortable can cause her to shut down.” Similarly, an IEP Progress Report from 4/07/17 stated, “The setting and how she’s feeling on a particular day make a big impact on how well she reads. When she’s in a comfortable setting (usually small group like resource class) her reading is much stronger. When she doesn’t feel well or is nervous (usually in a larger class) she can get in her own head [and] her reading suffers.”

In addition, DCPS was aware of [redacted]’s academic deficits at the November 2017 meeting, and reflected those deficits in the IEP. The IEP stated that [redacted], a seventh grader who had repeated a grade, was performing at a 3<sup>rd</sup> to 5<sup>th</sup> grade level in math and her “multiplication and division facts lacked fluency and automaticity.” In reading, the IEP indicated that her Lexile level was 405 – a 2<sup>nd</sup> grade level – and noted “difficulty with fluency, decoding, and phonics.” These deficits also impacted [redacted]’s writing and she had “difficulty independently writing a complete sentence due to spelling difficulties.” Despite awareness that [redacted] performed better in smaller settings and she was performing significantly below grade level in all areas, DCPS maintained [redacted] specialized instruction hours at 10 hours inside and 10 hours outside general education each week.<sup>2</sup> This level of specialized instruction was inappropriate because general education instruction could not be sufficiently scaffolded to [redacted]’s level, and because she required intensive remedial support that could not be provided

---

<sup>2</sup> Although DCPS amended this IEP on March 6, 2018, DCPS only added new assistive technology; there were no changes to specialized instruction hours or [redacted]’s placement.

within the general education setting. Thus, the November 2017 IEP was not reasonably calculated to allow [redacted] to make appropriate progress in light of her circumstances.

**3. The October 2018 IEP was not reasonably calculated to enable [redacted] to make appropriate progress.**

DCPS convened an annual review meeting on October 29, 2018 when [redacted] was in eighth grade. By the time of the meeting, DCPS had received and reviewed the May 2018 comprehensive psychological evaluation by Dr. Hasson. On page 9 of her evaluation, Dr. Hasson stated:

“I would strongly suggest a significant increase in services outside of the general education setting in order to provide [redacted] with the services she requires to improve her academic abilities to at least a functional level. DCPS should also strongly consider placement in a nonpublic school that can appropriately address her academic needs, such as the Chelsea school, the Siena School, or the Lab School.”

Despite this recommendation, the October 2018 IEP provided the same level of specialized instruction in the same settings as previous years.<sup>3</sup> And, this IEP provided several of the same goals as prior IEP; the reading decoding goal and first two math IEP goals were put in place in November 2017 and remained unchanged on the October 2018 IEP. Moreover, the baselines provided for each of these goals is unchanged between November 2017 and October 2018, indicating that [redacted] had not made progress on those goals. It is apparent that DCPS was aware that [redacted] had not made appropriate progress. Nevertheless, DCPS did not make any changes to [redacted]'s specialized instruction hours or placement.

---

<sup>3</sup> Elva Gloster from DCPS's Office of Teaching and Learning's "LRE Support Team" issued a report on October 18, 2018 that recommended [redacted] continue to receive the same level of specialized instruction in the same placements. This report followed Ms. Gloster's observations of [redacted] and a review of some of [redacted]'s records (notably, Ms. Gloster did not review Dr. Hasson's psychological evaluation). It appears that DCPS inappropriately relied upon the LRE Support Team's recommendations when determining the level of specialized instruction and placement during the October 29, 2018 IEP meeting.

In addition to being repetitive, some of the goals in the October 2018 were not appropriately tailored to [REDACTED]'s needs. For example, the third writing goal stated, "Given a list of 10 grade and/or content specific spelling words, [REDACTED] will spell them correctly at 80% accuracy across 8 out of 10 trials." As an eighth grade student who "struggled with . . . basic reading skills (knowledge of letter sounds relationships)," it was not realistic to expect [REDACTED] to accurately spell eighth grade vocabulary words within one year.

Because the October 2018 did not provide sufficient specialized instruction and included goals that were inappropriate for [REDACTED]'s skill level, it was not reasonably calculated to allow her to make appropriate progress.

**4. The March 2019 IEP was not reasonably calculated to enable [REDACTED] to make appropriate progress.**

The IEP team reconvened on March 28, 2019 for the Annual IEP Review. The resulting IEP notes, "[REDACTED] appears to have been regressing [in math] since the end of her 7<sup>th</sup> grade year." In reading, her scores on the Reading Inventory appear to be at the 7<sup>th</sup> grade level; however, this test was administered with someone reading the text aloud to [REDACTED]. A better indication of [REDACTED]'s reading level was the Developmental Reading Assessment. On this test, she reached the "frustration" point when attempting to read a text on the second grade level.

Due to [REDACTED]'s continued lack of academic progress, at the March 2019 meeting Ms. [REDACTED] requested an increase in [REDACTED]'s specialized instruction hours and placement in a nonpublic school. Instead, DCPS increased [REDACTED]'s specialized instruction to twenty hours per week outside of general education. This level of specialized instruction will be insufficient to overcome [REDACTED]'s academic deficits and allow her to obtain basic academic skills like phonological awareness and decoding. Moreover, with this level of specialized instruction she would remain in general education elective courses that progress faster than [REDACTED]'s capable



of processing and that demand basic academic skills that she does not have. Therefore, the March 2019 IEP was not reasonably calculated to meet [REDACTED]'s academic needs and allow her to make appropriate progress.

**III. [REDACTED] requires a non-public placement to make appropriate academic progress.**

DCPS has provided insufficient specialized instruction for the entirety of [REDACTED]'s elementary and middle school years, and as a result [REDACTED] has not made meaningful progress. Instead, she made minimal progress, and in some instances regressed, in all academic areas since June 2017. [REDACTED]'s Woodcock-Johnson standard scores on the October 2016 and May 2018 psychological evaluations for broad reading went from 50 to 55; her broad math standard score went from 84 to 71; and her broad written language score went from 61 to 58. Moreover, Savannah's IEP reflects her lack of progress. Her first two math IEP goals have remained the same since November 2017, and her decoding reading goal has not changed since November 2017.

In addition to the specialized instruction provided by DCPS, Ms. [REDACTED] funded in-home one-on-one tutoring for four hours per week during the entire 2018-19 school year. Nearly every day this school year, [REDACTED] sought out additional support from her classroom teachers during lunchtime. Despite these efforts and the specialized instruction hours provided by DCPS, [REDACTED] has fallen further and further behind her peers, which demonstrates that she requires a more restrictive setting with intensive focus on remedial instruction in all settings.

[REDACTED] has severe learning disabilities that require intensive, evidence-based instruction that DCPS cannot provide. As a rising 9<sup>th</sup> grade student, [REDACTED]'s reading and writing disabilities impact her ability to access to all subjects. With reading and writing skills at a 1<sup>st</sup> to 2<sup>nd</sup> grade level, [REDACTED] requires instruction in phonological awareness and decoding. In

both pull-out instruction and in a DCPS self-contained classroom, DCPS utilizes the Read 180 program to target these skills. [REDACTED] has been exposed to Read 180 since the sixth grade, and yet her reading ability remains at an early elementary grade level. DCPS should place [REDACTED] in a non-public school that uses a different evidence-based approach to teach phonological awareness, decoding, and reading fluency skills.

In addition to her learning disability, [REDACTED] has a processing speed of 75, which is considered low. Because of this low processing speed, it takes [REDACTED] longer than her peers to understand and apply new information in all school settings. With twenty hours of specialized instruction, [REDACTED] would be in a self-contained classroom for her core academic classes, but she would remain in general education for electives. In high school, diploma-track students must take elective courses in music, art, health, college and career preparation, and a foreign language. Even in elective courses that are less academically rigorous, [REDACTED] cannot keep up with her general education classmates. She requires intensive scaffolding, repetition, and slower pacing that can only be provided in all courses in a non-public setting.

#### **IV. Conclusion**

Because DCPS has failed to provide [REDACTED] with an appropriate IEP and placement since June 2017, DCPS has denied [REDACTED] a FAPE. Without sufficient specialized instruction in a non-public setting to address [REDACTED]'s severe learning disability and compensatory education to remedy years of inadequate services, [REDACTED] will continue to fall further behind her non-disabled peers. [REDACTED] aspires to attend college, but she is a rising 9<sup>th</sup> grader who, despite years of special education services, is learning below the level of a third grader in most areas. She cannot, and should not, have to wait any longer to receive the education that she needs and that the law requires.

**STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

Jane Smith, parent and next friend of	)
minor child, JV	)
Petitioner,	)
	)
v.	)
	)
DCPS,	)
	)
Respondent.	)
	)

**MOTION FOR EXPEDITED HEARING**

Petitioner, parent and next friend of John Smith, through her counsel, Katherine Zeisel, Esq. of the Children’s Law Center, hereby moves for an expedited hearing against the Respondents because Petitioner’s son, John Smith, is in physical and emotional danger in his current placement due to illegal corporal punishment in the form of physical discipline and restraints. An expedited hearing is further necessary because John is not currently attending school due to the failure of DCPS to provide a safe placement for him.

**I. FACTUAL BACKGROUND**

John is a ten-year old boy who is currently in the fourth grade at Garrison Elementary School (“Garrison ES”). His classroom teacher, [REDACTED] has repeatedly used illegal corporal punishment in the form of physical discipline and inappropriate restraints on John. On the morning of March 8, 2008, Ms. Smith received a call from [REDACTED] and heard John yelling “Ouch, she’s grabbing me.” Later that day another student scratched John on his face by his eye and Ms. Smith was called into school to pick him up. Ms. Smith took John to the pediatrician regarding the severe facial cuts/lacerations. Later that evening at home, Ms. Smith discovered bruises in the shape of finger marks on the upper

part of each of John's arms. John reported words to the effect of: My teacher grabbed me and put me in time out.

A letter was sent to [REDACTED], the principal at [REDACTED] on March 8, 2010 notifying him of this incident and of other past incidents of improper restraints used by his teacher. See Exhibit A. There has been no response by DCPS to this letter. A second letter was sent to the [REDACTED] principal on March 23, 2010 providing further documentation and requesting visiting instruction. See Exhibit B. John subsequently reported the incident to his occupational therapist at Georgetown, who also saw the visible bruises. This interaction was documented in John's medical records. See Exhibit C. Photographs were also taken of John's injuries, which initially manifested as finger-shaped scratches and redness and then showed as visible bruises the next day. See Exhibits D and E. The bruises remained visible for several days.

Upon information and belief, the first incident of inappropriate physical violence occurred during the 2008-09 school year when Scott's classroom teacher, [REDACTED], hit him with a ruler, causing an abrasion on his hand that was visible for approximately a week. Ms. Smith discussed the incident with [REDACTED], another [REDACTED] teacher and with the school counselor. However, upon information and belief, no action was taken by the school. In the time period between the two incidents, John reported inappropriate physical restraint by his teacher on several occasions.

DCPS's failure to address the ongoing illegal corporal punishment being utilized against John in his classroom cause not only physical harm to John but also negatively impact his ability to be able to learn in the classroom because John is so stressed and fearful that he cannot fully participate in his education.

## **II. EXPEDITED HEARING IS NECESSARY IN THIS CASE**

### **A. Expedited Hearing is Necessary Due to Illegal Discipline**

Although expedited hearings are required for disciplinary matters, the hearing officer retains the authority to grant an expedited hearing in other extraordinary circumstances. In fact the OSSE standards go so far as to say that an expedited hearing “shall be granted” in certain circumstances, recognizing that there are cases in which the situation is so grave that an expedited hearing must occur. See OSSE Standard Operating Procedures, §1008(B)(1) (2008). Pursuant to the Standard Operating Procedures, an expedited hearing request shall be granted when the physical or emotional health or safety of the student or others would be endangered by a delay in the conduct of the hearing.

In this case, it is clear that John is physical danger in his current placement. [REDACTED] uses illegal corporal punishment on John which threatens both his physical and emotional well-being. As long as John remains in his current placement, he is in danger. An expedited hearing is necessary so that John can be placed in an appropriate and safe program which can meet his need.

**B. Expedited Hearing is Necessary Because of Total Denial of FAPE** Garrison ES has completely ignored the parent’s reports of illegal corporal punishment and John has not been attending school since the last incident because Ms. Smith fears for his safety. Because no alternative forms of instruction have been provided, John is being totally denied a FAPE.

The Office of the State Superintendent Standard Operating Procedures specifically provides that an expedited hearing may also be granted for any other substantial justification. See OSSE Standard Operating Procedures, §1008(B)(2) (2008). For example, a hearing officer granted an expedited hearing for the failure of the school to appropriate place a child with several disabilities. See Allen v. Altheimer Unified Sch. Dist., 2007 U.S. Dist. LEXIS 57566 (E.D. Ark. Aug. 6, 2007) (hearing officer ordered change of placement after expedited hearing on request).

Where DCPS’s actions are so extreme as to constitute a total denial of FAPE to a student, an expedited hearing is an appropriate remedy because each day that FAPE is denied

causes additional harm to the child. See Blackman v. D.C., 277 F. Supp 2d 71 , 79 (D.D.C. 2003) (holding that the failure of a school district to comply with its statutory obligations under the IDEA and provide appropriate educational placements can have a devastating impact on a child's well-being.).

Each day that John is out of school due to the failure of DCPS to provide a safe school environment is a total denial of FAPE. As Blackman states, “While a month in the life of an adult may be insignificant, the rate at which a child develops and changes, especially one at the onset of biological adolescence with or without special needs like those of our plaintiff, a few months can make a word of difference in the life of that child.” See Blackman at 79. An expedited hearing is necessary in this case to ensure that John has a safe and appropriate school environment where he can be provided a FAPE.

### **III. CONCLUSION**

An expedited hearing is necessary to protect John from illegal school discipline and to protect his physical and emotional health and safety. An expedited hearing is also necessary to address the total denial of FAPE because John does not have a placement where he can access his education. For all of these reasons, Petitioner respectfully requests that the motion for expedited hearing be granted.

Respectfully Submitted,

---

Katherine Zeisel, Esq.  
DC Bar No. 979552  
Children’s Law Center  
Attorney for Elizabeth Smith  
616 H Street, NW Ste 300  
Washington, DC 20001  
(T) 202-467-4900 ext. 547  
(F) 202-552-6001  
kzeisel@childrenslawcenter.org

Daniel McCall  
Attorney for DCPS, [REDACTED]  
DCPS Office of the General Counsel  
825 North Capitol Street, NE, 9<sup>th</sup> Floor  
Washington, DC 20002  
Via fax: (202) 442-5115

February 4, 2010

**RE: [REDACTED] 5-day Disclosures**

Dear Mr. McCall,

I am writing in reference to the due process hearing scheduled for Child/Student (Case No. 2009-0000). The purpose of this letter is to provide you a list of witnesses and documents, including evaluations, which we may rely on in the hearing.

**Witnesses**

1. Child/Student, Petitioner\*  
Address  
Washington, DC 20020

Phone: (202) 555-5555

Petitioner will testify about the facts alleged in the complaint.

2. Ms. Emily Peltzman, Investigator, The Children's Law Center  
616 H Street, NW, Suite 300, Washington DC 20001

Phone: (202) 467-4900

Ms. Peltzman will testify about her observations of Child/Student at school, her review of the records and her observations at the IEP meetings and dispute resolution session.

3. Dr. Kara Covington, Psychologist\*  
Children's National Medical Center Pediatric Mobile Clinic  
1901 Mississippi Avenue, SE Washington, DC 20020

Phone: (202) 436-3060

Dr. Covington will testify about her evaluation, about the appropriate special education placement and services and about compensatory education.

4. Ms. Marlene Gustafson, Associate Head of School\*  
Kingsbury Day School  
5000 14th Street, NW  
Washington, DC 20011

Phone (202) 722-5555

Ms. Gustafson will testify about the proposed placement and its appropriateness for Child/Student.

5. Kathia Sturdivant, Therapist\*  
Capital Region Children's Center

Phone: (202) 596-5951

Ms. Sturdivant will testify about her observations of Child/Student as her therapist.

\* denotes that witness may testify by telephone

° denotes that witness may testify as expert

### **Documents Offered By Petitioner**

#### **IEPs and related documents**

SL-1	10/1/09 Student Evaluation Plan
SL-2	10/9/09 IEP and Parent Notes
SL-3	11/25/09 Behavior Intervention Plan
SL-4	12/2/09 IEP
SL-5	1/8/10 IEP
SL-6	1/8/10 Dispute Resolution Session Notes
SL-7	1/27/10 IEP

#### **Evaluations and Reports**

SL-8	Psychoeducational Evaluation by Dr. Covington, June 2009
SL-9	Vanderbilt Rating Scale by Ms. Agwalla for Dr. Covington, dated 3/20/09
SL-10	Functional Assessment Interview Form, 10/15/09
SL-11	Occupational Therapy Report, 11/19/09
SL-12	Psychological Evaluation, 11/16/09
SL-13	Speech and Language Evaluation Report, 11/18/09

#### **Other Testing**

SL-14	DC CAS Scores, 4/20/09
SL-15	Diagnostic Report, 12/1/09
SL-16	2009-2010 DC BAS Scores

#### **School Records**

SL -17	2006-07 Report Card
SL-18	2007-08 Report Card
SL-19	2008-09 Report Card- First three advisories
SL-20	2008-09 Report Card- Full year report card
SL-21	2009-10 Report Card
SL-22	4/6/09 Suspension Notice
SL-23	4/28/09 Suspension Notice
SL-24	6/10/09 Suspension Notice
SL-25	Photographs of Child/Student
SL-26	Child/Student . Work Samples

#### **Communication with Turner**

SL-27	8/20/09 Records Request to Elementary School
SL-28	11/19/09 Letter to PH regarding records
SL-29	11/29/09 Letter to RG regarding violent incident against Child/Student
SL-30	12/2/09 Email to PH regarding records



SL-31 12/3/09 Email to PH regarding records  
SL-32 12/8/09 Email with PH regarding records  
SL-33 1/5/10 Letter to PH regarding records  
SL-34 1/27/2010 Letter to PH regarding records  
SL-35 1/29/2010 Emails with PH regarding records

**Other**

SL-36 Affidavit of [REDACTED]  
SL-37 CNMC Medical Record 2/22/07  
SL-38 Acceptance Letter from Kingsbury Day School  
SL-39 Resume of Dr. Kara Covington  
SL-40 Resume of Kathia Sturdivant  
SL-41 Work Sample from Kingsbury

DCPS has notified us that additional records which have been repeatedly requested by Plaintiff, including work samples for Child/Student, will not be available until Friday, February 5, 2010. If DCPS provides the work samples, Petitioner reserves the right to include them in supplemental disclosures and to utilize them in the hearing.

In addition, we reserve the right to examine any witnesses and rely on documents disclosed by DCPS. We also reserve the right to use any documents or testimony for the purposes of impeachment.

Please let me know if we can settle this matter in advance of the hearing date. I can be reached at: 202-467-4900 (phone); 202-552-6001 (fax); or, [kzeisel@childrenslawcenter.org](mailto:kzeisel@childrenslawcenter.org).

Sincerely,

Kathy Zeisel, Esq.  
Attorney for Petitioner, Child/Student

CC: Student Hearing Officer Terry Banks

D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
SPECIAL EDUCATION STUDENT HEARING OFFICE

<u>Parent, parent and next friend</u>	)	
<u>Of Minor child, Student</u>	)	
Petitioners	)	
	)	Case Number: 2011-0188
	)	Hearing Officer: Coles Ruff
v.	)	Hearing Dates: 4/5/2011 & 4/6/2011
<u>District of Columbia Public Schools and</u>	)	
<u>William E. Doar, Jr. Public Charter School</u>	)	
Respondents	)	
	)	

**PETITIONER'S COMPENSATORY EDUCATION PLAN**

As requested by Hearing Officer Ruff, what follows is the proposed plan for compensatory education for Student as known to the Petitioner at the time of this filing. Educational consultant, Dennis Leighty, will testify regarding this plan.

- Two hours per week of academic tutoring at Kingsbury and/or in-home by Kingsbury Tutoring or EC Tutoring Services, for one year. Necessary transportation should be funded by DCPS.
- Twenty-five hours of behavioral intervention consultation from a trained behavior specialist to develop a program for home and school.
- Three-weeks of "B" Social Summer Camp by Susan Abrams at Fitness for Health that emphasizes social skills thinking/training to be implemented during summer 2011. Transportation should be paid for by DCPS.
- Social skills training group for ten weeks. Transportation should be paid for by DCPS.

Submitted by:

Date: \_\_\_\_\_

\_\_\_\_\_  
Renee Erline  
Attorney\* for Parent  
Children's Law Center  
616 H Street, NW – Suite 300  
Washington DC, 20001  
(202) 467-4900, x 580 (tel)  
(202) 552-6018 (fax)  
[rerline@childrenslawcenter.org](mailto:rerline@childrenslawcenter.org)

\* Admitted in Maryland; eligible to practice in D.C. under the supervision of Tracy Goodman, a member of the D.C. bar, DC Bar# 481088, pursuant to Rule 49(c)(9)(B) of the D.C. Court of Appeals.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2011, copies of the foregoing Petitioner's Compensatory Education Plan have been delivered by email to the following:

Hearing Officer Coles Ruff  
Office of the State Superintendent for Education  
Student Hearing Office (SHO)  
810 First Street, NE, 2nd Floor  
Washington, DC 20002  
*Via email:* Coles.Ruff2@dc.gov

Linda Smalls  
Office of the General Counsel  
District of Columbia Public Schools  
1200 First St., NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
*Via email:* linda.smalls@dc.gov

Office of the State Superintendent for Education  
Student Hearing Office (SHO)  
810 First Street, NE, 2nd Floor, Room 2001  
Washington, DC 20002  
*Via email:* Student.HearingOffice@dc.gov

Date: \_\_\_\_\_

\_\_\_\_\_  
Renee Erline  
Attorney\* for Parent  
Children's Law Center  
616 H Street, NW – Suite 300  
Washington DC, 20001  
(202) 467-4900, x 580 (tel)  
(202) 552-6018 (fax)  
[rerline@childrenslawcenter.org](mailto:rerline@childrenslawcenter.org)

\* Admitted in Maryland; eligible to practice in D.C. under the supervision of Tracy Goodman, a member of the D.C. bar, DC Bar# 481088, pursuant to Rule 49(c)(9)(B) of the D.C. Court of Appeals.

Dr Chase Direct—202.555.5555

**I.     Phone background**

1. Name
2. Where are you?
3. Are you alone?
4. Do you have anything in front of you?
5. Do you have a copy of the disclosures in this case?
6. Have you reviewed all of the exhibits?

**II.    Qualify as an Expert**

1. Current professional positions
  2. What does it mean to be a clinical psychologist?
  3. What does it mean to be a licensed neuropsychologist?
  4. Educational qualifications
    - a. Undergrad
    - b. Graduate degree
    - c. Post-graduate work
  5. Professional positions after post-graduate work
  6. Years in the field
  7. Years doing psychoeducational evaluations
  8. Number of psychoeducational evaluations conducted
  9. Number of neuropsychological evaluations conducted
- 2000

10. What is the difference between a neuropsychological evaluation and a standard psychoeducational evaluation?

11. In what percentage of those evaluations were you evaluating children with autism?

Part of training in Phd and seen and worked with kids with autism in 20 years of clinical work; stay current and educate myself

12. Any training for evaluating with children with autism?

13. Do you conduct trainings for other psychologists or psychology students? In what areas? in the area of psychological evaluations?

14. What documents do you typically review for your evaluations?

15. Why?

16. Have you had any training in interpret s/l evaluations?

Generally yes

17. What type of training have you had?

18. Have you had any training in reading o/t evaluations?

Generally

19. What kind of training have you had in reading OT evaluations?

20. As a child psychologist and evaluator, take part in IEP meetings?

21. How many?

many

22. Help determine if an IEP is appropriate?

23. Make recommendations about what services are necessary for a child to be able to derive educational benefit?

24. How often?

25. Make recommendations about what placement is appropriate for a child?

26. How often?

27. What training, if any, have you had in the provision of special education?

28. Testified as an expert in special education services and accommodations?

29. Testified as an expert in special education placements?

30. Testified as an expert about compensatory education?

31. How many times were you qualified as an expert in special education

Court hearing- two times as expert; school hearing- 7 times as an expert in school hearing

**TENDER Him as an expert clinical psychologist and neuropsychologist, with an expertise in neurological and psychoeducational evaluation, special education services and placement**

### **III. Evaluation**

7. Do you know Juan Smith?

8. How?

9. When did you perform that evaluation?

10. When did you issue the final report from that evaluation?

11. Turn to P-24, is this your report?
12. Did you review any documents prior to writing this report?
13. What documents?
14. Why did you these documents?
15. How would you describe Juan?
16. Generally, how would you describe the accuracy of your test results in describing Juan's abilities?  
*High estimation of his abilities*

**A. Testing**

17. What areas did you test Juan in?
18. Why?
19. What, if any, clinical observations did you have about Juan while you administered the testing?

**WISC**

20. In the area of intelligence testing, what test did you administer? (p3)
21. What did you learn from the WISC?
  - a. Full scale iq
  - b. Accurate assessment of his full scale iq?
  - c. Subtests
22. You noted that areas tested relating to visual perception were significantly higher than the other subtests, what does that mean?  
For instance, one part of the test requires kids to take a word and take away part of it. For instance, what is baseball without base? Juan could not do it with just hearing the instructions, but I wrote the word down and then crossed out base and asked him what it said. From that, he was able to do the other words.
23. What impact does that have on Juan?
24. What impact does it have on Juan's ability to perform in school?
25. Would a classroom teacher have been able to determine that Juan had visual strengths even without this testing?

26. How?

27. How can these strengths be utilized at school to ensure Juan is able to access his education?

28. You also noted that the Juan had significant deficits in areas related to verbal skills, what impact does that have on Juan

29. What impact does it have on Juan's ability to perform in school?

#### WIAT

30. What test did you administer in the area of academic achievement? (p6)

The WIAT-III and the GORT-4 (and the CTOPP)

The WIAT-III and the GORT-4 (and the CTOPP)

31. Why did you administer the WIAT?

Because the WIAT is:

1. A good and well-normed test of academic achievement functioning
2. Generally accepted by most public school systems
3. Specifically co-normed with the WISC-IV IQ test

32. Why did you administer the Gray-Oral Reading test?

Because the GORT-4 is a well respected, normed test of basic functional reading and reading comprehension that places minimal demands on a child's oral expressive abilities.

33. Why did you administer the OWLS Listening Comprehension subtest?

Because the OWLS is a good and relatively 'pure' test of basic listening and language comprehension which places minimal demands on a child's oral expressive abilities.

34. What did you learn about Juan's reading skills from this testing?

b. What did you learn about Juan's mechanical reading skills?

WIAT-III Word Reading: SS=62 (1<sup>st</sup> %ile) GE 6:4

WIAT-III Pseudoword Decoding: SS=82 (12<sup>th</sup> %ile) GE=7:0

WIAT-III Basic Reading Readiness Skills: SS=79 (8<sup>th</sup>%ile)

GORT-4 Reading Accuracy: SS=3 (1<sup>st</sup> %ile; GE=1:2; AE=6:3)

c. What did you learn about Juan's reading comprehension skills?



WIAT-II Reading Comprehension: SS62 (1<sup>st</sup> %ile) GE=1:2 (on 1<sup>st</sup> Grade Reading)  
GORT-4: Reading Comprehension= 2<sup>nd</sup> percentile; GE=<1:0; AE=<6:0

35. What, if anything, do these comprehension deficits tell you about Juan's language processing abilities?

That Juan's language processing and comprehension skills are severely impaired.

36. How is Juan's method of language processing related to his disability?

Children with Autism invariably have significant impairments in their functional language and communication skills which require intensive intervention from early on.

37. How would you expect Juan's deficiencies in reading mechanical skills to impact him at school?

38. How would you expect Juan's reading comprehension deficits to impact him at school?

39. What did you learn about Juan's mathematics skills?

*Math problem solving-standard score of 72, 3%, 2.2 grade; could do not items covered in later part of second grade, including reading clock, counting coins, concept of place value*

*Numerical operations: 66, 1%, grade 1.7—totally unable to do problems adding double or triple digit numbers*

*Arithmetic fluency addition- grade 1.0*

*Subtraction- 1.9*

*Multiplication- could not do it at all*

40. What does this tell you about Juan's ability to do math at school?

41. What did you learn about Juan's written expression skills? (p9)

*WIATT II- 7%, 2.1 grade—inability to spell words greater than 4 or 5 letters, overly phonetic spelling errors,*

*Spelling- heard and perceived sounds/phonemes in these words correctly and in proper order, but breakdown in Juan's ability to convert these correctly processed words sounds into the written forms—reps significant deficits*

*Sentence composition subtest-did surprisingly well, 21%, mildly below avg, 4.7 grade -but had significant trouble with part of test requiring him to independently create sentences*

*Essay composition- 2%, less than third grade level*

42. How might these deficits impact Juan at school?

43. What did you learn about Juan's oral language/communication skills from this testing? (p10)

WIAT-III Oral Expression: SS=70 (2<sup>nd</sup> %ile; GE=1:0; AE=6:0)

1. Expressive Vocabulary: SS=70; 2<sup>nd</sup> %ile
2. Oral Word Fluency: SS=85; 16<sup>th</sup> %ile
3. Sentence Repetition: SS=73; 3<sup>rd</sup> %ile)

WISC-IV Vocabulary: SS=3 (1<sup>st</sup> %ile)

Qualitative Observations showed severe expressive language impairment:

4. Speaks in brief utterances (1 to 2 sentences maximum)
5. Sentences a frequently agrammatical
6. Sentences generally omit use of pronouns
7. Echolalia present

44. What did you learn about Juan's listening comprehension from this testing? (p11)

WIAT-III Listening Comprehension: SS=75 (5<sup>th</sup> %ile; GE=1:6; AE=6:6)

1. Receptive Vocabulary: SS=90; 25<sup>th</sup> %ile)
2. Discourse Comprehension: SS=72; 3<sup>rd</sup> %ile)

OWLS Listening Comprehension: SS=29 (<1<sup>st</sup> percentile)

Qualitative Observations: Poor attentional listening skills

Poor non-verbal communication skills

Literal in his language comprehension

45. How do Juan's deficits in oral language and communication and in listening comprehension impact him at school?

46. You said you administered the WIAT b/c it is co-normed to the WISC-IV, what, if anything, did you learn by comparing these test results? What does that mean for Juan?

Because the WIAT-III and WISC-IV tests are both 'Wechsler Tests' and co-normed with one another, it is possible to obtain 'predicted' academic achievement scores based on a child's actual intelligence scores. It is then possible to compare their actual and predicted achievement scores and determine whether the discrepancy between them is clinically and/or functionally significant and atypical.

**Attention/concentration and mental/attentional control skills (p11)**

47. You said you also tested in Juan in attention and concentration, why did you test in this area?

Because attention and concentration skills are generally the basis of most higher-level cognitive, intellectual, and academic skills.

48. what tests did you administer in that area?

The WISC-IV WMI and PSI, as well as behavioral observations.

49. Why did you administer the WISC-IV working memory index?

Because the WMI is generally administered as part of overall intelligence testing with the WISC-IV and because it provides useful information about a child's attentional/mental control and working memory skills.

50. What, if any, observations did you make during testing about Juan's attention and concentration?

*Max span of attention was often 3-5 minutes and no more than 10-15 minutes*

51. How could Juan's significant deficits in attention and concentration impact him at school?

52. You said you also did an assessment of Juan's executive functioning (p12),

53. what is executive functioning?

'Executive Functioning' is an 'umbrella term' for a number of separate yet related 'higher cognitive and behavioral functions' affecting an individual's ability to think, work, and behave in a purposeful, goal-directed, logical, well-controlled, independent, non-impulsive, and effective manner.

54. Why did you test him in this area?

55. how did you do this assessment?

Primarily through behavioral and qualitative observations made during testing and by obtaining information on Juan's functioning at school and home through review of academic records, parental interviewing, and review of parental ratings of Juan.

56. You stated that asked for a rating scale from the mother, but not the teacher, why didn't you ask for a scale from the teacher?

Oversight

57. Are your conclusions valid without this rating scale?

Yes.

58. Why?

Administration of the BRIEF was mostly a formality. There is no question that Juan's executive functioning is severely impaired. Specific teacher ratings on the BRIEF are not really necessary to know or confirm this.

59. What did you learn?

60. How do Juan's deficits in executive functioning impact him at school?

61. How do you know this?

62. You also did an assessment of Juan's adaptive and behavioral functioning (p14), what tests did you administer to do this assessment?

The Adaptive Behavioral Assessment Scale—Second Edition (ABAS).

63. You stated that asked for a rating scale from the mother, but not the teacher, why didn't you ask for a scale from the teacher?

Because Juan's mother was deemed to be a better and more appropriate judge/rater of his level of adaptive functioning in all areas assessed on the ABAS with the possible exception of 'Functional Academics' – and I had considerable information about Juan's 'functional academic abilities' from other sources.

64. Are your conclusions valid without this rating scale?

Yes.

65. Why?

Because my evaluation and report deal primarily with Juan's intellectual, neuropsychological, and academic functioning with recommendations primarily guided by findings in these areas. Thus, while it is important to know about Juan's functioning in the areas of self-care, community use; safety, etc. (as they will ultimately need to be addressed as well) not having this information would not effect findings and recommendation regarding Juan's academic needs.

66. What did you learn?

That, as expected given his significant level of Autism, Juan experiences marked impairments and disabilities in his general level of adaptive functioning beyond his academic abilities (i.e., in the areas of self-care, safety, community use, activities of daily living, socialization) all of which will need to be specifically addressed to improve his quality of life and chances for maximum functioning as he matures into adulthood.

### **Diagnosis (p20)**

67. After testing Juan, were you able to make any diagnosis?

HFA

68. What was it?

69. What does High Functioning Autism mean?

HFA is characterized by most of the symptoms that characterize autism with the notable exception of better developed language-based communication skills and, better cognitive/intellectual functioning— although these will typically be markedly impaired relative to a normal or non-autistic individual.

70. What does HFA mean for Juan?

71. How does it impact him at school?

72. Based on this diagnosis and your testing and observations of Juan, what can you say about Juan's ability to knowingly lie?

It is not impossible, but children with significant autism like his have an extremely hard time lying—they don't know how to. To lie requires you to have a sense severed from others. Kids with autism like Juan does not have the cognitive capacity to be creative, they are very literal and don't have sense of themselves separate enough. They think you know what they know. Likelihood is only about 5% he could tell a lie.

73. Based on this diagnosis and your testing and observations of Juan, what can you say about Juan's ability to become angry and act on that anger an hour or two later?

Nothing impossible, but it is likely b/c he has poor self-control that he will react in the moment and be sort of impulsive. It is possible—if there is an intervention in the moment by someone. Then Juan may decide he doesn't need do anything—later, if he sees the kid, he may act then.

74. Based on your review of the documents, is this diagnosis consistent with prior diagnoses of Juan?

-yes (not MR b/c of his PRI skills—w/o that would also have mmr)

### **Recommendations (p20)**

75. Based on your evaluation, review of the documents, and expertise, were you able to make recommendations for Juan?

76. What is your recommendation about the type of school program necessary for Juan?

- Multi-modal/multi-sensory instructional techniques
- Small student:teacher ratio
- Emphasis on individual instruction over group instruction
- Provides intensive speech/language therapy, occupational therapy/sensory-integration therapy, physical therapy, social skills integration therapy, emotional/behavioral regulation therapy both on a 'pull-out' basis and integrated into the general classroom curriculum.
  - a. Has staff specifically trained in approved instructional and behavioral modification techniques known to work most effectively with Autistic children, including:
    - i. Applied Behavioral Analysis (ABA)
    - ii. Discrete Trial Learning
    - iii. TEACCH
    - iv. Pivotal Response Treatment
    - v. Sensory Diets
    - vi. Intensive individual and group speech/language and pragmatic language therapy
    - vii. Augmentative Communication
    - viii. Functional and Vocational training

Program that is specifically designed for kids with HFA—if there is a kid who is slightly lower

- cluster related- if in a school with gen, they are protected and separated—especially lunch and recess should be separate b/c so unstructured; could get into trouble
- prefer that whole campus is for these kids
- he needs to be protected b/c he is almost clueless; he is like a very young child cognitively
- particularly b/c other kids that age tease him
- student/teacher—2:1 student, teacher ratio in the classroom; not more than 10, but rather be 5-6 kids
- needs to be multiple computers b/c computer teaching is a good way to work with him and kids on autism spectrum
- need de-escalation and cooldown room—need to get to a quiet setting when agitated
- teachers have to be well-experienced and trained in working specifically with kids with autism b/c they are a whole different breed
  - in grad school training, they need to show they have considerable coursework and training in teaching autistic kids and then after grad school they should have a few years experience (at least the main teacher should have that);
  - aides: should be teachers not paraprofessionals b/c need to be trained to work with autistic kids; if you don't understand autism very well, then you don't know how to

work with them when they are escalated—so need to be a trained teacher or paraprofessional with training in autism

-dedicated aide b/c needs to be prompted, needs to be in a whole school that is protected and dedicated to these kids with teachers and aides that can prove they have training and experience

Classroom needs multimodal teacher, esp we know he is a visual learner and somewhat a hands-on; hearing things explained is not useful for him;

-visual cues throughout the school—should have signs and then point them out to him

Will need environmental management—he is such a victim to his environment, he will be calm if the environment is calm; he can't just follow normal school rules so you have to manipulate the environment—that is why it is important to have kids who understand autism—o/t and s/l must be an integral part of the team; o/t in and out of classroom; all kids on sensory diet so that there is constant interaction of needs---KK has this

Lunch w/ dedicated aide would not be sufficient—it is not just to protect him, but it is b/c he is so sensitive to lunch and recess; too much stimulation for him

Five crucial things to know about Juan:

1. ability to focus—needs help with this;
2. needs individual supervision and instruction with extensive reinforcement
3. Language- his progress is largely contingent on his language skills; he'll read more accurately and not understand so need to work on language skills
4. Instruction needs to be geared to a non-verbal style
5. Sensory Diet

77. Why is it important that Juan be in a class with only HFA and not other forms of autism?

Because, if Juan is in a class primarily with students who are lower functioning (as is reportedly the case at present):

- a. the level of instruction will probably be geared primarily towards the lower level of the majority of the class (meaning that Juan will not have nearly as much opportunity to experience instruction that will stretch and increase his level of functioning.
- b. Teachers may not perceive Juan as being as impaired (and thus in need of as intensive help) as he is – because he will look and perform better than the majority of his classmates.

- c. Being in a class with primarily lower-functioning students will contribute to Juan's level of frustration and agitation and prevent him from having opportunities to 'model up' to slightly higher-functioning students.

78. Is there any harm to Juan if the children in his class are not HFA?

79. What is that harm?

80. Is there any harm to Juan if the other children in his class are lower functioning than him?

81. What is that harm?

82. You also say Juan should be in that program full-time, does that include non-academic subjects?

83. Why?

84. Does that include lunch and recess?

85. Why?

86. Is there any harm to Juan if he has non academic subjects or lunch and recess with regular education peers?

Because Juan's autism places him a risk if he is placed with normal children his age (or even younger) as he will not be able to function at their level or understand what is happening or what is expected of him. He will also be a target for teasing and bullying.

87. Why?

For the same reasons as stated above and, also, because placing Juan (and other autistic children) in a crowded and noisy cafeteria or playground with large groups of other children would likely lead to 'stimulation overload' and possible agitation.

88. Do you have a recommendation about class size?

5 children (plus or minus 2)



89. Why?

Needs small class size to help ensure individualized instruction and supervision, as well as to minimize over-stimulation.

90. What student to teacher ratio do you recommend?

1:1 or 2:1 (students to instructors)

91. What training should the teacher have?

Teachers should have had specific training in their graduate education regarding working with and teaching children with autism and should have considerable professional experience in this area. Training in Adaptive Behavioral Analysis (ABA); Applied Verbal Behavior (AVB); TEACCH; and Pivotal Response Treatment would also be helpful (although are not necessarily 'essential').

92. What training should any classroom aides have?

Ditto above.

93. You also recommend a one-to-one aide, why is that necessary?

Juan lacks the ability to work or learn independently for more than a few minutes without specific 1-on-one supervision, guidance, and direction.

94. Is there any harm to Juan if he does not have a one-to-one aide?

95. What is that harm?

96. You also said that Juan should have an FBA to create a BIP—why?

A Functional Behavioral Assessment (FBA) is probably necessary to formally assess and clarify what specific traits and characteristics in Juan, his school environment, and the interaction between the two contribute to positive/adaptive versus negative/maladaptive behavior for him during the school day. This information is important to proactively create a program of environmental and behavioral management designed to optimize positive behavior and outcomes for Juan.

97. Turn to DC-9, this document from Juan's teacher states that he has challenges including laziness and defiance and recommends a goal of limiting the frequency of punishment to less than 3 times a week and reducing loud outbursts of defiance to less than three times per week—are the challenges and goals listed appropriate for Juan?

98. What are some of examples of strategies that could be used for Juan in a BIP?

- a. Start teaching/working at easier difficulty levels to avoid Juan's becoming acutely anxious, agitated, or shut-down upon starting newer or more challenging tasks.
- b. Utilize multi-modal teaching strategies – and especially visual and haptic/experiential/hands-on methods
- c. Utilize 'environmental management' and behavioral reinforcement techniques to help Juan remain calm, focused, motivated, and on-task
- d. Minimize group instruction and maximize individual instruction.
- e. Augment personal instruction through appropriate use of computer-based instruction.
- f. Integrate academic instruction (in reading, writing, and arithmetic) with specific instruction in social skills; verbal and nonverbal communication; and emotional management and regulation and sensory regulation (through having speech/language therapy, Occupational Therapy, and psychological therapy integrated into the classroom curriculum.
- g. Build Juan's 'emotional vocabulary' (pictures, faces, body language, words and adjectives describing different feelings and emotions) as well as gradations of intensity (1 to 10).
- h. Use 'verbal scripts' and 'social stories' to teach Juan how to respond appropriately in various common social and functional situations.
- i. Make sure to 'train generalization' of specific skills taught in one context so they are also used in other situations, environments, and contexts (including having his parents be involved so

they can further train generalization at home and in the community)

- j. Juan's classroom instruction must explicitly focus on teaching him to use imitation as a form of learning (and not just as meaningless parroting or repetition of others' words or behaviors. Teachers must help him understand that he needs to watch and listen and then copy what they do and say as a way of learning new skills – meaning that he has to actually pay attention to other people and learn and practice 'joint attentional and work skills' (rather than more 'parallel-play' type skills).

99. What is that harm?

100. In your recommendations on page 21 for o/t, you specify that a sensory diet should be implemented—what is a sensory diet?  
Some children with Autism are under or over-sensitive to certain kinds of sensory stimulation (whether it be 'touch', 'movement', 'vestibular stimulation', 'sight', or 'sound'). Having more or less of these types of sensory stimulation than their nervous systems requires (or can handle) will often lead them to seek-out, avoid, or react-to these types of sensory stimuli – often in ways that are inappropriate and maladaptive. A 'sensory diet' refers to the development of specific exercises, tasks, or techniques that can be used to provide Juan's nervous system with the correct type and intensity of sensory stimulation it needs to be better regulated. This, in turn, will likely contribute to his being emotionally and behaviorally balanced, better-regulated, calmer, and more able to sit, focus, learn, and work.

101. Should school staff in an autism program be able to identify these issues even without your evaluation?

Typically, this would be an Occupational Therapist.

102. Where should it be implemented?

At school, at home, in the community – wherever and whenever it is needed by Juan.

103. Why is it important that it be implemented at school and at home?

Because it is an effective method of 'self-calming' and 'self-regulation' that can often improve functioning without necessarily having to rely on medication.

104. Is that something you would expect an occupational therapist at Juan's school to be able to identify?

105. You also make several recommendations about other strategies that could help Juan control other sensory input on page 21-22-- You make a recommendation on p21 that the classroom have a time-out room/quiet room where Juan can go, why is that important?  
Because children with Autism tend to have very poor 'self-regulatory skills' (emotionally and behaviorally) and tend to be highly 'environmentally dependent' (meaning that if their environment is calm, they are more likely to be calm and if their environment is more stimulation or less structured and controlled, they are likely to get over-stimulated and/or agitated. Thus, trying to get an over-stimulated and agitated child with Autism to 'calm down' in the same environment that contributed to his becoming upset and out-of-control is likely to fail. You need to have a separate, quiet, structured, calming environment that they can go to de-escalate and calm back down.

a. Is there any harm to Juan from not having this room?

b. What is that harm?

106. Based on your testing and observations of Juan, would he be capable of determining on his own when he needed to go into such a space?  
Highly unlikely due to lack of insight and self-regulatory and initiation skills.

107. Who could help Juan determine that at school?  
Teachers, aides, therapists.

108. You also recommend that Juan utilize a three-way screen for his desk while he does desk work, why is this important?  
To help block-out or minimize visual distractions that might interfere with his ability to stay focused on work-related tasks and desk-work.

a. Is there any harm to Juan from not having this screen?

109. On p 22, you recommend that Juan have special/therapeutic earphones why is this important?  
To help block-out or minimize auditory distractions or over-stimulation that may hamper his ability to focus, stay on-task, or cause him to become agitated.

110. When should he utilize these headphones?

111. Where should he utilize them?
- a. Is Juan capable of determining when he needs to wear the headphones by himself?
  - b. Is there any harm to Juan from not having these headphones?
  - c. What?
112. Should Juan's need for the visual and auditory buffers you described be evident to a classroom teacher?

Once he was diagnosed with autism, the needs of a lot of autistic kids are similar. There are differences in what behaviors they display and what reinforcements are effective. Should have expected he would be oversensitive to over-stimulation and had modifications in place. 99.999% of kids with autism are verbal learners, need o/t.

113. He should have had IQ and academic achievement tests to see how he was.

114. Why?

115. You also recommend intensive speech-language therapy with both individual and group work (p21)—what do you mean by intensive?  
No less than 3 times a week, and preferably 5 days a week.

116. Why is this necessary for Juan?  
Because one of Juan's most severe disabilities is in his highly impaired verbal (and non-verbal/social-pragmatic) communication skills. If these are not addressed, his functional reading comprehension and writing cannot be expected to improve much and, even if he does learn additional academic skills, they will be functionally useless to him if he cannot work or function around other people.

117. Where should this therapy occur?  
Preferably at school – integrated into his academic program (although supplemental therapy received outside of school is alright, in addition).

118. Why is it important that it occur at school?  
As stated above, having Juan receive such therapy away from school will make it significantly harder to teach/get him to generalize skills learned to his actual interactions with adults and children he sees and interacts with at school every day.

119. What do you mean by generalize?
120. You also recommend augmentative communication strategies, what does this mean?
121. Providing Juan with a chart or brief booklet containing pictures or symbols indicating commonly used words, emotions, needs and requests that he can quickly point to in order to communicate when doing so with words would prove too slow, inefficient, or frustrating for him.

i. Why is it important for Juan?

122. Would this replace his need for verbal speech?  
No. It is important that Juan continue to receive intensive therapy to improve his speech and verbal communication skills, and that he be strongly encouraged to practice and use these skills. 'Augmentative communication' skills are meant to be just that, 'augmentative'.

123. How do you recommend implementing these augmentative communications strategies?  
Speech/language therapist in-conjunction with Juan's teachers, aides, parents, and other therapists

124. On p 22, you also recommend that Juan's academic instruction utilize multi-modal strategies, what does that mean?  
Instruction that makes simultaneous use of verbal/auditory language, visual, tactile, and physical/experiential techniques.

125. Why is it important?  
d. Specific program recommendations?  
e. Computer program—why?

126. Recommend that functional and life skills be an important part of Juan's curriculum on page 23, why?

127. On page 23, you also recommend ESY—why?

Because children, like Juan' with severe academic, intellectual, and functional disabilities require continued structure, practice, routine, and reinforcement of newly learned skills or they tend to lose them. Thus, being out of school (and away from the structure, instruction, routine, and therapeutic services Juan requires for the summer months would likely cause him to regress significantly.

a. Do you think there is any harm to Juan if he does not have ESY?

Yes.

b. What do you think that harm is?

See above. Lack of ESY greatly increases Juan's chances of regressing and losing skills that he and everyone else worked so long and hard to establish throughout the previous school year.

128. Is Juan's inability to retain information something that his teacher could have been aware of without your testing?

129. Why?

### **Progress**

Review of DCPS academic evaluation:

130. You said that as part of your evaluation you reviewed the DCPS educational evaluation from 2009 at P-17, did you learn anything from this evaluation? What did you learn?

131. Based on the scores from this evaluation, are you able to say anything about Juan's academic progress?

132. What?

133. Would you expect that a classroom teacher would be able to tell that Juan was not making academic progress?

134. How?

If he has been one of the highest functioning kids, he probably shines even if he is not making progress so relatively speaking he is doing well.

From 2<sup>nd</sup> grade IEP—it doesn't look like he has made much meaningful progress. He has not even met the 2<sup>nd</sup> grade IEP short term goals. When you are working with the kid day in and day out, you may not notice. But that is why the school program has to not rely on what the teachers are saying, but they have to periodically retest with people who can use normative measures and see how he is doing.

Review of other documents:

135. You said you also reviewed the prior IEP's, what IEP's did you review?

136. What were your conclusions?

137. Were those conclusions significant in the assessment of your evaluation testing measures?
138. Why?
139. What implication do these conclusions have for Juan?
140. You have talked about Juan's limitations, do you think that Juan is capable of making more progress than he has made in the last three years?
141. Why?
142. Has he made any progress?
143. Was it meaningful?
144. Why not?

**Kennedy Krieger**

145. Do you have any knowledge about Kennedy Krieger?
146. How?
147. Based on your knowledge of KK, would this program be appropriate for Juan?
148. Why?
- There are two classes potentially; he is provisionally accepted and they think they can help him. She said most likely he would be with high functioning kids. Class size is 5-9 kids with about 4 staff members. If Juan came in with an aide based on his IEP, that would be an additional person in the classroom.

Teachers have all either gotten certification or are currently getting certification. Most experienced teacher is 10 years with autistic kids and previous 8 years as a teacher; least experienced is her second year. KK provides 100% reimbursement on all classes and courses that people take, so people take classes and have to stay x number of years. Keeps retention and experiences people. Every weds they do staff training on teaching methods, sensory methods. It seems that their people are reasonably qualified. All aides have at least college experience; the whole program is based on integrated cirric method—speech, o/t and psychologists work in classroom.



They do have an o/t gym with swings and they have a Verizon sensory room for the kids with lights, vibrating chairs that can be used for therapy and calming for kids.

They do ABA and have a behavioral regulation team that is headed by a behavioral psychologist. Teachers would implement it, but in concert with the behavioral specialists. The teachers and aides would provide ABA guided by behavioral specialists.

ABA and TEACHH methods are the best we have for autistic kids and they implement them at KK. They have community activities for kids to go into the community, they have parent training and outreach.

They have pivotal response intervention—there seem to be some pivotal behaviors that if you train, they automatically lead to improvements in related skills and get improvements in generalization.

### **Comp Ed**

149. Based on your evaluations, observation and review of documents, can you determine when Juan's autism began to manifest?

150. When you do you think it began to affect his performance in school?

151. Do you know when Juan was first placed in an autism program?

152. How do you know?

153. What types of services do you think Juan needed in kindergarten to address his deficits?

154. You said Juan was placed in an autism program in first grade, but he has not made meaningful progress since then---what services do you think would have been necessary for him to make meaningful progress?

*½ day of individual therapy, 2 hours/week of group therapy and o/t*

155. And what was the harm in not providing those services?

156. What services would have been necessary in second grade?

157. Harm?

158. Third grade?
159. Harm?
160. If we look back from March of 2008 to now, if Juan had received the services you describe, what level do you think he would be functioning at now?

*Mid-third grade*

161. If we look back from March of 2008 to now, what do you think would be necessary now to get Juan to the academic and functional level he would have been at if he had received the services you described during that time period?

*Individual tutoring—about 100 hours of tutoring in ½ segments during the week (1.5-2 hours a week)*

*Laptop with earbuds to utilize at home*

162. Why do you recommend tutoring?
163. Why do you recommend laptop?
164. Why would a laptop be effective for Juan?
165. If Juan were to receive the compensatory education you recommended, but remain in the same placement, would you expect to see meaningful progress?
166. *clarify these questions after further conversation with Dr. Case*  
*Anticipated areas of cross:*
- no communication with the school
  - no observation of Juan with other children
  - any holes in training
  - length of time with Juan
  - Whether he's aiming at Juan's potential, or what Juan should have been able to achieve with the Chevy of academic supports (rather than the Cadillac)

Direct of Sally Smith

1. Name
2. Do you know John Jones?
3. How?
4. Where do you live?
5. Who lives with you?

John and James, my two sons.

6. How old is John?
7. How old is James?
8. Can you please describe John?

John is a nine year old, very intelligent, but a lot medical issues—ADHD, ED, asthma seizures, sleep apnea, pica. He has behavior problems—his behavior problems is trying to agitate adults or child to try to get them upset; he eats things that are not appropriate. He is also hyperactive and emotional. He loves math and science, and I am hoping he can overcome his medical problems and become a good citizen.

Wanders around a lot, so you have to keep an eye on him at all times, especially in parks

9. Does John have any disabilities?
  - a. Mental Health diagnoses?

ADHD

ED

- b. Medical diagnoses

Pica—putting objects in his mouth (marbles, pencils)

Asthma- because he is overweight and his surroundings

Sleep apnea—going to have surgery on august 16  
seizures

He has a condition with his foot

10. What are these?
11. What is pica?
  - Marbles, papers, anything

12. In what setting does he do put inedible objects in his mouth?
  - Every setting

13. Is there anything that can be done medically to prevent the pica?

No

14. So what can be done to ensure that he does not eat objects?

Constantly watching him and asking what is in his mouth; must be observed by an adult

15. You also mentioned that he has asthma, how does this affect him?

Limits his activities in the sense of running too long, gets out of breath and can't push out long breaths; has to have albuterol and other medicine—he can do them for short periods of time b/c out of breath, sometimes it takes too long to catch his breath

*1. You mentioned limited physical activity, does this have any relation to his ability to get around, climbing stairs or similar activities?*

*He gets out of breath; I don't even let him throw something in the trash; he can't lift bags. He gets out of breath.*

*2. Do you think that John could climb three flights of stairs?*

*No, he would have to stop and take a break after each flight.*

3. What is sleep apnea?

Max sleep of 3 hours, sleeps in upright position—tosses, turns, grunts

4. What impact does sleep apnea have on him during the day?

The dr said that some sleep apnea patients like John will make behavior problem worse. Makes him not sleep—moody, irritable and tired

5. Did anyone tell you that the sleep apnea has these effects?

The doctor told me, and as a parent I observed it

6. You also mentioned several other psychiatric diagnoses, how do these affect John?

ED—he is very emotional at least 20-30 times a day—he has a little explosion 100 times day. He gets upset 5 times an hour for the littlest things and I have to find the words or solution to calm him down. He gets upset about the littlest things that he shouldn't be upset about. He swears, throws chairs in the classroom, tearing the classroom up and they have to walk him out to somewhere. Even if he isn't at home, I make him go to his room to calm down.

He doesn't know how to share with peers or play with peers, he gets upset if his little brother takes a toy from him that he wants to play with.

Low self-esteem, won't talk baths and he smells

7. What does he get upset?

Depends—lower level would be kicking and scrunching his body  
Higher is throwing furniture, kicks/hits, slams doors—can't calm himself down

He tries to calm himself down and looks upset

8. Who has he kicked and hit in the past?  
Me, his peers, the door, the furniture, his brother

9. At school?

10. How know?

School calls me for every behavior at school, especially if they have to take him to the time out room—esp. if he hits a student or an adult

11. How often?

A lot—I was on probation for my job and my job said I had to leave to get my son together and then come back.

I get calls at least 5 times a week, sometimes twice a week—I tried to calm down by phone and then I would have go when that didn't happen. If he couldn't calm down, someone had to go to school to get him b/c he couldn't get on the bus.

The police officer had to escort the bus home last year b/c he was fighting on the bus and the aides on the bus couldn't handle it. The bus had to stop in the middle of the bus and the police officer had to get on it.

12. What are some examples of aggressive behavior at school?

Could not restrain him b/c he was kicking, try to choke teachers and students, spits on them—mostly teachers but also students. I would try to calm him down on the phone—not work, I have to go physically for him to see me.

Trying to touch teacher inappropriately, very disrespectful to women, indecent language. Sexually touched his peers—has to be walked to the bathroom by himself to use the bathroom.

He is aggressive towards adults. kicked the teacher in the groin in the 2008-09 school year.

He can't even play in the neighborhood b/c older kids beat him up.

13. Does he have other problematic behaviors?

Spitballs that he throws

He tries to bite and slap himself and call himself names. If anyone is front of him when he is mad, he will push them.

At school he shows behavior. He will show himself to other peers. When he went into the bathroom, he would peep into stalls or show kids inappropriate sexual behavior. He also says sexual things to his teachers.

He is abusive to his brother—he held a knife to him, he hits him—I have to watch him 24/7. Drs at childrens asked me to hide all the knives b/c he is so impulsive. There are no knives around our house. He has to be watched 24/7.

14. How is John's hygiene?

He don't care about it, his self-esteem is very low. He does not like to take baths. It is an argument for baths, to brush his teeth. I still have to go physically with him in the bath and I have to give him a bath b/c he doesn't do it himself—he won't stay in it and he still has feces on him.

15. What school did John attend for the 2009-10 school year?

Jackie Robinson Center

16. What grade was he in?

Third grade

17. How many years did he attend JRC?

Three years

18. What type of school is JRC?

A center to help kids with behavior problems

19. Can you describe the physical lay out of JRC?

JRC is very accessible for the kids, it is one level—each classroom is close together, classes can be observed, not too many places for them to wander, no stairs in the property. Security at the front and second door. Had a mental team for whatever problem the kids might have—a physical or mental time.

20. Who was on the mental team?

Ms Pipkin, counselor

Dr. Park-psychiatrist

SEC

21. How many hours a day in sped?

Full day

22. What school did he attend prior to JRC?

23. How long was he at Moten for?

2 years

24. What type of school was Moten?

Special ed for them

25. How many hours a day in special education?

Full-time

26. What related services did John receive at Moten?

Ot, counseling and behavior meds

27. Who was his counselor?

Ms. Pipkin

28. Who gave the meds?

Dr. Park—she gave meds and referred for procedures based on seizures

29. John's first at JRC was first grade, did you visit his classroom?

30. How many kids?

At first three and then 6.

31. How many adults?

3

32. In second grade, did you visit his classroom?

33. How did John do behaviorally during the 2008-09 school year when he was in second grade?

At the beginning he had issues with his behavior, with restraint, suspensions—a lot of suspensions. They wanted him to be admitted at Children's mental department. Children's refused to admit him.

He would run out of the classroom, running to 295, hitting his peers, cursing grownups

Inappropriate sexual behaviors, cursing at adults and peers

At home it was the same issues, his behavior was aggressive.

I lost my job b.c he had such behavioral problems

a. Did you observe any changes in his behavior during the school year?

b. How do you know how his behavior was at school?

34. You said he runs onto 295, where is 295 in relation to the school?

35. Turn to P-6—what is this?

Letter from ms pipkin

36. How did you get this letter?

Ms Pipkin called me to get the letter and said I had to take him to CNMC b/c so worried about outbursts

37. To your knowledge, are the behaviors in the letter accurate?

Yes, he ran to to 295 at least 2 times that week; his features were not coherent

38. Did you take him to CNMC?

39. Was he admitted?

No—he was calm when he got there; CNMC referred him to psychiatrist at CNMC

40. Turn to P-7—what is this document

From Dr. Park

41. How did you get it?

I picked it up from Dr. park b./c she was worried about seizures during rages

42. Where did you pick up the letter?

At JRC

43. Where is Dr. park's office?

In JRC next to Ms Pipkin

44. What was your understanding of why the letter was written?

She was so worried about his behavior and his seizures and being dangerous running onto 295

45. Was he admitted at that time?

46. Why not?

HSCSN said not enough to be admitted, they wanted to put into place outside solutions—psychiatrist at CNMC and ASY

47. What is ASY?

48. What services did John receive?

Therapeutic after care, group therapy, family therapy, self-esteem and medication/psychiatric care and counseling.

49. What, if any, related services did he receive during the 2008-09 school year?

O/t and counseling, behavior meds

50. Who did the meds?

Dr. park

51. Who did the counseling?



Ms Pipkin

52. Did you ever visit his class in second grade?

53. Who was his teacher?

Ms White

54. How many students?

Max was 5; with 3 adults—two teachers and one or two aides

55. In third, did you visit?

56. How many students?

8

57. How many adults?

4

58. how was behavior in 2009-10 school year in third grade?

It was a lot better at the beginning of the s/y, and then it got bad after January.

They called to praise me at the beginning of the year and he was getting greens and then that changed a month into school and he got all reds.

Hitting teachers, trying to hit in groin, cursing, hitting of his peers, spitting, trying to bite them, running out of the classroom, refusing to work, not cleaning himself when he goes to the bathroom at school

Ms Pipkin called to ask if I can send extra clothes to school for him.

Up and down. He got upset because he did not understand the school work—sends him in a frenzy when he doesn't understand b/c he doesn't want to be dumb.

He still had inappropriate sexual behaviors in the classroom, playing with his feces. His behavior was the same as the year before—being loud and obnoxious, curse at his teachers a lot, tries to fight the teacher

59. Any particular incidents last year?

In classroom, he showed himself in the class.

Jumping through window, got hit by a car on east hospital—police officer tried to arrest him b/c he was disrespectful

At school—hit teachers, hit peers, spitting on them, in the time out room a lot, he was calling his peers names, cursing at adults, tried to hit them in the groin, hitting himself, biting himself, running to 295 a lot—3 or 4 people have to hold him down for him to get relaxed

Inappropriate sexual behaviors went on—his teachers had to walk him to the bathroom with no others in the bathroom.

Disrespectful to females—called them the b word. Calls from his principal b/c said if behaviors not change, he is going to have to go somewhere else. He got a lot suspension and a lot of warnings. He was suspended 2-3 days for about 20 days total.

60. How do you know?

School calls me—Ms Pipkin call me, Dr. Park, his teachers call me—all the teachers know my number to get in contact with me

61. How often does the school call you b/c of a problem?

At least 4-5 times a week

62. What, if any, related services did he receive during the 2009-10 school year?  
o/t, meds, mental health

63. Who was his counselor?

64. To your knowledge, how often did Ms Pipkin work with John?

She worked with John every day; Ms Pipkin and Dr. Parks were the main ones interacting with him b/c he had so many behavioral problems

65. Did John get any services in the community in the 2009-10 school year?  
Yes ASY and Children's. He was receiving therapeutic aftercare, group therapy and psychiatrist and family therapy

66. Did you attend any IEP meetings during the 2009-10 school year?

67. How many?

3

68. When were they?

Beginning of the year, February and April

69. What was discussed during the Feb meeting?

That school is closing and they want to send to him another location-Hamilton Center

Behaviors and needs—discussed goals and needs; teacher was concerned he will not get services at Hamilton b/c he has come so far

He needed evaluations b/c they were old

70. What, if anything, was discussed about John's school placement for the 2010-2011 school year during the February meeting?  
They said Hamilton Center and that I should see the school

71. At the feb meeting, What, if anything, did you learn from DCPS about the Hamilton Center at the meeting?  
No one could tell me about, they said I had to go see it

72. After that meeting, what, if anything, did you to investigate the Hamilton Center on your own?

73. What did you see on your tour of Hamilton Center?  
3 flights of stairs that they said he would have to take three times a day  
Showed me the rooms, surroundings

The rooms are very large---there is too much room and not enough therapeutic room to deal with him

They have a bigger group with JRC and fewer teachers

I learned that the school is too big for him—physical school is too big  
The stairs are too much for him—he will be out of breath on the first set of stairs and there are three flights of stairs. They have to do them at least 3 times a day

I saw that he is being switched to different rooms that are not close to each other; he has to switch classes.

12-13 kids with two teachers in the classroom

Hallways were so long and he will be wandering and will go where he wants go. Lots of kids wandering without adults.

The classrooms are not close together—they are on different floors, that is too much activity for him with his medical problems

The classes were too big for him

He will be lost with all the grown up kids there

Not enough aides.

John needs therapeutic surrounding—not therapeutic, not doing introducing them to more school—like animals, football or soccer where he can learn to participate; no extracirulars. Outside grounds too big for him, he needs small setting to be watched

74. After your tour, what was your opinion about the Hamilton Center?

My baby is going to be lost in the school, nothing will be accomplished for him and what he did accomplishment will go away b.c/ lost in the system and medial probs will get worse needs individual attention.

75. Why?

76. Is there another school that you want John to attend?

77. What school?

78. Did you ever tell DCPS that you wanted to discuss Children's Guild as a placement?

79. When?

April IEP

80. What was DCPS' response?

They said no comments—they said he had to go to Hamilton center. They said they cannot discuss it and only Hamilton is the choice they have for us.

81. Have you visited the Children's Guild?

yes

82. Could you afford to pay for the Children's Guild on your own?

No

83. Why not?

Income is TANF and SSI

84. Why do you want John to attend the Children's Guild?

b.c of the peaceful surroundings, b/c equipped for his behaviors, timeout rooms are soothing and not have to use bodily force to calm him down; two floor with an elevator; extracirric activities; therapeutic environment. He could attention at CG—I see a lot of togetherness, the teacher and the aide cares. No students were wandering in the halls, it was quiet.

## **Direct Examination Parent**

### **Intro**

1. Good Morning, Could you tell everyone here your name
2. Parent, where do you live?
3. Do you have any children  
Yes
4. What are their names  
John, Jane and Juan
5. Do they live with you?  
Yes

I'd like to talk a little bit about Student

### **Educational Background**

6. What grade is Student in currently?  
9<sup>th</sup>
7. Where does he go to school?  
Dunbar
8. When did Student start at Dunbar?  
September of this year
9. We'll come back to Dunbar in a minute, but where did he attend school before that?  
Burroughs
10. What grade was that?  
8<sup>th</sup>
11. And do you remember when he started there?  
September 2009
12. Where was he before that?  
Thurgood Marshall
13. What grade was that?  
7<sup>th</sup> grade
14. When did he start at Marshall?  
January 2009
15. And where was he before that?

## Shugart in PG Country

16. Where is that?  
Maryland
17. How much time did he spend in Shugart?  
6<sup>th</sup> and 7<sup>th</sup> grade

## Student's Profile

18. Parent I want to turn for a minute to Student himself – Could you tell us a little bit about what he is like a child?
19. What is he like at home?  
He's really helpful around the house, pretty good kid, Ive noticed some emotional problems lately, but he's easy to deal
20. What about when he first gets home from school?  
He is really cranky  
Feels like he's overwhelmed from his school day – he is angry, cranky, won't eat, won't talk, sometimes just plain nasty
21. How long does that last?  
About two hours, but sometimes longer if the day was really hard for him
22. Does he bring school work home?  
I haven't seen any work
23. Did he ever bring work home from his other school?  
Yes and he used to bring home books to  
I don't think they let him bring books home from Dunbar  
Everything is a Xerox paper – makes it hard to help him without the books

Let's talk for a minute about the days when he does bring work home?

24. What kind of work comes home?  
The works that I've seen looks kind of difficult for Student  
She doesn't see how he can do it without books – lord knows I can't  
Some of the work that I see that he does at school looks totally opposite

The work I see that he has done at school is almost like baby work – it just doesn't match  
I can understand why he's frustrated because the work he bring home is really hard – I couldn't do it, so I can't imagine how he can as far behind as he is

He often tells me, I don't know how to do it, we didn't talk about this in class

25. You just testified Student gets frustrated with the work he brings home – can you tell us a little bit about what that looks like?

Some of the math looks really difficult – he never has any examples to go by – a book breaks it down step by step

26. How does Student express his frustration

Deep breathing, tapping of pencil, patting of foot on the floor and finally he'll just say I can't do it

27. How long will that last?

HE will try to hang in there for 30 minutes or so, but then he will give up because he says he can't understand it

28. How is Student doing with the instruction?

He's not really getting instruction – there is none – he is just copying things done  
All of the time he is telling me that they don't show us how to do anything. They just give us something to copy and then expect that we are going to know it – they don't teach me.

29. How do you know that?

He told me

30. When did he tell you that?

In general conversation when we were trying to do work?

31. Was it only one time?

No he's said that a lot of times

**Parent I want to back up just a little bit -**

**Maryland:**

32. Parent what was the last grade Student spent any time in Maryland Public Schools?

Part of 7<sup>th</sup> grade

33. Where was he then?

Shugart

34. Do you remember what year that was?

6<sup>th</sup> grade and half of 7<sup>th</sup>

First half of 2008-2009 school year

35. And do you remember what special education services he was getting when he first started at Shugart?

He was getting full time

36. Was that on his IEP?

I don't think so

37. Do you know why they put him in a self-contained classroom?

When I enrolled him – the SEC told me that they looked at his records and they told me that they were going to try it

I knew Student was slow so I didn't object to it

38. How did that work?

He seemed like he was doing ok

39. How was his attendance?

Good

40. How was his behavior at home

It was ok

41. Did he stay in the full time special education at Shugart?

No, they took him out

42. Why not?

I remember a phone call saying that they wanted to test him to see if he could handle it?

43. What did they try at that point?

They put him in regular education

44. How did that go?

It was a disaster – he had schedule changes, the classes were huge, he did horrible

45. Did he get any special education services during that period?

Not at first

46. Did he get ever start getting special ed while in Maryland

They started giving him pull out services

47. Did the pull out help?

Not really?

48. How do you know that?



I used to pop up a lot, observe, watch through the window  
I spoke to a few teachers  
The special education coordinator was hard to get in touch with – so I would regularly call his teachers  
Drive around when I had free time and observe

49. When did you move to DC?  
January 2009
50. What did you do when you first enrolled Student in DCPS  
Thurgood Marshall
51. Why did you go to TM?  
It's the neighborhood school
52. What did you do when you got there?  
I told them that I needed to enroll my kids
53. Did you bring any documents?  
Plenty –  
Histories, IEP's, transfer packet – I brought everything
54. Did you speak to anyone?  
Yes
55. Who did you speak to?  
The Principal
56. What did you discuss?  
I was concerned about special services for Student and the school being open space  
I asked if they thought they could accommodate him and when could he start?
57. Did you talk about what services Student had gotten in MD  
Yes
58. What did you tell them?  
I told her that he was in a full time placement and then he went to pull out  
I gave her a copy of the IEP  
She said she was going to review it and have her coordinator contact me
59. You testified that you gave them a copy of Student's Maryland IEP – do you remember when the Maryland IEP was created?  
March of 2008
60. Did you tell her your thoughts on whether the special education services he was getting in MD were working?

I told her that they were not working

61. What did the school do to address your concerns?

They didn't do anything

They stuck him in a class and he wasn't getting any services

He wasn't getting pull out or special education services

62. How do you know that?

Because Student told me – several times

63. Did you do anything once you learned that?

I called the school several times and asked what was going on

They said that they were trying to get him scheduled for some evaluation

Teachers were calling me all of the time

64. How long did that go on for?

The whole school year

65. Did they every get around to testing Student

I think they gave him a psychological test in May

66. Did you ever had an IEP meeting

At the end of the school year

I think it was the last day of school

67. What happened there?

It was very informal

They basically left everything the same – they were just going to dump everything in Burroughs

68. Did they go over the results from that psychoeducational test?

Yes

69. Did DCPS make any changes to services based on the evaluation

I don't think so

70. Did you agree with the IEP back then?

No

71. Did you sign it?

Yes

72. Why?

Because I just wanted him to move on and I hoped he'd get better services at the next school

They told me that he wouldn't get anything if he didn't sign it

73. Who told you that?

I can't remember – it was either the teacher or Ms. King

### **Burroughs**

74. Where did Student go next?

John Burroughs

75. What grade was this?

8<sup>th</sup> grade

76. Did Student get special education services at Burroughs

Yes

77. What did he get?

15 hours of pull out

78. How did Student do at Burroughs?

He started off ok

And then he nose dived

79. Tell me what you mean by Nose dived?

Grades started to drop

His classes were large

He didn't know what was going on

80. How was his attendance at Burroughs

He could've done better

81. Why did he miss class?

Sometimes he was actually sick, sometimes I think he faked sick to avoid the situation

That school had a lot of gang violence – security couldn't even stop them

One time they busted in the school to get Student and he wasn't there

82. You just testified that Student sometimes wanted the situation – what do you mean?

Student is a really calm quiet kid and he can't handle an over load of kid frustration

He's not one of those kids that can just shrug it off his shoulders

He just explodes he can't deal with it

83. How did you feel about all of that?

It was hard being a parent watching my son struggle with that

He'd get the stomach aches, headaches, real nasty moods

84. Did you share your concerns with anyone?

Yes

85. Who

Principal, Asst. Principal, resource room teacher, French teacher

86. Was anything done

We had one meeting after Student was targeted

Principal would sometimes pull kids into her office and try to talk to them

87. Was it helpful

Not really

88. Did you ever attend an IEP meeting at Burroughs?

Yes

89. When was this?

July 201

90. Do you remember the purpose of the meeting?

To discuss Student's special education services and to review his testing

91. What testing is that

I requested that Student be re-evaluated

I felt like there was more going on with Student that no one was addressing

92. Did the team review the evaluation

Yes

93. What did they do with that information

Basically nothing -

94. Did they make any changes to the IEP?

His classification

95. Did you talk about goals at all

They added a few goals

96. Did you talk about services

Yes

97. What did they do with the services?

Nothing

98. Did you express any concerns?

Of course

99. What about?

I said that I was worried about the amount of hours

I felt like they ignored the evaluation

I felt like they were just passing him off to Dunbar has he has been from school to school

100. Did they agree to make any changes to the services?

NO

101. What did they purpose to place Student the following year?

To send him to Dunbar

102. Did they give you any information about Dunbar

No

103. Did you ask for any information

Many times

104. What were you told?

I was told that Dunbar was the neighborhood school

But they couldn't give you any information re: services, who to contact, who was the SEC

In fact during that meeting the SEC herself admitted that she didn't know any of that information

105. Did she tried to find out for you

She called during the meeting, kept us waiting for about 30 minutes and the end result was Dunbar hanging up on her with no information

It really bothered me – how could they refer Student to a school and say it was going to be good for him when they knew nothing themselves about the program

I didn't make any sense

### **Dunbar -**

Parent, I'd like to turn to the current school year

106. Where is Student currently enrolled?

Dunbar

107. Why he is attending Dunbar?

That's where John Burroughs sent his paperwork because they told us the boundaries had been changed

And Dunbar said it wasn't – but that's where his paperwork was sent

108. Did you ever visit Dunbar prior to enrolling Student?

I did go

109. What happened?  
I hand carried a packet for Student and I spoke to a woman that does enrollment  
She said that Student's IEP would be honored and not to worry
110. Did anything else happen  
When Student was sitting in the hall waiting for me in the office – two boys tried to  
intimidate Student and start a fight  
Something in reference to the way he looked
111. Did anything else stand out  
I knew that he was going to be overwhelmed because I was  
I knew that the size was going to be overwhelmed  
Because it was in other school  
  
Sure enough - it was he would get lost – he would come home so cranky and  
overwhelmed
112. What did you observe about Student at home when he began attending Dunbar?  
There was a major personality change  
Huge decrease in appetite, attitude, a lot of slang he didn't use at first  
He was cranky a lot  
He was complaining about getting lost, changing his schedule  
He told me he never used the bathroom because of the activity going on there
113. Did you ever try to observe Student in school?  
I was told by the Principal
114. Did you ever have any meetings with Dunbar staff about Student?  
Yes
115. When?  
Very beginning of the school year
116. What was that meeting  
An IEP meeting
117. Why was that meeting scheduled?  
They told me that Student was doing so well they wanted to adjust his hours
118. What did you discuss first in that meeting?  
Then wanting to reduce Student's hours
119. Did they say why they wanted to do that?  
Because they said he was doing so well?

120. How long had Student been there at that point?  
About two weeks
121. What did DCPS recommend?  
Reduce the number of hours Student was receiving instruction outside of general education
122. Did they say why they were making this decision?  
So that he could graduate on time
123. What was your response?  
I really totally disagreed with that because I thought he would fall even further behind and still not graduate on time
124. Why?  
Because he really needs as much service as possible  
He needs really good instruction time
125. What did you tell them  
I said no way that was crazy and they insisted
126. Did they review the evaluation  
At that point they didn't review the evaluation
127. Did they ever get it during the meeting?  
You gave it to them?
128. Did they review the evaluation after I gave it to them?  
They flipped through it but didn't talk about it
129. What did you discuss next?  
The time he spends with the counselor
130. Who spoke about this?  
The counselor, Ms. Hall
131. What did she recommend?  
She felt like Student didn't need the one-on-one support
- She said that she didn't know what my son looked like, someone else had to point him out to her – that let me know that she didn't even meet with him before this
132. Did they have any other interaction?  
Not really – she said she observed him once
133. Did she ask you at the meeting for any input from you about this decision?

Yes

134. What did you tell her?

I told her about his depression stage and major weight loss and not eating

135. What did she say after you told her this?

She didn't seem to be too concerned

1. Where any changes made to Student's IEP?

They decreased hours of specialized

Did they do anything with the behavioral support – they left it along

2. Did you agree with the changes made to Student's IEP?

No

### **Attendance**

3. Did you communicate with the school again after that meeting?

Yes

4. Why?

Because the automated system called me every day

5. Why?

They had changed Student's schedule 4 times

He was confused

Didn't know how to be

One time when I called the school they did even know where he was – they were only able to tell me where they thought he might be?

6. Were you able to speak with anyone?

I spoke to someone in the office

7. Who?

I think it was the receptionist

8. How many calls did it take to speak to a person

After the 6<sup>th</sup> call of getting transferred

I told her I didn't want to be transferred I wanted to talk to someone

I told her I was trying to talk to the Principal

I even got transferred to Enrollment

I never got a return phone call from anyone

9. How long did that last?

It was maybe a month where I wasn't able to speak with anyone



10. Was the issue ever resolved?

I finally got in touch with Ms. Clarke – she said that the last schedule that Student got is the one that should be in place

11. About when was that?

Around November

12. Did you ever do anything else to straighten out the concerns about getting misinformation about the attendance

I went to the attendance office and spoke with the person who keeps track of it

I brought all of Student's notes and he gave me a copy of Student's current schedule He said that we were able to excuse everything expect for 3 days

That was when Student came back from being so sick with the flu

Going back to Student -

**Student in Dunbar**

13. After Student's pull out services were decreased, how did he do?

He didn't do well at all

14. Was this a change?

It got worse

15. How was he acting?

Really negative behavior, not eating, stomach aches, headaches, always nasty angry and frustrated

He always kept saying the same thing – it's just copying copying copying

I'm not being shown how to do this

16. Did you talk to him about it?

He said he just wasn't learning

17. How was Student's attendance during this period?

It was pretty bad

18. Did he ever tell you why he wasn't going?

He had some major bullying issues

There was a kid harassing him in the bathroom, coming into his classroom, catching him in the stairwell

Sometimes when I would pull up to pick him up, he would appear to be hiding on the other side of the building and he would come around and run into the car

19. When did you learn about the bullying?

End of October

20. How did you find out what was going on?

He didn't tell me at first

My mom walked in on a conversation he was having with my brother and found out everything

21. What did you do then?

I called you, I got therapy started right away, took him to see his pediatrician because I was really concerned about the change in body weight and headaches

22. What did Dr. Bellard say?

Dr. B had a conference with Student for about an hour, talked to him about coping skills to try to relieve some of the stress, told me he could tell it wasn't a good place for him because of the stress

23. Did you speak to anyone at the school

I spoke to the Assistant Principal myself

24. Did the situation improve?

No – she told me she already knew about it

She said that she had spoken to the boys (although she never called me) and it didn't improve, it seemed to get worse.

That's when the boys started busting into the class eyeballing him and giving him looks

### **Dispute Resolution Session**

25. Did you ever have any other meetings at Dunbar

Yes

26. What was that meeting

Dispute Resolution Session

27. Do you remember who was there?

Someone from DCPS, Special ed, coordinator, you, me Amanda, Ms. Clark, the counselor

28. Did you come to a resolution of the complaint at that meeting?

No

29. What did they offer Student?

Really nothing

The counselor suggested that

They offered us a meeting

30. Did they say why?

They said that the whole IEP team wasn't there so we couldn't be offered anything

31. So what did you talk about

My concerns about Student's progress and his hours and basically about his health depression and not eating

32. What did you tell them?

Just that I felt like Student needed more hours and she was really concerned about his safety and well being in his school

33. What was your response?

I didn't feel like it was sufficient

34. Did you bring up the bullying concern?

Yes

35. Did the team know about it?

No

36. What did they say?

They didn't say much of anything

But I had already talked to the principal

The counselor offered to meet with him more

37. Did you discuss any other concerns

His safety and his attendance

38. Can you tell us about that?

I felt like I wasn't getting accurate information

I would drop him off saw him walk in, the attendance system would call me even though he was there, called the principal 5 or 6 times, went to the school had a meeting with the attendance office.

39. Did you discuss anything how about you would get accurate information in the future?

The special ed coordinator suggested Student carried a sign in sheet in order to prove he was in class?

40. What was your response to this sign in sheet

I felt like it wasn't a good idea because he was already feeling isolated and this would make him stand out even more by being forced to stand out even more

41. Did you make any suggestions about how we could deal with this?

I suggested that maybe we could make sure he's signing in on the actual sheet the teacher has and I could communicate with the teachers maybe on a weekly basis

42. What was the DCPS response to this?

They really wanted to try get him to carry the sheet – it didn't sound good to me or Sarah but we said we would try it.

43. Was anything resolved at the end of this meeting

No – nothing really

### **Student Now**

44. After the DRS, Did Student go back to school?

Yes

45. How did it go?

It was a little rocky, nothing really changed

46. Did Student carry the sign in sheet

He refused to take it, he said he wasn't going to do it

He said he didn't feel like it was necessary because he was getting to his classes and he felt like we were picking on – he was upset about that

47. How about the counseling – did he go to that?

No

48. Why?

He felt like it was too impersonal

It wasn't individual it was a group session

She was asking questions that weren't appropriate in a group setting – she asked if he was involved in a school rape because she hadn't seen him around

Was anyone in his family incarcerated  
She made him feel really uncomfortable coming to him because he felt labeled as a misfit  
or coming from a bad home

49. How do you know all of this

He told me

I kept trying to encourage him to go but it came up many times

50. Parent does Student participate in any therapy

Yes

51. What's that

He gets counseling in the home setting

52. Who is that with?

Capital region

53. Does he Participate in those sessions?

Yes

54. What kind of therapy is that?

Individual and family

Twice per week

55. After the Dispute Resolution Session – did Student continue to attend class?

No

56. Why?

I found out that the torment from the bullying in the classroom, hallways, and cafeteria  
started all over again

57. How did you know that?

He told me

58. How is Student doing now?

He's really calm over Christmas vacation

But I do notice that the anxiety has built back up about returning back to school

59. Are you willing to send him back to Dunbar?

I don't want to

60. Why not?

I'm worried about a large amount of things

I worried about his mental state – he is more depressed, getting headaches and stomach aches – he had to get a prescription for zantac

He can't sleep – he stays up all night anticipating the following day

He is really cranky all of the time

It takes a long time

61. Academically

He's not learning

He told me all they do is copy copy copy all of the time

There is no instruction time

He's not being shown HOW to do the work so he is really frustrated with that

## Lourie Center Direct Examination

### Introduction

- Can you please state your name for the record?
  - Tamieka Thomasson
- Where do you work?
  - The Lourie Center
- How long have you been at The Lourie Center?
  -
- What is your position?
  - Admissions
- What does your position entail?
  -
- What professional and educational training do you have?

### Admissions at Lourie:

- Can you describe the admissions process at the Lourie Center
  - We require students to submit ...
  - Then we review the material – if the students appears like they might be appropriate for our program, we ask them to come in for an interview
- 

██████:

- Do you know ████████?
  - Yes
- How do you know him?
  - He applied to the Lourie Center...
- Did you personally review his evaluations?
  -
- Have you ever met ████████?
  - Yes
- When?
  - We interviewed him on April 13, 2010
- What did ████████'s visit entail?
  - ████████ and his mother came in to interview and to tour the Lourie Center

- Who did he meet?
  - Myself and the clinical director Dianne -
- Did you meet with Ms. [REDACTED] on the visit?
  - Yes
  - Ms. [REDACTED] and I met for over an hour
- What did that part of the interview process involve?
  - I asked Ms. [REDACTED] about [REDACTED], his profile, his needs, her concerns, his background, what was being done in his current school, where/how he was struggling
- Did Ms. [REDACTED] also tour the Lourie Center?
  - Yes
- What did that tour involve?
  - I took Ms. [REDACTED] into several classrooms (describe one way mirrors)
  - I showed her the OT room
  - We toured the entire property
  - Add details...

#### Lourie's Program

- Does the Lourie Center have program that is appropriate for a child with [REDACTED]'s educational profile that includes .....give nutshell of his profile in the question? I see you ask more specific questions below...
  - Yes
- Can you describe the educational program that [REDACTED] would participate in if he came to the school?
- Is the school accredited by the state of MD?
  - Yes
- Are the teachers certified special education teachers?
  -
- What about the teachers in the class that [REDACTED] would be in?
- Is there therapy integrated into the daily curriculum/classroom? Please describe.
- \*Insert a questions about therapeutic training...
- Are the classes self-contained?
- Do the student's have Behavior Intervention Plans?



- Is staff trained to respond to student crises situations?
- Is there a psychiatrist available at the school?
- Is there counselor available throughout the day for therapy?
- Would speech / language therapy be available on site?

#### █████'s Class

- If █████ came to the Lourie Center, what class would he be placed in?
- How many children are in that classroom?
- How many full-time instructors are in that classroom?
- How many aides or other adults are in that classroom?
- Could you please describe the structure of a typical day for █████s?

#### █████'s special needs:

- As you know from reviewing his evaluations and speaking with his mother, █████ has been diagnosed with Oppositional Defiant Disorder and has had social/emotional and behavioral struggles in the classroom – how is the Lourie Center equipped to address this so that he can access his education?
- Additionally █████ has been diagnosed with ADHD, how will the Lourie Center be able to address this so that it's effect on █████'s ability to access his education is minimized?
- Does the Lourie Center have anything in place to encourage family involvement and to maintain continuity between the classroom and the home environments?

#### Conclusion/Appropriateness of Lourie

- Will Lourie Center be able to provide the necessary services that █████ needs?
  -
- Based on your knowledge and experience, would the Lourie Center be able to provide █████ an appropriate education?
  - YES
- As you know, █████ does not yet have an IEP, if he is placed at the Lourie Center, how would this be addressed?
  -

- \*Consider asking if any other students have been placed there without IEP's in the past. If you find out the answer is yes, then sure go ahead and ask it.
- When could [REDACTED] begin attending Lourie?

**I. Qualifications to be an expert**

1. Please state your name and spell it for the record
2. What is your current profession?
3. What does it mean to be an educational advocate?
4. I'd like you to turn to P-68, is this your curriculum vitae?
5. Is this an accurate representation of your educational and professional background?
6. Can you give us a brief description of your educational background?
7. Do you have any specific training to work with children with autism?
8. Do you keep up with the scientific research on interventions for children with autism?
9. Your CV indicates that you are a research associate at University of Maryland, what does that entail?
10. What courses do you teach?
11. Your CV also indicates that you were the Director of Autism Educational Programs at the Forbush School for 8 years, is that correct?
12. Can you please describe the school?
13. Can you please describe the student population?
14. What were your duties as the Director of Autism Educational Programs?
15. Apx how many children with autism did you work with in this position?
16. Prior to this position, your CV indicates that you taught at several other schools, in how many of those positions did you work with children with autism?
17. Apx how many children with autism did you work with in this position?

18. In total, how many children with special needs would you say you have worked with in your career?
19. Apx, how many of them were children with autism?
20. What training do you have in understanding evaluations done for special education purposes?
21. During your career, what, if any, involvement have you had in developing appropriate IEPs for children?
22. Have you been involved in developing IEPs for children with autism?
23. With language impairments?
24. How many?
25. Have you taught others how to develop appropriate IEPs?
26. In what capacity?
27. How many IEPs have you been involved in writing appropriate goals?
28. How many IEPs have you been involved in deciding what services a child need to get educational benefit?'
29. How many IEPs have you been involved in developing appropriate behavioral interventions?
30. Were you involved in recommending whether goals were appropriate?
31. During your career, what, if any involvement have you had with educational placement of children?
  - a. How many?
32. Have you testified in due process hearings before?
  - a. How many?

b. For whom?

33. Have you been qualified as an expert before?

34. How many times?

35. How many times have you testified as an expert witness in DC?

36. In what areas have you been permitted to testify about your opinions as an expert?

Move to have Dr. Livelli qualified as an expert in special education services and placement for children with autism.

Knowledge of [REDACTED]/Observations

Are you familiar with [REDACTED]?

How?

Have you reviewed all of the records in the disclosures?

You said that you have observed [REDACTED], when did you conduct that observation?

What classes did you observe?

How long did you observe in each class?

Please describe what your observations of [REDACTED] were in his special education class

Did you have an opportunity to speak with Mr. Smith?

What did you learn in that conversation?

Please describe what your observations of [REDACTED] were in his gen ed class

Did you have an opportunity to speak with Ms. Jones?

What did you learn from Ms. Jones?

In addition to your observation and review of the records, have you talked to anyone else about [REDACTED]?

Who?

What did you learn?

Based on all of this information, can you please describe [REDACTED]'s educational profile?

Have you ever worked with students with a similar educational profile to [REDACTED]'s?

How many?

Based on all of this information, what can you tell us about [REDACTED]'s current educational performance?

What is the basis of this opinion?

Recommendations for [REDACTED]

Given what you have described about [REDACTED]'s educational profile, what recommendations do you have about what level of services [REDACTED] needs at this time?

Classification

Level of services

Academic approach (visual etc)

Why do you believe that [REDACTED] needs special education support in all of his academic classes?

Why do you believe that [REDACTED] should be with general education peers during electives?

Why do you recommend that [REDACTED] be with the special education teacher in this context rather than take part in an autism classroom?

If you were told that DCPS' position is that [REDACTED] would be saturated with services if he has more than 12 hours per week of specialized instruction, what opinion would you have about that?

Dr. Amado recommended a full time placement in his May 2013 psychoeducational evaluation, why don't you recommend that?

In your opinion, are any additional evaluations or assessments needed at this time?

Which ones?

What is an evaluation for ABA services?

Why is an evaluation for ABA services needed?

DCPS observation report

Please turn to P-66, DCPS' Observation Report of [REDACTED], have you reviewed this document?

Do you have any opinion about this document with respect to the observation?

What ?

Do you have any opinion about this document with respect to the recommendations?

What?

IEPS

Old IEPs

Based on your review of the records, when did [REDACTED] begin receiving special education services?

What was his educational classification?

What type of placement did he have?

To your knowledge, what, if any, changes occurred with [REDACTED]'s special education classification in April of 2011?

In your opinion, was it appropriate to change [REDACTED]'s educational classification from developmental delay to multiple disabilities for OHI and SLD?

Why not?

What other classifications should they have considered?

Why?

To your knowledge, what IEP was in place in October of 2011?

Turning to P-7, page xx, how many hours of specialized instruction was Juan receiving at that time?

How does this compare to the specialized instruction he received the year before? (P-1)

In your opinion, by October of 2011, could DCPS have assessed whether this change in the IEP services was working for [REDACTED]?

In your opinion, was it working?

Why not?

Do you think that April IEP was ever appropriate for [REDACTED]?

Why not?

Let's look at the specifics of the IEP, Please turn to P-7, the April 29, 2011 IEP, page 60, was this IEP appropriate for [REDACTED] at the time it was created?

Why not?

Turning to page 54, what, if anything, can you say about the math goals?

Turning to page 56, what, if anything, can you say about whether the reading goals?

Turning to page 56, what, if anything, can you say about the written expression goals?

Turning to page 58, what, if anything can you say about the social emotional goals?

What, if anything, can you say about the accommodations and modifications?

What is your opinion about the Level of specialized instruction provided in this IEP?

Opinion of related services

Lack of BIP

Lack of sensory diet

No esy

Do you have any other comments on the IEP?

What?

Let's turn to the March 26, 2012 IEP P-9, was this IEP appropriate for [REDACTED] at the time it was created?

Why not?

Page 70, Math goals

Page 71, Reading goals

Page 72, Written expression goals

Page 74, behavioral support goals

Accommodations and modifications

Level of specialized instruction

Lack of related services

Lack of BIP

Lack of sensory diet

No ESY

Let's turn to the P-12, March 22, 2013 IEP, was this IEP appropriate for [REDACTED] at the time it was created?

Why not?

Page 85, Math goals

Page 86, Reading goals

Page 87, Written expression goals

Page 90, behavioral support goals



Accommodations and modifications

Level of specialized instruction

Lack of related services

Lack of BIP

Lack of sensory diet

ESY

You mentioned that the March 2013 IEP did have ESY, in your opinion were those ESY services sufficient for [REDACTED]?

Why not?

11/19/13 IEP

Please turn to the proposed IEP from P-21, Nov. 19, 2013, is this IEP appropriate for [REDACTED]?

Why not?

Reading goals

Written expression goals

Math goals

Accommodations and modifications

Level of specialized instruction

Lack of related services

Lack of BIP

Lack of sensory diet

Comp ed/progress

Reading

In the Woodcock Johnson academic testing by DCPS in 2011 at P-40, [REDACTED] had a 92 in broad reading and in the 2013 testing by Dr. Amado at P-47, he had a 60, what does that indicate about whether he made progress?

Turning to P-49, what is the TRC test?

Can you please explain what [REDACTED]'s scores indicate about his reading levels?

What does the <PC score mean?

What does the <RB score mean

Would progress would you have expected from [REDACTED] had been receiving appropriate services during the 2011-12 school year when he was in first grade?

What grade level is the C score?

What progress would you have expected from [REDACTED] in reading comprehension had he received the appropriate services in the 2012-13 school when he was in second grade?

What do the scores tell you about [REDACTED]'s progress in reading comprehension?

Based on all the information you have about [REDACTED], what can you say about what progress [REDACTED] has made in reading in the past 2 years?

I want to turn to some of the academic testing over the years. Looking at [REDACTED]'s abilities in written expression, in the Woodcock Johnson academic testing by DCPS in 2011 at P-40, [REDACTED] had a 58 in written expression and in the 2013 testing by Dr. Amado at P-47, he had a 79, what does that indicate about whether he made progress?

Based on all the information you have about [REDACTED], what can you say about what progress [REDACTED] has made in written expression in the past 2 years?

What level of progress would you have expected had [REDACTED] received the appropriate services?

Turning to [REDACTED]'s abilities in mathematics, in the Woodcock Johnson academic testing by DCPS in 2011 at P-40, [REDACTED] had a 97 in written expression and in the 2013 testing by Dr. Amado at P-47, he had a 78, what does that indicate about whether he made progress?

Based on all the information you have about [REDACTED], what can you say about what progress [REDACTED] has made in math in the past 2 years?

What level of progress would you have expected had [REDACTED] received the services you recommended?

Based on the information that you have about [REDACTED], what can you say about what progress [REDACTED] has made in social emotional functioning in the past 2 years?

You have said that you would think [REDACTED] should have had specialized instruction for all academic classes since Oct 2011, correct?

If [REDACTED] had had those services, what progress would you have expected in the past 2 years?

Why would you expect that rate of progress for [REDACTED]?

What compensatory services would [REDACTED] need now in order to make the progress that you have described?

## Cross Examination for DCPS Psychologist

### Background

1. You are a school psychologist?
2. What is your educational background?
3. Certifications?
4. Aware of the professional guidelines from the National Association of School Psychologists?
5. Follow these guidelines your work?
6. One of your primary responsibilities with DCPS is administering psychological examinations of students?
7. Psychological evaluations are to address the particular needs of and concerns about the student?
8. So not all students should receive the same testing?
9. Have to be familiar with the childhood disorders?
10. And the different behavioral and conduct disorders?
11. Learning disability is a common problem you find in testing?
12. ADHD?
13. Intellectual Disabilities? Adjustment disorder?
14. So you are familiar with the DSM-V?
15. You are aware that it is guide created by the American Institute of Psychiatry to diagnose mental disorders?
16. And is based on research methodology to determine the criterion for the disorders?
17. It is the standard of practice to utilize the DSM-V to make diagnoses in psychology?
18. Since one of your primary responsibilities is administering psychological testing for students, you are familiar with the DSM-V criterion for a learning disability?
19. What is that criterion?
20. You are familiar with the DSM-V criterion for ADHD?
21. What is it?
22. You are familiar with the DSM-V criterion for adjustment disorder with mixed emotions and conduct?
23. What is it?
24. you are familiar with the DSM-V criterion for intellectual disabilities?
25. what is it?
26. Typical behaviors of intellectual disabilities include poor peer relationships?
27. Poor self-care skills, including problems toileting?
28. Poor academic performance?
29. Poor memory?
30. You also participate in IEP/MDT meetings as a school psychologist?
31. Help determine what is necessary for the child in an IEP?

32. What progress would you expect to see once a child has an IEP in place?

If they cannot name criterion:

1. If you don't know the criterion for these, how do you administer the correct testing to diagnose them?
2. Stated follow the professional guidelines from the National Assoc of School Psychologists—state that you must be familiar with the up-to-date testing methodology and use the most appropriate tests for a child?
3. And that school psychologists are required to use methods that the profession considers to be responsible research-based practice?

**DCPS Psych eval (RT-8)**

33. You conducted/reviewed the psychological examination conducted by DCPS on January 28, 2008?
34. Reviewed her records?
35. So would have read the comments on her report cards documenting her significant problems with attention, regulating her behavior and poor peer interactions?
36. Was RT on medication during the evaluation?
37. Only the WISC-IV and the Beery were administered?
38. On the WISC-IV her full scale IQ was 56?
39. According to the DSM-V, this full scale IQ would put her in the range for an intellectual disability?
40. But no adaptive testing was conducted even though she had a low IQ and documented adaptive difficulties?

If they bring up her IQ was a low estimate:

41. You said the IQ was a low estimate because of problems regulating behavior, but there is no indication that it is 15 points too low?
42. So, her IQ even if a few points higher, would still be below 70?
43. And adaptive testing should have been performed?
44. Evaluation did state that no evaluation of ADHD had occurred?
45. But were told by mother that dr diagnosed ADHD?
46. Meant that no DCPS evaluation had occurred to verify diagnosis?
47. And your position is that w/o the DCPS evaluation, can't tell if it is a real diagnosis?
48. And made numerous observations about RT's inability to pay attention, sit still and to regulate her behavior?
49. Evaluator also reviewed records that indicated these behaviors?
50. But did not conduct any screening for ADHD?

51. Noted specifically that her inability to regulate her behavior prevented him from getting accurate test results?
52. It is reasonable to think then that this same behavior, which had been noted by her teachers, would also impact her in the classroom?
53. In spite of these behavioral reports, no behavioral testing at all was conducted, correct?
54. No social-emotional testing of any kind?

### **3/8/08 IEP Meeting- RT-5**

55. School psychologist participated in the March 3, 2008 IEP/MDT meeting?
56. Reviewed psychological, educational and social work evals at meeting?
57. Information about her behavior was presented by mom and by teachers?
58. Determined she had a learning disability?
59. B/c she was performing below what could be expected of her cognitive and age level?
60. True that in spite of behavioral concerns raised in psychological evaluation and the reported ADHD diagnosis by the mother, neither ADHD nor any other behavioral disability was considered for RT?

### **3/17/09 IEP- RT-6**

61. Reviewed the records from the 3/17/09 IEP meeting?
62. Reviewed the report cards and reports since 3/8/08?
63. Indicate the same behavior that was present prior to the 3/8/08 IEP, including the inability to pay attention, regulate her behavior and to have appropriate peer relationships?
64. Reviewed Dr. Missar's evaluation?
65. Saw that her disability classification was expanded to include ADHD and ID?
66. A child doesn't suddenly become intellectually disabled at age 8, right?
67. So she was always Intellectually Disabled?
68. And she was misdiagnosed in 2008?
69. And misclassified on the 2008 IEP?
70. And the manifestation of her ADHD was same as prior to the March 3, 2008 meeting?
71. So she was also misclassified b/c of the failure to include ADHD?

### **If testify about the appropriateness of the IEP:**

1. You testified the 3/3/08 IEP was appropriate?
2. You maintain that it was appropriate even though her disability classification was wrong?
3. And that she made no academic progress in the year following the implementation of the IEP?

### **Cross Examination of DCPS Placement Specialist**

1. As placement specialist who made decision about where to place [REDACTED], you know about the school?
2. Does Johnson have a soft room for [REDACTED] to cool of in?
3. Has an emotion word wall?
4. You know that last year, 65.4% of the classes at Johnson were taught by teachers who were not considered highly qualified under NCLB?
5. And that almost 30% of teachers had no valid teaching license?
6. This year Johnson is under restructuring?
7. B/c in the last several years, students have had low proficiency rates?
8. In 2008, only 19% were proficient in reading on DC-CAS?
9. And only 11% of the disabled students were proficient in reading?

10. In 2008, only 9% were proficient in math on DC-CAS?
11. And only 5.5% were proficient in math on DC-CAS?
12. In 2007 only 5.8% were proficient in reading on DC-CAS?
13. In 2007 only 9% were proficient in math on DC-CAS?
14. Johnson is transitioning to be a full-service school?
15. But in 2009-10 there will be only money allocated in the school budget for one social worker for the school provided by DMH?
16. And only one special education aide for the entire school?



Cross of Hamilton Center SEC

1. DCPS uses Easy IEP?
  2. Provides only certain options in drop downs?
  3. And as part of the form?
  4. No place to specify class size?
  5. Psychiatric services are not in the drop down for related services?
  6. De-escalation room is not listed as an accommodation?
  7. Individual attention is not listed anywhere?
- 
1. Hamilton Center was recently restructured?
  2. Meaning that the entire staff had to reapply for their jobs?
  3. And that was because the students at Hamilton Center did not make sufficient annual yearly progress as defined under No Child Left Behind for five consecutive years prior to the restructuring?
  4. And in the most recent year with scores available, 2009, only 8% of the student body was proficient in reading?
  5. And none were advanced?
  6. And only 7% of students in 2009 were proficient in math?
  7. And none was proficient in reading?

Cross-Ex for Ms Green-Peterson

1. You are the only special education teacher at RT?
2. In addition to teaching resource, do you also administer educational testing?
3. Do you help administer the DC CAS?
4. Stated at 3/19/09 IEP meeting that there are 5-6 students in the class RT is in with you?
5. And there are no aides?
6. What disabilities do the other children have?
7. What are their ages?
8. Work with any children diagnosed with mental retardation?
9. RT has made no academic progress based on the testing administered by you on 2/17/09?
10. As her special ed teacher, noticed that she was not making progress?
11. In your class, prior to the IEP meeting, you observed that RT has problems paying attention?
12. That she frequently needs to be redirected?
13. That she seeks attention frequently?
14. But you did not ask for an IEP meeting to discuss whether LD was the only disability impacting her education?
15. to adjust her services?
16. Or to get an FBA?
17. Or to revise her BIP?
18. You stated you take RT for individualized instruction for (NUMBER FROM DIRECT) hours per week?
19. What time of the day?
20. What subjects does she miss in her general education class?
21. Do you always do this?
22. But you don't make up instructional time when RT's misses it?
23. On March 31, you were administering evaluations and didn't get RT?
24. That was true on March 30 and April 1?
25. When did you make up the hours for RT?

## Opening Statement

Student is a 15 year old special education performing years behind his academic peers. He is a child whose self esteem and confidence are eroding with each passing day. He is a child who the educational system has a chance to reach, but who is in serious danger of slipping out of its grasp.

The District of Columbia Public Schools has seen Student's academic performance slide downhill ever since his enrollment. Evaluation after evaluation demonstrated that Student struggled with focus and attention and needed intense remediation. Each grade the situation worsened. As demonstrated by his psychoeducational evaluation in Joint 1 and report cards at P-4 through 6, he is currently between 3-6 years behind in nearly every single academic area.

However, instead of giving Student the individualized support he required and addressing his academic meltdown – DCPS chose instead to send Student to successively larger neighborhood schools and reduce the time he was provided special education support outside of general education, a fact which will be demonstrated by Student's current IEP and IEP meeting notes in Joint exhibits 3 and 4.

Knowing that Student was a child who not only needed academic remediation but was also socially and emotionally fragile and at risk for depression – DCPS sent him to a school of close to thousand students with a reputation for bullying and mismanagement. Despite explicit recommendations from a psychologist, that Student be given full time special education and a supportive environment – DCPS reduced the amount of resource room support Student received, suggested cutting his counseling hours and failed to provide him with an appropriate education.

Student enrolled in the District of Columbia Public Schools as a 7<sup>th</sup> grader in January of 2009. You will hear testimony from Student's mother, Ms. Parent, about how when Student's mother signed him up at Marshall Elementary, his neighborhood school, she brought reports cards, IEPs and transfer packets full of information about her son. Parent will tell you how she also spoke to the Principal and told her all about how at Student's last school they had tried full time special education and pull out services for him. She described how the pull out support was a disaster for Student and how she was worried he hadn't been getting what he needed. Parent will also tell you how for the next 6 months Student didn't receive services and didn't have an IEP meeting until the very last day of school. That IEP, is exhibit P-3. She will tell you about how at that IEP meeting, she felt like DCPS was passing Student from one school to the next, not really addressing any of his difficulties and leaving her hoping that the next year might be better.

Parent will also describe how Student went next to John C. Burroughs, where she hoped things might change. At least at Burroughs, she thought, he would receive the services on his IEP – but much to Parent's dismay – things did not improve. Student continued to struggle and now in addition to his academic problems, she started to notice social difficulties as well as increasing frustration surrounding school. Parent asked DCPS for an independent educational evaluation, because she believed that the last set of DCPS testing, didn't really address all of Student's suspected disabilities.

In May of 2010, Dr. Samantha Bender evaluated Student. Dr. Bender is an experienced child psychologist whose credentials are found in exhibit P10. Dr. Bender evaluated Student over the course of 4 days and her final report is exhibit J-1. Not only did Dr. Bender diagnose him with ADHD, but her

reports suggests that he has actually regressed in the majority of academic areas that she was able to test him in. Exhibits J-1, P-1 and P-2 will demonstrate how in Broad Math alone, Student's standard scores dropped 22 points over the past several years.

Dr. Bender will testify about how Student is a child with a strong understanding of social norms and how the world around him functions. She will tell you how he is a bright and kind boy who really wants to do well. But she will also tell you how he requires a very specific learning environment and how he has not been able to access his education with the support that he has so far been provided. She will testify about how Student's response to the pull out intervention has been to actually regress. She will also say that testing also indicates that he is acutely aware of his own shortcomings and struggles daily to overcome them. His ADHD makes it very difficult for Student to organize information and process emotionally complex situations. She explained that Student is constantly overwhelmed, frustrated and beating himself up for not being able to do the right thing both socially and in the classroom.

DCPS was giving this report after its completion and held an IEP meeting July 7<sup>th</sup> 2010. Exhibits P-3 and Joint 2 will show you that they did exactly nothing to increase Student's services, in direct contradiction to the report. You will hear testimony that the IEP team changed Student's classification from Speech Language Impairment, something there was actually zero support for, to MD to represent a learning disability and ADHD. The team acknowledged that Student was far behind and needed support. However, you will also hear testimony that Parent was told to yet again – to wait it out and hope that it will be better in the next school. Even more disconcerting will be the testimony that the special education coordinator at that meeting was not able to give Parent any information about the program she was recommending Student being in the Fall of 2010. No one from DCPS was made available to Parent tell her about what her son would be walking into – and yet again she was just to cross her fingers and see what happens.

So Parent again enrolled Student in the DCPS school suggested by his IEP team. And as with each previous DCPS experience – disaster ensued.

Parent will tell you how each area of concern that she had was magnified at Dunbar Senior High School. The school was huge, the classes were large, there was chaos everywhere, the teachers did not provide Student with instruction he could understand and he very shortly became the target of upperclassmen bullying.

You will hear testimony that Parent did in fact receive an early call from the special education department at Dunbar. Not because they wanted to look out for anticipated problems, or address how his evaluations showed how he was falling even further behind – but because within just a few weeks of attendance they had decided Student didn't actually need 15 hours of pull out special education support – and that half of that time could be given in the classroom. Parent and Amanda Eggers, a Children's Law Center investigator will tell you about the meeting where Dunbar Staff reduced Student's special education support outside of general education – against the wishes of his mother and without ever reading his most recent psychoeducational evaluation.

You will hear testimony from Dr. Sheila Iseman, an expert in special education who has worked in the field for over 20 years. Her credentials can be found at P-9. She will testify about Dunbar as a placement for Student. She will describe his educational profile to you and give evidence about his needs. She

will tell you about how someone with Student's disabilities requires a small class setting and individualized attention. She will also describe her observations of Student in Dunbar. She will tell you about how she saw him drift through his classes without learning a thing. How she saw his teachers pay attention to him, but instead of using the multimodal method of instruction he requires – they just gave him answers and filled out his homework and tests for him. She will describe how Student cannot make progress in his current setting.

Dr. Iseman will testify about the proposed placement, Kingsbury Day School in the context of a child with Student's educational profile and why it would be an appropriate placement for him. Finally, Dr. Iseman will discuss compensatory education and what would be required to bring Student to the level of performance that he would be at today, were he appropriately served by DCPS.

Finally, you will hear from Marlene Gustafson, a representative of Kingsbury Day School the placement that Parent proposes for her son. Ms. Gustafson will describe everything that the Kingsbury has to offer for her son. She will tell you about the educational program he would participate in if he was placed there and she will describe the qualifications of the teachers and other staff at Kingsbury. Further, Ms. Gustafson will describe the program they have in place for a student with Student's profile and special needs. Ms. Gustafson will also describe the Kingsbury admissions process and her interactions with the [REDACTED] family.

Ultimately you will hear about Student and his struggle to learn. How he went from school to school, each year hoping, maybe this time, it will be different. You will hear how he has been inappropriately served for several years and cannot and will not be able to make meaningful progress if DCPS refuses to provide him the services he requires. You will also hear about the devastating effects that these past years, and acutely the past few months, have had on his mental state.

DCPS may try to tell you that this is just simply a child who won't show up. They may assert that they are doing every they can, but Student isn't available for them. I ask you to consider what Student would be showing up for. What a child might experience in a classroom that was 3-7 years too advanced for him that was being taught in a manner he could not possibly learn from. I would also ask you to consider the effect of this constant struggle on a child who desperately wants to learn, who knows he is falling behind and who just can't find anyone to help him.

Parent is asking you to place Student in a full-time special education day school and award him compensatory education, in order to address all of his unique needs, enable him to access his curriculum, and make meaningful progress.

## **Joe Smith Closing**

DCPS has failed to provide an IEP or placement that can provide for Joe's unique needs to ensure that he can receive a FAPE. The parent has met her burden of showing that DCPS failed to provide FAPE and that DCPS has completely failed to meet Joe's unique and extremely pervasive needs.

### **I. Background**

Joe Smith is a 14 year old boy with serious mental health issues stemming from serious physical abuse as a child. Joe's mental health issues have seriously impacted his ability to access his education throughout his childhood, and he has been in highly therapeutic non-public placements with a dedicated aide for at least the last ten years. Because of his severe PTSD and ADHD, Joe is extremely anxious and fearful, is very impulsive, very disruptive in a school environment, frequently uses profanity towards adults and peers and has difficulty focusing on his work. When Joe is afraid, he may lash out both verbally and physically.

For the past eight years, he has also received psychiatric care and therapy at Children's National Medical Center. For the past six years, he has had a community support worker to provide in-home support to the family through First Home Care, and First Home Care is looking to provide even more services because of his declining mental health.

Joe attended Children's Guild for sixth through eighth grades, but the school ends at 8<sup>th</sup> grade and so a new placement had to be determined for him. As a student at CG, Joe's behavior was erratic and he was frequently disruptive. Shawn Hampton, Joe's community support worker, provided detailed testimony about Joe's behaviors,

including frequent profane and disrespectful language, anxiety and extreme susceptibility to peer pressure without regard to his safety or the safety of others.

During the 2009-10 school year, Joe was suspended twice—once for removing a window from the frame after his peers urged him to do it and once for exposing himself at the school. Joe also continued to have serious problems with cursing at staff and peers, with being defiant and oppositional. In addition, we know from his records that he was performing at only a third grade level academically.

In the past several months, at the end of the school year and even more so over the summer after DCPS denied him ESY, his mental health has further decompensated and his behaviors have gotten even worse. Dr. Dave, Mr. Hampton and Ms. Smith provided testimony about this regression in his behavior—and they all agree that a structured summer school program could have prevented this significant of a regression.

## **II. Joe's needs**

Although Joe has borderline intellectual functioning, Dr. Dave testified that Joe has the capacity to do continue to progress academically and socially with the right supports, but that his behavior will limit his academic progress without those supports.

Joe needs a calm school setting that is highly therapeutic and where he can be in very small classes with a very low student teacher ratio. As Mr. Hampton and Dr. Dave described, when he is around more children, his behavior gets even worse and he models the bad behavior of his peers.

Due to his PTSD, Joe also needs to be in a school that does not use restraint or seclusion and which does not allow physical violence or horseplaying. He does,

however, need an appropriate supervised space with a mental health professional who can be available on an as-needed basis where he can deescalate if that is necessary.

In addition, Joe needs to have access to a school psychiatrist, a therapist and family therapy at his school in order to ensure that he can be successful at school. The family therapy is important because school is a significant stressor for Joe and because Joe is not able to generalize very well and it will help him improve his functional behaviors so that he can benefit from his education.

As Dr. Dave and Dr. Iseman testified, the school psychiatrist is necessary both to monitor medications, to observe Joe and to provide advice to the clinical team that is providing direct services to Joe. As USC held, where the medical service is required for a child to be able to access school, then it must be included in the IEP. Cedar Rapids Comm. Sch. Dist. v. Garret, 526 U.S. 66 (1999); Irving Independent School Dist. v. Tatro, 468 U.S. 883 (1984).

Joe also needs a school environment that is structured and predictable and where he will feel safe. As Dr. Dave and Dr. Iseman testified, a lack of structure will mean that Joe will be unable to progress therapeutically – getting into trouble with his peers in ways that can be dangerous to himself and others and will therefore be unable to access his education

Because of Joe's susceptibility to peer influence, Dr. Dave and Dr. Iseman recommend that he be in an environment where peer modeling is utilized so that he can get benefits from positive peer pressure.

In addition, ESY is necessary for Joe because he will regress academically and socially without it.



### **III. Joe needed ESY in 2010**

The IEP is inappropriate because it did not include ESY.

Suggs v DC, 2010 U.S. Dist. LEXIS 3735, 18 (DDC, 2010)

- a. An IEP may not be reasonably calculated to provide benefits if, for example, a child's social behavior or academic performance has deteriorated under his current educational program, see *Reid v. District of Columbia*, 401 F.3d at 519-20; the nature and effects of the child's disability have not been adequately monitored, see *Harris v. District of Columbia*, 561 F. Supp. 2d at 68; or a particular service or environment not currently being offered to a child appears [\*19] likely to resolve or at least ameliorate his educational difficulties. See *Gellert v. District of Columbia Public Schools*, 435 F. Supp. 2d 18, 25-27 (D.D.C. 2006).

Joe had ESY every year because of the danger of that regression until the summer of 2010, when he was changing schools. Suddenly, per DCPS' own notes from the MDT meeting at J-1, DCPS determined that although CG and Ms. Smith believed he needed ESY, he could not have ESY in the summer of 2010.

The result of DCPS's unilateral denial of extended school year services The IEP is inappropriate because it did not include ESY. were what everyone feared, The IEP is inappropriate because it did not include ESY. Joe decompensated and his behaviors got worse over the summer. Dr. Dave testified that if he had been in a structured school program, he likely would not have shown this regression and Joe would have been able to retain the academic information and the behavior strategies he learned at school.

### **IV. Placement is implementation of IEP and program**

The placement encompasses services in the IEP as well as the school environment and program, and a change between two full-time special education programs that on-face can implement the IEP can still constitute a change in placement. See Lunceford v DCPS et al, 745 F.2d 1577, 1581 (DC Cir, 1984); See also A.K. ex rel. J.K. v. Alexandria City School Board, 484 F.3d 672, 680 (4<sup>th</sup> Cir. 2007) (The Court rejected an assertion that “stating the particular location where services will be provided is a mere technical requirement separate from a student’s educational placement determination.”)

*In the alternative, if the HO holds that everything should be in the IEP, then it is clear that Joe’s IEP is lacking. Joe had services that were well beyond his IEP at Children’s Guild because that was part of the program. If the HO holds that the IEP is the only that determines placement, then the entire necessary program should be incorporated into the IEP.*

#### **V. CG to Shadd is a change of placement not location of services**

Joe will changing placements regardless of which school he attends. DCPS does not contest in their answer that Shadd is a change of placement, and in fact claims they issued a prior notice about the change of placement.

At CG, Joe was in a highly intensive program where he had two certified teachers and a social worker in class in addition to his dedicated aide. Joe also had access to the school psychiatrists, who could provide the observation and consultation to the clinical staff. Joe had access to a supervised de-escalation and calming spaces where he could process with a mental health staff, he had social skills incorporated to the curriculum and he had access to a social worker as needed. In addition, Ms. Smith was able to visit the school and she actively participated in his education.

Shadd is a substantially different program. Dr. Iseman, Ms Smith and Ms Bernal all testified about their recent visits to Shadd. Ms. Smith detailed a visit to Shadd in which

Joe became afraid and literally backed himself into a corner—but rather than respond in an appropriate therapeutic manner, the staff continued to approach Joe physically and informed him that he would go to jail if he did not go to the school. They also stated that they would use physical restraints on him if he escalated as he did that day—even though during the incident he was not posing a threat to himself or anyone else. Instead of permitting Ms. Smith and Joe to tour the school, DCPS staff forced them to leave.

When Ms. Bernal went to the school, she saw very few students and those students that were there were not working—they were wandering the halls unsupervised, playing video games and reading sports webpages on the computer. She also saw a staff member with his hands on the neck of a student.

Dr. Iseman testified that in June she saw a student being wrestled by a teacher and on a previous occasion had seen a student wrestled to the ground by a teacher.

In addition, we have heard testimony that Shadd does not have any access to a psychiatrist, Shadd does not provide the therapeutic calming spaces where Joe can be alone with a therapist. Shadd also uses restraints on students, and has already indicated to Ms. Smith that they would use them on Joe. The deescalation space at Shadd is not staffed by a mental health professional and is not even always supervised. The school also does not have any family therapy component.

In addition, Shadd's environment is substantially different than the environment at CG. The environment is chaotic with students unsupervised in the hallway, horseplay between students and staff and students who are not engaged in learning—all of which Dr. Dave testified would be detrimental to Joe because of his extreme susceptibility to harmful peer modeling.

The students have a significant problem with truancy—Dr. Iseman, Ms Bernal and Ms. Smith all testified that the school had very few students or staff even though school was in session. Ms Bernal also testified that the school staff told her that the students don't come to school for the last few weeks---Dr. Dave testified that this type of environment will negatively affect Joe b/c he will follow the lead of the other students.

Furthermore, Ms. Smith, who has always been an active participant in Joe's education, does not have meaningful access to the school. She requires oxygen and uses a cart to walk—but the school does not have any handicapped access and she would be required to climb the three flights of stairs in order to get to the school.

The parent's right to participate in her child's education is a fundamental right contemplated by the IDEA. The IDEA requires the parent to consent to all evaluations, to be given the opportunity to participate at all IEP meetings, to consent to all services, and to participate in the placement decision for her child. While a parent does not have to agree with the final outcome if the placement is appropriate, the parent must be afforded the opportunity for meaningful participation. Holdzclaw v. DC, 524 F. Supp. 2d 43, 46 (D.D.C. 2007).

Ms Smith's ability to effectively participate in Joe's education is limited through a placement that is physically inaccessible to her.

#### **VI. Placement at Shadd was unilateral by DCPS and Violated Ms. Smith's Rights in Placement Process**

Ms. Smith's rights to participate in the placement process were violated by DCPS and that violation constitutes a denial of FAPE. Parental participation in educational placement is specifically required by the law. 20 U.S.C. §1414(e); 34 C.F.R. §300.327, §300.501; 5 DCMR §3013. In fact, one of the critical goals of the legislation as identified by Congress is that parents have a meaningful opportunity to participate in the

education of their children and to ensure that the rights of parents of children with disabilities are protected. 20 U.S.C. §1400(c)(5)(b); 20 U.S.C. §1400(d)(1)(B). It is no exaggeration to say that parental participation is the cornerstone of the IDEA. Holland v DC, 315 US App DC 158 (DC Cir, 1995). DCPS is uniquely in control of the information about a potential placement, including what services will be available to the child, how the class determination was made and other important details of the placement.

While a parent does not have to agree with the final outcome if the placement is appropriate, the parent must be afforded the opportunity for meaningful participation. Holdzclaw v. DC, 524 F. Supp. 2d 43, 46 (D.D.C. 2007).<sup>1</sup> Once a placement determination has been made, the LEA must issue prior notice that includes specific detailed information about how the decision was made. 34 C.F.R. §300.503; 5 DCMR 3024.1.

The IDEA specifically permits a finding of a violation of FAPE when there are procedural violations that “significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child.” See 20 USC 1415(f)(3)(E)(ii).

In this case, DCPS gave little information about Shadd at the IEP meeting and just told Ms. Smith that Shadd was the placement determined by DCPS and was the only option. While DCPS gave Ms. Smith an opportunity to visit after the meeting, DCPS had already stated that they would not consider any other placement. This meant that there was no real opportunity for Ms Smith to participate b/c it did not matter what she found at Shadd and the IEP team could not address whether Shadd was appropriate after the

---

<sup>1</sup> A placement decision may only be made without the parent if the LEA is unable to contact the parent and has documented their attempts to contact the parent in compliance with the law, including by phone, in writing and by personal visits to the student's home. 34 C.F.R. §300.322(d); 5 DCMR 3003.5(g). These strict requirements were not done in this case and the parent was wrongfully excluded.

visit. This is not meaningful participation by the parent as contemplated by the law—this is DCPS unilaterally assigning Joe to the only full time program that DCPS has without any consideration of whether his unique needs can be met. This is an extremely significant violation of the law because Joe’s will be harmed by not receiving the appropriate services at the appropriate placement and should be considered a denial of FAPE.

## **VII. Shadd cannot serve Joe’s needs**

The particular school that a child will attend must be determined after considering the child’s unique needs, including the methods of instruction and other factors that might cause a child’s education to decline. See generally *Glendale Unified Sch. Dist. v. Almasi*, 122 F. Supp. 2d 1093, 1107 (C.D. Cal. 2000); *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9<sup>th</sup> Cir. 1994).

In this case, DCPS did not consider Joe’s unique needs in any way—DCPS simply offered the only therapeutic placement it had without considering whether it had sufficient services to provide a FAPE to Joe.

Petitioner also presented detailed testimony about the Petitioner’s search for a school after the February 2010 IEP meeting in which she was told a new placement would have to be found for Joe. She looked in DC—at High Roads, but because of the severity of his needs, Joe was rejected. Then, she saw the Frost School and felt it would serve Joe’s needs. She asked to discuss it with the IEP team at the May 2010 meeting, but Dr Gayle, the DCPS LEA, refused to discuss any placement except Shadd. Although Ms. Smith was permitted to visit Shadd, it was after the May meeting, when she had been told there were no other options and DCPS would not consider anything else.

Ms. Smith shared her concerns with DCPS when given the opportunity on her visit and at the DRS, but DCPS failed to address those concerns or to consider Joe's specific needs, and simply maintains that Shadd is appropriate.

- Per Gellert v DC, 435 F. Supp. 2d 18, 23 (2006), ignoring the need for a small class size and need for a calm quiet learning environment can render a school inappropriate for a student.
- Per D.C. v. Bryant-James et al, 2009 U.S. Dist. LEXIS 120509, 12 (DDC, 2009) where DCPS does not dispute evaluation recommending small class setting that is quiet and distraction free and IEP does not include that, then IEP fails to address chief concern of evaluator).

I have already described many of the issues at Shadd, and Dr. Iseman provided detailed testimony about why Shadd is not an appropriate placement for Joe because the placement could actually be detrimental due to his severe mental health needs and because his extreme susceptibility to peer pressure he could be dangerous to himself or others.

Academically, it is also not an appropriate placement for him given that he is on the third grade level. As we learned on cross, the school did not meet AYP last year—meaning that the students did not make adequate academic progress under federal law. Furthermore, the class sizes are too large for Joe to be able to receive the necessary attention and academic support for him to make progress.

**VIII. Frost can serve Joe's needs and is the only placement before the HO which can**

The Petitioner has presented detailed testimony about Frost and the unique intensive therapeutic community model at Frost. Joe would be in a HS program with only 17 students total, and he would be in a classroom with only 3 or 4 students that is specifically designed to work with children who are as academically behind as he is and is taught by a licensed special ed teacher. He would also have access to the reading specialist.

Frost does not use restraint and does not permit any kind of physical aggression, even horseplaying, between students. Clare Savage, the clinical coordinator for the program, testified that they have other students who had a history of physical aggression, but that those students are able to obey the rules about physical contact because of the intensely therapeutic environment.

The school also utilizes peer modeling and positive peer pressure to aid the students in understanding social skills and in modifying their behavior—something which Dr. Iseman and Dr. Dave testified would be very effective for Joe.

In addition, the school has mandatory weekly family therapy conducted by a therapist in order to ensure that the parent is engaged in the school process and so that the student can learn to understand that his behavior affects the school and home community.

**IX. HO has broad authority and should order placement at Shadd and comp ed**

HO's have broad authority when crafting relief, and DCPS has failed to prove that Hamilton Center is an appropriate remedy for their failures to provide FAPE, or that it can meet his unique needs as those needs should have been reflected on his IEP. See Sch. Comm. of Burlington v. Dep't. of Ed., 471 U.S. 359, 369 (U.S. 1985). (citing that the



IDEA provides Courts with broad discretion to “grant such relief as the court determines appropriate.”) 20 U.S.C. § 1415(i)(2)(c) (2008); Harris v. Dist. of Columbia, 1992 U.S. Dist. LEXIS 11831, at 12-13 (D.D.C., 1992) (specifically recognizing a hearing officer’s authority to grant any relief he/she deems necessary).

Furthermore, under Reid, the HO has authority to grant compensatory education to ensure that a child will be where he would have been had he received a necessary service.

In this case, the Petitioner is requesting that you find that:

- the IEP was inappropriate, that Joe should have been provided with ESY in the summer of 2010 and
- that Ms. Smith’s right to participate in the placement process was violated and that violation was so significant as to constitute a violation of her substantive rights
- that the 2009-10 placement is inappropriate.

The relief requested is:

1. comp ed for the missed ESY in the form of 30 hours of tutoring
2. placement and transportation to the Frost School for the 2010-11 school year.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
FOR THE DISTRICT OF COLUMBIA  
Student Hearing Office

Y G, legal guardian and next friend ) Of minor child, C ) Petitioners, )  v. )  District of Columbia Public Schools, ) Respondents )  _____ )	Hearing Officer: Terry Banks, Esq. Hearing Dates: September 22 & 23, 2010 Complaint Filed: August 17, 2010 Case No: 2010-██████
--	---

**PETITIONER’S MOTION THAT ALL ISSUES NOT SPECIFICALLY DENIED BY  
THE RESPONDENT BE DEEMED ADMITTED**

Pursuant to the Federal Rules of Civil Procedure, 8(b)(6), Superior Court Civil Procedure Rules 8(d), and under measures of equity and fairness in the litigation process, Petitioner Y G, legal guardian and next friend of District of Columbia Public Schools (“DCPS”) student C , by and through her undersigned counsel, Lauren Onkeles Esq., of Children’s Law Center hereby moves this tribunal for a finding that all issues not specifically denied by the Respondent at the time of the filing of this motion be deemed admitted. Petitioner submits the attached Memorandum of Law supporting her Motion.

WHEREFORE, Petitioner respectfully requests this tribunal to order that all issues not specifically denied by the Respondent at the time of the filing of this motion be deemed admitted.

Respectfully Submitted,

\_\_\_\_\_  
Lauren Onkeles, Esq.  
Counsel for Y G  
DC Bar No. 488920  
Children’s Law Center  
616 H Street NW, 3rd Floor  
Washington, D.C. 20001  
(phone) 202-467-4900, ext. 539  
(fax) 202-552-6009 (fax)

## **MEMORANDUM OF LAW**

### **I. Statement of Facts:**

C is a twelve year old girl who should currently be in seventh grade. C has extensive mental health needs and a reading disorder that impact her in all areas of her academic and social emotional functioning. Unfortunately, as of the filing of the Petitioner's due process complaint, DCPS failed to provide an appropriate placement or issue prior written notice to any placement for C for the 2010/2011 school year that began on August 23, 2010.

C has been diagnosed with depressive disorder, oppositional defiant disorder ("ODD") and attention deficit hyperactivity disorder ("ADHD") in addition to a reading disorder. Through July of 2010, C had been attending the Episcopal Center School ("Episcopal Center") an 11-month full time therapeutic placement for children with emotional disturbance needs. The Episcopal Center's program only serves children through the sixth grade. As C was in the sixth grade during the 2009/2010 school year, she was in need of a new placement for the 2010/2011 school year.

During the 2009/2010 school year, there was both an Individualized Education Program ("IEP") meeting and a Multidisciplinary Team ("MDT") meeting held where C's need for an appropriate placement for the upcoming school year was discussed. Although in attendance at both meetings, DCPS failed to issue prior written notice to a DCPS placement or to any other placement that could meet C's needs. Upon information and belief, there was no one in attendance at these meetings with information on available resources within DCPS or who had placement authority on behalf of DCPS. An IEP was developed for C that did not include the level of services she received at the Episcopal Center, did not have measurable academic goals, and did not accurately reflect the amount of time that C spent away from her regular education peers.

Though in contact with Petitioner, Ms. G, over the summer regarding the need to find an appropriate placement for C for the 2010/2011 school year, DCPS did not issue prior written notice.

### **II. Procedural Background**

Due to DCPS's failure to respond to C's need for a school placement and with the school year fast approaching, Ms. G filed a due process complaint to resolve the situation and ensure her daughter could receive a free and appropriate public education ("FAPE"). *See*, Attachment A.

Consequently, the complaint was filed on August 17, 2010 along with a motion for expedited hearing. The six legal issues raised in the Petitioner's complaint are:

- (1) DCPS's failure to ensure development of an appropriate IEP;
- (2) DCPS's failure to ensure implementation of an appropriate IEP for the 2010/2011 school year;
- (3) DCPS's failure to provide an appropriate placement for C for the 2010/2011 school year;
- (4) DCPS's failure to ensure Ms. G's participation in any placement decision regarding the 2010/2011 school year;
- (5) DCPS's failure to issue prior written notice regarding placement for the 2010/2011 school year;
- (6) DCPS's failure to convene or support the convention of a legally sufficient IEP and/or MDT and/or placement meeting during the 2009/2010 school year

*See*, Attachment A, page 4.

On August 27, 2010 a dispute resolution session ("DRS") was held at DCPS headquarters, 1200 First Street, NE Washington DC 20002. By that point, Ms. G had found a school she felt could meet C's needs and communicated her desire for placement at Rock Creek Academy to DCPS prior to the meeting. At the DRS, DCPS offered to resolve the complaint through placement in a previously undisclosed D.C. public school named the Hamilton Center.

On August 31, 2010 DCPS filed its untimely response, failing to address any of the six legal issues raised in the complaint. *See*, Attachment B.

In its response, DCPS claimed only that Hamilton Center could implement C's IEP as it was written at the time of filing, and therefore Hamilton Center would be appropriate. *See*, Attachment B, page 2. DCPS did not address whether the IEP itself as written was appropriate, nor whether at the time of filing DCPS had failed to ensure the implementation of an appropriate IEP, failed to provide an appropriate placement or issue prior notice, or failed to convene a legally sufficient IEP meeting or to ensure the Petitioner's participation in any placement decision.

At a pre-hearing conference on September 3, 2010, after prompting from the Hearing Officer, Respondent stated DCPS's position that the IEP was appropriate at the time of filing. Respondent did not provide a response to any of the remaining five issues from the complaint.

At the end of the pre-hearing conference, Petitioner's counsel stated Petitioner's intent to file a Rule 8(b)(6) motion regarding the failure to provide a response on any of the remaining issues.

### **III. Legal Argument:**

#### **A. Respondent must provide notice as to what is being defended at a hearing and why.**

A fundamental portion of any legal proceeding is notice. For cases brought under the Individuals with Disabilities in Education Improvement Act ("IDEIA"), complaints must be sufficient to provide Respondents notice of the issues to be addressed and the facts underlying each issue. *See*, 20 USC §1415(c)(2)(B); CFR § 300.508(e); DCPS Special Education Student Hearing Office Standard Operating Procedures ("SOP") §303(B)(1). Equally, Respondents must provide a response to the complaint that provides notice to a Petitioner not just which areas will be defended at a hearing, but why the Respondent has chosen to defend those issues. *See*, *Id* . Because of the absence of any response from DCPS on five of the six legal issues raised in the complaint, despite numerous opportunities, Petitioner has had to prepare her case without any notice regarding what areas beyond the appropriateness of the IEP Respondent is intending to defend.

#### **B. Federal and State Rules of Procedure Provide Remedy for Petitioners who are not provided appropriate notice regarding a Respondent's decision to defend legal issues raised in a complaint.**

Federal and State rules of procedure dictate that when specific denials are required, all issues not specifically denied by a Respondent be deemed admitted. *See*, Fed. R. Civ. P. 8(b)(6); D.C. Sup. Ct. Civ. P. 8(d). In its written answer to the complaint, Respondent did not issue denials to any of the six issues raised in the complaint, choosing instead to discuss the Respondent's proposed remedy. At the pre-hearing conference, counsel for Respondent only stated his client's desire to defend the appropriateness of C's IEP. Respondent did not indicate

any other issues that would be defended at the hearing, or any basis for a defense of any further issues. Even after counsel for Petitioner indicated Petitioner's intention of filing the instant motion based on Respondent's failure to properly respond under the law, Respondent has failed to issue any response to the five outstanding legal issues.

Consequently, the appropriate remedy under federal and state rules of procedure, and looking to issues of justice and equitable relief is to consider all allegations not addressed by respondent according to the IDEIA and DCPS's Student Hearing Office's Standard Operating Procedures to be admitted. *See*, Fed. R. Civ. P. 8(b)(6); Fed. R. Civ. P. 8(e); D.C. Sup. Ct. Civ. P. 8(d). As the Respondent failed to respond to the legal issues raised in the complaint, failed to address the deficiency orally during the pre-hearing conference, and failed to respond either orally or in writing after being put on notice of Petitioner's intent to file the instant motion, Respondent's lack of a response must be read as an admission.<sup>1</sup>

#### **IV. Conclusion:**

Based on the foregoing facts and argument, Petitioner's requests that the following issues raised in the complaint and unaddressed by Respondent be deemed admitted:

- (1) DCPS's failure to ensure implementation of an appropriate IEP for the 2010/2011 school year;
- (2) DCPS's failure to provide an appropriate placement for C for the 2010/2011 school year;
- (3) DCPS's failure to ensure Ms. G's participation in any placement decision regarding the 2010/2011 school year;
- (4) DCPS's failure to issue prior written notice regarding placement for the 2010/2011 school year;
- (5) DCPS's failure to convene or support the convention of a legally sufficient IEP and/or MDT and/or placement meeting during the 2009/2010 school year

<sup>1</sup> Though respondent reserved the right to amend their response in the footnotes of its insufficient answer, the law affords no such right. Additionally, Respondent was provided ample opportunity to amend – both orally and in writing – and chose against any revision. Allowing any such amendment at this point would be contrary to both the letter and the spirit of the law.

As such, the only outstanding legal issue to be determined at the hearing is the issue of whether or not the February 25, 2010 IEP was appropriate and what remedy is required for DCPS's denial of FAPE for Petitioner.

Petitioner respectfully requests this motion be granted to ensure the hearing may move forward equitably and efficiently under the law.

---

Lauren Onkeles, Esq.  
Counsel for Y G  
DC Bar No. 488920  
Children's Law Center  
616 H Street NW, 3rd Floor  
Washington, D.C. 20001  
(phone) 202-467-4900, ext. 539  
(fax) 202-552-6009 (fax)

### **Certificate of Service**

I hereby certify that on \_\_\_\_\_, a copy of the foregoing Motion that All Issues not Specifically Denied by the Respondent be Deemed Admitted has been sent via facsimile and electronically filed with the following:

Hearing Officer Terry Banks, Esq  
Independent Contractor with the Office of the State Superintendent of Education  
Fax: (202) 698-3825  
Email: terry.banks2@dc.gov

Blair Matsumoto, Esq  
Office of the General Counsel, DCPS  
Fax: (202) 442-5098 or (202) 442-5097  
Email: blair.matsumoto@dc.gov

Courtesy Copy to:

Student Hearing Office  
District of Columbia Office of the State Superintendent of Education  
Fax: (202) 698-3825  
Email: admin@dcshe.i-sight.com

---

Lauren Onkeles