Overview

Dispute Resolution: Due Process and Other Complaints

In this section of the Education Toolkit, you will find information and resources on the federal and state legal mechanisms you can use to protect your client's special education and other rights (such as the right not to be discriminated against based on gender, age or disability). While these materials focus primarily on DC mechanisms for dispute resolution that pertain to District residents and wards, some Maryland resources are provided as well.

Methods of dispute resolution that are discussed include: due process, state and Section 504 complaints, in addition to complaints through the Office of Civil Rights (OCR) and other formal grievances. Tip sheets are included on each of these types of complaints, as well as resources to support you in pursuing these complaints. Note, however, that none of these materials should supplant a strategic discussion with your client regarding what legal action to pursue, especially given that in many cases filing one complaint will preclude or stall pursuit of relief in another forum. Please consult the information sheet in this toolkit that provides a table of the types of dispute resolution available (and when each might be sought).

This section of the toolkit also includes tip sheets for each complaint process, citations to basic form documents to initiate complaints and references to additional resources that may be helpful in pursuing dispute resolution on behalf of a student.

Federal Regulations

- 34 C.F.R. § 300.507 *et. seq.* (procedures for filing a due process complaint)
- 34 C.F.R. § 300.153 *et. seq.* (procedures for filing a state complaint)

Local/State Law & Regulations

- 5 D.C.M.R. § E3029.1 *et. seq.* (DC due process complaint regulations)
- 5 D.C.M.R. §§ E-2405.1 et. seq. (DC Section 504 and other grievance regulations)
- D.C. Code Ann. §§ 2.1401.01 *et seq.* (DC's Human Rights Law)
- C.O.M.A.R. 13A.05. *et. seq.* (MD due process complaint regulations)

Additional Helpful Resources

- http://www2.ed.gov/about/offices/list/ocr/docs/howto.html - for information about how to file an OCR Complaint
- **http://ohr.dc.gov/complaint** - for information about how to file a Discrimination Complaint under DC's Human Rights Act

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 (*pro se* 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. *See* 5 D.C.M.R. § 2405.1 *et. seq.*	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.

CLC Tip Sheet

DC Administrative Due Process Hearings

Who Can File A Due Process Complaint?

The Parent or educational decision maker, or the educational agency for a child (schools) can file a due process complaint over any dispute between the educational decision maker and the educational agency related to the identification, assessment, Individualized Education Program ("IEP") or placement of a student (essentially any disputes over service provision under the Individual with Disabilities Education Improvement Act ("IDEIA")).

Wait … Schools Can File Due Process Complaints Against Parents?

Yes, although this is unusual. As an example, schools sometimes will file due process complaints against parents where a parent has requested an independent evaluation and the school refuses to authorize it, and where the school wants a child to move to a more restrictive school placement and the parent disagrees.

Do You Need a Lawyer to File a Due Process Complaint?

Technically no. However, given the highly nuanced and technical provisions of the IDEIA, it is often helpful to be represented by an attorney who has experience practicing in this area of the law.

The DO's and DON'Ts of Due Process Complaints and Hearings

- **DO** make sure that your complaint contains all of the information requested by the due process complaint form (either include your complaint in the form, or fill out the form and attach it).

- **DON'T** provide only minimal details in your complaint if you can help it. The Hearing Officer does not receive school records in advance of a hearing, so you want to make as compelling a case as possible from the start. However, an important caveat is necessary to mention:

- **DON'T** plead facts in a due process complaint unless you are *absolutely* sure that you can prove them at a hearing using multiple sources of evidence. Witnesses can disappear or become unavailable so don't plead facts you can only prove through testimony.

- **DO** put the due process complaint timeline on your calendar and keep track of it once you have filed. You can calculate deadlines using http://www.timeanddate.com/date/dateadd.html or other internet resources (for timelines see the information sheet in this Toolkit). You can ask for sanctions where the other party fails to comply with timelines, but keep in mind you also can be sanctioned if you miss them.

- **DO** be extra careful when calculating the deadline for disclosures. Federal and local holidays (e.g., Emancipation Day in DC) can truncate your timeline.

- **DO** prepare carefully for the Pre-Hearing Conference. Make sure you can answer all of the questions on the Pre-Hearing Conference check list (including student ID number, the names of your witnesses and what they will testify to) and review closely each of the presumptions listed to make sure you agree with them.

- **DO** use the Pre-Hearing Conference to address logistical or evidentiary issues, including concerns about records or witnesses not being provided, and to confirm disclosure and motion deadlines as well as the manner of service (e.g., electronic versus facsimile).

- **DON'T** assume witnesses can testify by telephone. You should be able to confirm at the Pre-Hearing Conference which witnesses are available to testify in person or by phone and that the Hearing Officer will allow telephone testimony when requested.

- **DO** make sure your witnesses have copies of all the disclosures (yours AND the school's) before the hearing. Witnesses testifying by telephone are often barred from testifying if they don't have the disclosures available to reference when necessary.

- **DON'T** assume the hearing will start on time (in terms of scheduling witness testimony). Preliminary matters can take any time from ten minutes to over an hour. Ask your witnesses to have a window of time when they can be available so you don't lose the opportunity to present important testimony if the hearing is not on schedule.

I'm a GAL Representing a Student Who Needs Special Education Services. What Can I Do to Help?

- **IF THE CHILD'S PARENT HAS A SPECIAL EDUCATION ATTORNEY AND IS PURSUING DUE PROCESS**: Reach out to the attorney and see if there is any assistance you can provide in preparing for the due process hearing, or if you might be able to serve as a witness. While it may not be appropriate for some attorneys to testify or they may need to give very limited testimony (e.g., juvenile defense attorneys), GALs can often be very helpful witnesses and provide context to the Hearing Officer about the child's history and service needs.

- **IF THERE ISN'T A SPECIAL EDUCATION ATTORNEY INVOLVED**: You may want to consider requesting a special education attorney be appointed in the child's neglect case if there is an educational decision maker identified.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

Clifford B. Janey, Ed. D, Chief State School Officer

The Special Education Student Hearing Office
Due Process Hearing
Standard Operating Procedures

A Handbook for Hearing Officers, the Local and State Educational Agencies, Parent / Child's Representatives, and the Student Hearing Office Staff

District of Columbia Public Schools
State Enforcement & Investigation Division
Special Education Programs
Student Hearing Office
825 North Capitol Street NE, Suite 8076
Washington, DC 20002-1994
Phone: (202)442-5432 / Fax: (202)442-5556

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SECTION I
INTRODUCTION

FACT More than 11,000 children receive special education and related services in the District of Columbia.

FACT Parents and schools do not always agree about a child's special education identification, evaluation, eligibility, program, or placement.

FACT Children are best served when parents and educators work together.

FACT Federal special education law affords children, their parents, and educational systems certain legal rights when disputes arise, including the right to a due process hearing.

The information in the Standard Operating Procedures Manual for the Student Hearing Office 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. The Student Hearing Office will provide information about any free or low-cost legal services available in the District of Columbia upon request. These guidelines will, however, help individuals understand the implementation of these laws in the District of Columbia and the steps for filing a due process complaint to obtain a due process hearing. This document also details procedures to be followed by the Student Hearing Office ("SHO"), the Independent Hearing Officers assigned to conduct due process hearings on disputed issues, and the representatives of the Local Educational Agency (LEA), the State Educational Agency (SEA), and parents/children. You are also invited to visit the District of Columbia Public

Schools (DCPS) website (www.k12.dc.us) for additional information about special education and other dispute resolution options. Unless otherwise specified, all days in this handbook are defined as calendar days.

SECTION II

THE SPECIAL EDUCATION STUDENT HEARING OFFICE

§ 200 PURPOSE

The Individuals with Disabilities Education Act (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 and children with 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. These Standard Operating Procedures are designed to implement the requirements of the IDEA and to give notice to the public. Copies of these procedures shall be maintained at all District of Columbia Public and Charter schools and a copy shall be provided without cost or delay to any person on oral or written request. If there is any conflict between the Standard Operating Procedures and the IDEA or the *Blackman/Jones* Consent Decree, the IDEA or the *Blackman/Jones* Consent Decree govern.

§ 201 GENERAL RESPONSIBILITIES

A. The due process system is administered in the District of Columbia by the Student Hearing Office in the State Enforcement & Investigation Division for Special Education Programs in accordance with the IDEA, 20 U.S.C. § 1400 *et seq*. and Title 5 of the District of Columbia Municipal Regulations

(5 DCMR § 3000, *et seq.*). The Student Hearing Office is responsible for the following:

1. Receiving the written due process complaint for requesting a due process hearing;
2. Scheduling, or coordinating with the Hearing Officer to schedule the hearing, within the statutory time limit;
3. Contracting and assigning an impartial Hearing Officer;
4. Notifying the parties to the hearing of the time and place of the hearing;
5. Providing and coordinating logistical support for the hearing such as adequate space, recording equipment, and an impartial and qualified interpreter who is not an employee of DC Public Schools, if needed;
6. Obtaining transcripts and audio recordings of hearings and retaining copies;
7. Providing copies of transcripts and recordings upon request;
8. Maintaining historical statistical data and archiving hearing files;
9. Processing pre-hearing matters;
10. Maintaining records of due process hearings;
11. Publishing Hearing Officer Determinations; and
12. Promptly and professionally respond to inquiries.

B. The Student Hearing Office 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. The Student Hearing Office administrative support staff will ensure:

1. Office staff promptly and professionally respond to inquiries and otherwise perform their duties competently.
2. Office space is sufficient to provide reasonable working space for the staff at all times and for the use of Hearing Officers in the period before, after and between hearings.
3. Hearings have adequate time and space to be conducted in the time reasonably requested by the parties or allotted by a Hearing Officer.
4. The telephone is answered promptly and professionally during normal business hours; in the exceptional situations in which the telephone cannot be answered promptly (e.g., 5 or more calls come in simultaneously), calls immediately roll over to an answering machine or voice mail system that has sufficient memory to handle all messages.

5. After normal business hours, calls immediately roll over to an answering machine or voice mail system that has sufficient memory to handle all messages.
6. All messages handled by the answering machine or voice mail are retrieved promptly and calls returned no later than the close of the next business day, unless exceptional circumstances prevent it.
7. Incoming communications and documents, including faxes, are received and documented promptly by date stamp; outgoing faxes are sent promptly, and the fax machine produces written transmittal confirmation for each fax attempted. Requests for copies of certified records, transcripts and audio recordings of pre-hearing conferences and hearings shall be kept in a log maintained by the SHO. Five-day disclosures, due process complaints, amended complaints, and HODs shall be logged into the ENCORE data base and tracking system.
8. The Student Hearing Office shall provide and maintain in working order a date stamp machine for use by persons submitting documents by hand and will provide personnel to date stamp documents received by mail. SHO personnel shall return date-stamped documents by mail no later than the next business day if self-addressed postage-prepaid envelopes are provided.
9. Case files for each Hearing Request are accurately maintained and include documentation of all correspondence, including fax transmittal confirmations, 5-day disclosures, and all documents from related cases involving the same student.
10. All notices, decisions, and other correspondence are transmitted in a timely manner to the parties.
11. The Student Hearing Office shall maintain and provide for staff and Hearing Officers reasonable working conditions.
12. Hearing Officers shall be adequately and timely compensated. Hearing Officer compensation shall be competitive with comparable jurisdictions and sufficient to ensure there are enough Hearing Officers to ensure timely hearings. In addition, Hearing Officers shall be provided reasonable assistance from the Student Hearing Office staff so that the Hearing Officers can function efficiently without undue burdens from clerical responsibilities.

§ 202 SHO HOURS OF OPERATION

The Student Hearing Office shall open at 8:30a.m. and remain open until 5:00p.m. Monday through Friday except for District of Columbia holidays.

§ 203 FILING OF PLEADINGS & DOCUMENTS

1. Except as otherwise provided, all documents, pleadings, and motions shall be filed with the State Enforcement & Investigation Division for Special Education Programs, Student Hearing Office, 825 North Capitol St., N.E., Washington, D.C. 20002. All facsimile filings shall be sent to the following facsimile number: (202)442-5556, which is a dedicated fax line.

2. Electronic filing of documents is not permitted and will not be accepted for filing.

3. All documents received for filing by 5:00 p.m. Eastern Time will be accepted for filing that day. All documents filed after 5:00 p.m. Eastern Time, and all documents filed on any designated holiday, Saturday, or Sunday shall be deemed filed on the following business day, except as provided in ¶ 1 above.

4. Upon the filing of any pleading or motion an attorney is certifying that to the best of the his/her knowledge, information and belief, after an inquiry reasonable under the circumstances, that (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.

5. Notice of Appearance of Legal Counsel. The filing of a Notice of Appearance or other pleading by an attorney on behalf of a party in comformity with the requirements of this section shall constitute the entry of an appearance by the party. All pleadings and other papers filed by the attorney shall set forth the name, full business or street address, telephone number, and fax number, if any, of the attorney. Subsequent notices, pleadings, and documents shall be served on the attorney of record or, if not represented, the party.

§ 204 SERVICE OF DOCUMENTS

Unless otherwise provided by law, every letter or document, including every pleading, motion, or notification filed with the Student Hearing Office shall simultaneously be served on all parties or party representatives by the same method as the document was filed with the SHO, except that service by facsimile may be substituted for personal service.

§ 205 FAIRNESS AND IMPARTIALITY

The staff of the Student Hearing Office is not part of nor under the supervision of any District of Columbia Public Schools division or staff office that will participate in the hearing or implement the decision of the Hearing Officer. In fairness to all parties, the Staff shall maintain neutrality and neither favor nor promote the interests of the litigants who participate in due process hearings, 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 may advise parents/students where to obtain low or no cost legal counsel and refer inquiries to other offices in DCPS.

§ 206 CIVILITY AND DECORUM

All parties and counsel involved in a Special Education Due Process Hearing, including hearing officers, are expected to act with respect and decorum. Rude, offensive, and unprofessional conduct such as inappropriate language, angry outbursts and threatening statements directed at any other person or party is absolutely prohibited. All attorneys are governed by the D.C. Rules of Professional Conduct. The 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 hearing officer may exclude any person, halt or suspend a hearing, consider a referral to Bar Counsel and/or summon appropriate law enforcement authorities to address any inappropriate conduct or misbehavior by any person that disrupts a hearing.

Section III

THE DUE PROCESS HEARING

§ 300 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 argument in support of their respective positions on disputed special education issues. A Hearing Officer then issues a written decision concerning the matters in dispute.

§ 301 REQUESTING A DUE PROCESS HEARING

§ 301.1 Filing a Due Process Complaint

A. What must be filed.

To obtain a due process hearing, the complaining party must file a due process complaint. A party may not have a due process hearing until a party, or the attorney representing the party, files notice of a due process complaint.

B. Who may file a due process complaint.

Anyone (parent, student, Local Educational Agency (LEA), or the State Educational Agency (SEA)) may file a due process complaint. Typical reasons for filing a due process complaint by parents and students include, but are not limited to, disputes regarding:

1. Eligibility for special education services;
2. Identification of the child as a student with a disability;
3. Results of an evaluation or need for an evaluation;
4. The appropriate educational placement of the student;
5. Entitlement to, types of, and quantity of compensatory education services/products;
6. Appropriateness of the student's IEP;
7. Proper implementation of the student's IEP;
8. Transportation problems;
9. Disciplinary actions taken by the school; or
10. The provision of a free appropriate public education to a child with a disability.

C. Typical reasons for which the Local Educational Agency (LEA) or State Educational Agency (SEA) may file a due process complaint to initiate a hearing include, but are not limited to, disputes regarding:

1. A parent's refusal to consent to an initial evaluation or reevaluation;
2. A parent's refusal to consent to the release of a record;
3. Placement of a child with a disability in an interim alternative educational placement for disciplinary reasons; or
4. The need for an independent evaluation.

D. Notice

1. LEA: Parents initiating a complaint must provide notice of the due process complaint to the Local Educational Agency ("LEA"). For students in traditional public schools, non-public 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. 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.

2. Student Hearing Office: A written copy of the due process complaint must be filed with the Student Hearing Office, 825 N. Capitol St., NE, Washington, D.C. 20002. The complaint may be filed by mail, hand-delivery, or facsimile (unless the parent is unable to read or write or has a disability that prevents a written request). If a parent or guardian is unable to read or write, is not fluent in English or has a disability that prevents a written request, Student Hearing Office personnel shall assist the parent or guardian in filling out the complaint or refer the parent to a legal services program that handles special education matters without charge and is open for intake or Advocates for Justice in Education, the District's Parent Training and Information Center.

3. Model Form: A model "Due Process Complaint Notice" form created by the State Education Agency may be used to give proper notice. A copy of the model form is provided in the Appendix of this procedural manual. DCPS will provide a copy of the form upon oral or written request. DCPS shall maintain an electronic copy of the form on its website with an easily identifiable link to the form from its homepage. Copies of the form shall also be available on request by a parent at every District of Columbia Public School and Charter School and in the Office of Special Education, Office of the General Counsel, Student Hearing Office, State Complaint Office, the DCPS Care Center, Parent Resource Centers, Office of the

Superintendent, and the general office of the State Enforcement & Investigation Division. 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 20 U.S.C. § 1415(a)(7)(A) and § 301.2.B of these standard operating procedures.

§ 301.2 Contents of and Timeline for Filing the Due Process Complaint

A. Timeline for Requesting Hearing: Two Year Limitation Period

1. Unless otherwise provided by law or regulation and except as provided in § 301.2.B., the due process complaint must be filed not more than two (2) years after the date that the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.

B. Exceptions to the Two Year Statute of Limitation Period

1. The timeline described in § 301.2.A.1 shall not apply to a parent if the parent was prevented from requesting the hearing due to:
   (a) Specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
   (b) The local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

2. Nothing stated above should be construed to limit the right of the parties to rely upon other applicable exceptions to the statute of limitations period.

C. Contents of a Due Process Complaint. The Due Process Complaint must contain the following information:

a. The name and address of the child. In the case of a homeless child, available contact information for the child;
b. The name of the school the child currently attends;
c. A brief fact-based description of the problem or disagreement about the child's education;
d. A proposed resolution of the problem to the extent known, and

e. The signature of the parent or complaining party.

§ 302 REQUESTING A HEARING WHEN THE STUDENT ATTENDS A CHARTER SCHOOL

The parents of a student who attends a charter school have the same right to request a due process hearing as the parent of a student who attends a traditional public school. If the Charter School is a named party, a copy of the due process complaint must be provided to the principal or director of the charter school at the same time that it is filed with the Student Hearing Office. The failure to issue notice of the complaint to a charter school that is a party will result in a delay in scheduling a due process hearing.

§ 302.1 Notice of Appearance For Charter School

The filing of a Notice of Appearance or other pleading by an attorney on behalf of a charter school in conformity with the requirements of this section shall constitute the entry of an appearance by the charter school. All pleadings and other papers filed by the attorney shall set forth the name, full business or street address, telephone number, and fax number, if any, of the attorney. Subsequent notices, pleadings, and documents shall be served on the attorney of record for the charter school.

§ 303 RESPONDING TO A COMPLAINT

A. Sufficiency of Complaint.

A due process complaint shall be deemed sufficient unless the party receiving the due process complaint notifies the Student Hearing Office or assigned Impartial Hearing Officer (if a hearing officer has been assigned to the complaint) and the other party 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 § 301.2.C. 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 student hearing office.

1. Hearing Officer Decision on Sufficiency. Within five (5) days of receipt of notification that a party believes the due process complaint is legally 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 301.2.C. and shall immediately notify the parties in writing of that determination.

2. Amending the Due Process Complaint.

   a. A party may amend its due process complaint only if:

      i. 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 pursuant to 20 U.S.C. § 1415 (f)(1)(B) and any controlling federal or local regulations; or

      ii. The hearing officer grants permission, except that the 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 begin again with the filing of the amended due process complaint.

3. 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 notice that meets the above requirements.

B. Response to Complaint by the Local Educational Agency

1. If the Local Educational Agency has not sent a prior written notice to the parent 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 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 under this subsection B shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

C. Other Party Response to a Due Process Complaint

Except as provided in section B. above, the party receiving a due processcomplaint must, within ten (10) days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint as set out at 20 U.S.C. 1415(c)(2).

D. Parties should be cognizant of the 10 day statutory period for filing the response noted in § 303.C.1. 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.

§ 304 PRE-HEARING MATTERS

A. PRE-HEARING CONFERENCES.

1. General Information about Pre-hearing Conferences. The purpose of a pre-hearing conference is to identify all ripe issues that are truly in dispute and that could benefit from a joinder of claims and remedies. Pre-hearing conferences are not mandatory, however, the Hearing Officer may order the conference or either party may request a conference. It permits the Hearing Officer to raise the issue of settlement or mediation if the circumstances suggest that exploration of this issue would be beneficial to the parties and not result in delaying resolution of the complaint. However, hearing officers shall not discuss the terms of settlement or mediate settlement discussions. Conducting a pre-hearing conference also provides the Hearing Officer the opportunity to advise all parties how the hearing will be conducted. Establishing ground rules, which

remove surprise from the proceedings, will result in a more efficient and focused evidentiary hearing.

The Hearing Officer shall not offer advice to any of the parties and/or their representatives, however, a Hearing Officer shall advise pro se litigants that they have a right to counsel and where free legal services may be obtained. The pre-hearing conference must be held in the presence of all parties concerned (either telephonically or face-to-face). Discussion with either party separately could result in an *Ex Parte* relationship that would taint the impartiality of the process and violate the Judicial Code of Conduct. No delay in the hearing date should result from a pre-hearing conference absent the consent of both parties or an Order of the Hearing Officer.

The pre-hearing Order should 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 a last-minute continuance where good cause is not shown, and (5) confirming special requests. The Order does not have to be a verbatim recitation of everything discussed in the pre-hearing conference; its chief purpose is to set forth the matters either stipulated to by the parties or ordered by the Hearing Officer.

Unless otherwise agreed to by the parties, the hearing officer should transmit the Order to the parties for receipt by each of them within 3 business days after the pre-hearing conference or at least seven business days prior to the hearing, whichever is earlier. The Order shall be sent by fax whenever possible and otherwise by mail to the parties. The Hearing Officer must also provide a copy to the Student Hearing Office.

2. Prior to a hearing, the hearing officer or a party may move for the setting of a pre-hearing conference. At the hearing officer’s discretion, the parties shall be directed to appear, either in person or by telephone, at a specific time for a conference prior to a

hearing on the merits for the purposes of considering preliminary matters, including any of the following:

a. Setting the date and amount of time for the hearing;

b. The formulation or simplification of issues;

c. Admission of certain assertions of fact or stipulations;

d. The procedures at the hearing on the merits;

e. To establish any limitation on the number of witnesses and the time to be allotted each party to present their case in chief;

f. Consideration of any motions; and/or

g. 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.

3. Motions for pre-hearing conferences.

a. Motions by parties for a pre-hearing conference, unless by consent, shall be filed with the SHO and served on opposing parties (by facsimile whenever possible) no more than ten (10) calendar days after the Notice of Hearing is issued by the SHO. All motions should include a proposed order. Consent motions for a pre-hearing conference shall be filed at least 20 days before the hearing date and include a proposed order.

b. Any reply or opposition to a non-consent motion under 3.a shall be filed and served not later than 5 business days after receipt.

c. Hearing officers shall rule on motions for a pre-hearing conference in sufficient time to allow the conference to be held and a pre-hearing Order issued within 3 business days after the pre-hearing conference or no later than 7 days before the hearing, whichever is earlier.

4. In exercising discretion under this provision, hearing officers shall not unreasonably deny a request for a pre-hearing conference.

The pre-hearing conference is not to be used in lieu of a resolution session.

5. To ensure implementation of this section, the SEA shall ensure that there are sufficient hearing officers to accommodate reasonable requests for pre-hearing conferences and that hearing officers are assigned to cases in a timely manner.

6. Action taken at the pre-hearing conference shall be on the record.

7. A written request to reschedule a pre-hearing conference must contain a statement that all parties have been consulted or the reason why all parties were not consulted and list any objection and shall set forth three alternate dates and times for rescheduling the conference. Unless consented to by the parties, continuances shall not be granted without a showing of good cause.

§ 400 DUE PROCESS HEARING

§ 400.1 Scheduling the Hearing

A. If the LEA has not resolved the due process complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process complaint, the due process hearing must occur.

B. The timeline for issuing a final hearing officer's determination begins at the expiration of this 30-day period. Pursuant to federal law, not later than 45 days after the expiration of the 30 day resolution period:

1. A final hearing decision shall be issued by the hearing officer; and
2. A copy of the decision shall be faxed when possible and otherwise is mailed to each of the parties.

C. Exceptions:

1. Waiver of the 30-day resolution period. The parties may jointly waive the resolution session. When the parties have jointly agreed to waive the Resolution Session, the due process hearing will be set for an expedited hearing, not later than 20 days following the date of the waiver.

2. OGC determination that settlement discussions not productive. If the resolution session was unsuccessful, as soon as the OGC determines that further settlement discussions would not be productive, the OGC is obligated to immediately notify the SHO to schedule the case for hearing.

D. General Procedures

1. The Student Hearing Office and the parties shall work reasonably in scheduling the case for a hearing. The date and time of the due process hearing may be set during a pre-hearing scheduling conference at the discretion of the Impartial Hearing Officer assigned to preside over the case. However, if the date of the hearing is not set during a pre-hearing scheduling conference, the following general guidelines shall apply:

   a. Upon notification that the due process complaint has not been resolved, (SHO will receive a Due Process Complaint Disposition Form), upon request by mutual agreement of the parties, or upon the expiration of the 30 day resolution period, whichever occurs first, the SHO Hearing Coordinator will schedule the matter for a due process hearing.

   b. The complaining party may indicate on the Due Process Complaint Form the estimated amount of time that will be needed for the hearing. All hearings will be scheduled for two hours unless a party requests otherwise. Unless the requesting party agrees to a modification of their request for a particular time allotment, only Hearing Officers may deny or modify a party's request to alter the time allotted for a hearing. If the Student Hearing Office has good cause to believe the time request is unreasonable, the matter shall immediately be referred to the Chief Hearing Officer who shall convene a pre-hearing conference call with the parties' counsel within 3 business days for the purpose of scheduling the hearing and establishing the time allotment. Hearing Officers may deny or modify a party's request to alter the time only after allowing the requesting party an opportunity to be heard about the reason for the request, and may grant such request only after allowing the opposing party an opportunity to be heard.

c. The parent, or the parent's attorney if the parent is represented by legal counsel, will be contacted and requested to provide 3 available days for scheduling the hearing, and the amount of time needed for the hearing. At this time, the complaining party is required to notify the SHO if the case will require more than 2 hours for the hearing.

d. The SHO will make every effort to schedule the hearing on one of the requested dates if one of the dates is available. If one of the 3 (three) dates is available, a Notice of Hearing will be sent by fax to every party/counsel who has a fax and by mail to any party/counsel who does not have a fax.

e. If none of the 3 dates are available, and if a date and time has not otherwise been determined by a pre-hearing conference, SHO will propose the next available open hearing date and shall issue a Provisional Notice of Hearing to the parties.

f. If any party objects to the provisional hearing date selected by the Hearing Coordinator, and no other date is agreed to between the parties, the matter will be referred to an Impartial Hearing Officer for a telephone pre-hearing conference, and the hearing officer shall render a final decision on the date and time of the hearing. Oral requests for a continuance will be ruled upon during the teleconference.

2. When the parties have jointly agreed to waive the Resolution Session, the due process hearing will be set for an expedited hearing, not later than 20 calendar days following the date of waiver. See § 1007 for the procedures that govern expedited hearings.

3. Not less than 10 business days before the hearing, the SHO will notify the parties of the hearing officer assigned to the case. This does not preclude the substitution of another hearing officer after the notice of the assignment as a result of unexpected emergencies or other exceptional circumstances.

§ 401 MOTIONS

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

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

1. Whether good cause exists for continuance;
2. The child's stay-put placement pending resolution of the dispute;
3. Dismissal of a party or parties to the hearing;
4. Recusal of the Hearing Officer;
5. Clarification of the issues in dispute;
6. Consolidation of multiple cases into one hearing.

C. Procedures for Filing Motions:

1. A party may obtain a ruling on a pre-hearing issue by submitting a motion in writing to the presiding Hearing Officer (with a copy to the Student Hearing Office).

2. A copy of the motion must be simultaneously faxed when the party or counsel has a fax machine and otherwise mailed to all other parties. A certificate of service must be attached to the motion verifying that all other parties, or, if represented, their attorney of record, have been served with a copy of the motion. Failure to timely serve 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 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 filed no later than the 5-day deadline for disclosing evidence and witnesses. Any motion filed after that date shall be considered untimely, and may be denied at the discretion of the Hearing Officer without further consideration. This rule does not limit the Hearing Officer’s discretion to grant a motion filed after the 5-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 the motion shall file and serve by fax or mail as specified in 2 above a written response no later than 3 business days from the date the motion is filed with the Student Hearing Office or with the Hearing Officer if one has been assigned. 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. Failure to timely serve the response motion to all other parties may result in granting of the motion or scheduling of a contested hearing on the motion at the discretion of the Hearing Officer.

6. Requests that require an immediate ruling may be directed to the Chief Hearing Officer at any time prior to the appointment of the hearing officer who will be assigned to preside over the case, or at the pre-hearing conference. No motion shall be decided before the time periods specified above have passed. Hearing officers shall be cognizant of timelines when considering motions and shall decide motions so as not to delay hearings or necessitate requests for continuances.

7. 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 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 Hearing Officer will not rely solely on statements made by an attorney or advocate representing a party.

§ 402 CONTINUANCES

It is the policy of the Student Hearing Office to render final hearing decisions within all stated federal and local rules. Continuances often cause unreasonable delays in the resolution or development of an appropriate educational plan for the student. The SHO discourages the use of continuances; the granting of an extension of time to render the final hearing decision is prohibited in the absence of good cause.

A. Continuance defined

1. A continuance is a request by one or more of the parties that a scheduled hearing, pre-hearing conference, or other event be rescheduled to a later date, and may request an extension of time for issuance of the final 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 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 Hearing Officer may require documentation prior to granting a continuance request and an extension of time to issue a final determination.

2. Pursuant to the *Blackman/Jones* Consent Decree, there is a rebuttable presumption that good cause does not exist for a continuance sought by DCPS for any of the following reasons:

    a. Unavailability of DCPS witnesses or counsel, unless DCPS has made a diligent effort to have such persons appear;
    b. Hearing officer unavailability, unless SHO has made a diligent effort to have such persons appear;
    c. The SHO's or Hearing Officer's decision to allot a different amount of time from that requested by the parent;
    d. The SHO's failure to secure adequate physical space for the hearing, unless SHO made a diligent effort to schedule reasonable space under the circumstances known to them at the time of the hearing;
    e. SHO failure to transmit in a timely manner those notices and documents which it is responsible for distributing;
    f. Late arrival of the Hearing Officer of DCPS attorney to the scheduled hearing; or
    g. SHO failure to provide the necessary recording equipment to adequately capture the entire proceeding.

B. Procedures for Requesting a Continuance:

1. A request or motion for a continuance shall be submitted to the Student Hearing Office in writing. Only hearing officers can grant a continuance of hearings that have already been set on the hearing docket.

2. A copy of the request shall be provided simultaneously to all other parties by facsimile if the party or counsel has a facsimile. If the other party does not have a facsimile the requesting party shall call

the other party or counsel and leave a voice mail message or leave a message with a responsible adult over the age of 18 and also mail a copy of the request. 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 motion or request should be filed with the Student Hearing Office. 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 notice 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 hearing officer.

4. Parties opposed to a continuance must submit a written objection to the continuance within 3 business days of the date the motion is filed with the Student Hearing Office and serve same or provide notice as provided for in 2 above.

5. All requests or motions for a continuance shall be submitted and filed no later than the 5-day deadline set for disclosing witnesses and evidence. Any request or motion for a continuance made or filed after that date shall be considered untimely, and may be denied at the discretion of the Hearing Officer without further consideration. This does not prohibit the Hearing Officer from granting a continuance submitted or requested after the 5-day disclosure deadline upon a showing of good cause by the party for the late request.

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

6. The Chief Hearing Officer shall rule on all requests or motions for a continuance unless the case has already been assigned to another Hearing Officer.

7. 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 Notice of Hearing.

8. A Hearing Officer must rule upon all continuance requests within 5 business days of the request or sooner, if practicable. To comply with this provision, the 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 Hearing Officer may ask the parties to submit declarations, affidavits or other evidence, including witness testimony, which may be taken by telephone.

9. When the Hearing Officer grants the request, the hearing shall be rescheduled and the 45-day time limit will be extended for the duration of the continuance. The case must be reset to a date certain, with notice to all counsel and unrepresented parties, and the final hearing decision must be issued within the extended timelines.

10. No more than one (1) continuance per side shall be granted in any case unless the Chief Hearing Officer grants another continuance based on exceptional circumstances. All continuances shall be limited to ten (10) days, except by the agreement of the parties, or if the applicable Hearing Officer orders otherwise after review.

    a. **Continuance granted**. The 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. 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 allowed unless good cause is shown or the parties agree.

    b. **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.

11. **Recessing a Hearing From Day to Day**. If a hearing cannot be concluded within the time allotted for the hearing, and the case

needs to be recessed from day to day, the hearing will be reconvened as soon as reasonably possible, but in no event shall the case be recessed for more than ten (10) business days, except upon the mutual agreement of the parties, or upon the finding of good cause for a longer delay. The deadline for the issuance of the final hearing decision will be extended only for the duration of the recess period.

12. **No continuance for DCPS failure to attempt Resolution Session,** In the absence of agreement of the parties, if DCPS fails to make any attempt to schedule a Resolution Session within the statutory fifteen (15) days, DCPS shall not be granted a continuance of the due process hearing, except under exceptional circumstances. The failure to notice and conduct a Resolution Session shall not constitute an exceptional circumstance.

13. **Expedited Hearings**. No continuance shall be granted on any case set for an expedited hearing unless the party was not consulted regarding the date or the parties agree. Where parties have no counsel a hearing officer must determine if the pro se parent's assent is knowing and willing.

§ 500 PREPARING FOR THE HEARING

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

A. Five (5) Day Disclosure Rule.

1. At least five business days prior to a scheduled due process hearing, each party must disclose and provide to all other parties and the Student Hearing Office copies of all evidence which the party intends to use at the hearing. This rule requires specific disclosure of:

   a. All documents and tangible things the party wants admitted into evidence for the Hearing Officer to consider;
   b. The names, addresses, and telephone numbers of all witnesses the party intends to call to testify during the hearing; and

c. All evaluations completed by that date and recommendations based upon the offering party's evaluations that the party intends to use at the hearing.

2. A party who does not receive adequate prior disclosure of evidence may ask the Hearing Officer to exclude the evidence from the hearing. It is within the discretion of the Hearing Officer to determine whether the evidence will be excluded.

§ 600 THE HEARING OFFICER

§ 600.1 Authority and Responsibilities

The 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. The Hearing Officer has additional specific authority to:

1. Administer oaths or affirmations and question a witness on the record.
2. With the consent of all parties to the hearing, request that conflicting experts discuss an issue with each other while on the record.
3. Visit the proposed placement site when the physical attributes of the site are at issue.
4. Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony, or if the hearing is continued for at least five days prior to the witness testifying.
5. Order that an impartial assessment of the child be conducted (the cost of which will be paid by the school system).
6. Restrict the number of witnesses and limit the length of their testimony, provided such limitations do not prohibit a party from introducing relevant material and competent evidence.
7. Ask questions of counsel and parties in order to fully develop an appropriate record.

Hearing Officers have discretion in managing a due process hearing. Hearing Officers may have individualized procedures or rules concerning the handling of documents, exhibits, witnesses and the like. Such preferences shall be expressed in writing and made available upon request by the Student Hearing Office, and posted with timely updates on the DCPS website.

§ 600.2 Qualifications of Hearing Officers

Impartial special education hearing officers are not employees of the DC Public Schools. They are private attorneys who have qualified to serve as hearing officers and who have executed a contract with the DC Public Schools for that purpose. The Student Hearing Office will assign impartial Hearing Officers to cases on a rotating basis. Hearing Officers are selected based on their academic achievement, background in special education and special education law, professional experience, writing ability, and personal qualities. All Hearing Officers are members in good standing of the District of Columbia Bar, have at least five years of active legal experience as an attorney, and have received special training in conducting administrative hearings. Hearing Officers also receive training in special education laws, regulations, procedures, and programs.

The Student Hearing Office shall also maintain a statement of the qualifications of each person who serves as a Hearing Officer and make it available to the public without charge or undue delay upon request.

To ensure impartiality, every Hearing Officer is held to the American Bar Association's Code of Judicial Conduct. Additionally, no Hearing Officer may be employed by DCPS or any agency or organization involved with the care or education of the child in the case, have any other professional or personal interest that would conflict with his or her objectivity in the hearing, or have a prior involvement with the child. A person who otherwise qualifies to conduct a hearing is not an employee of DCPS solely because he or she is paid by DCPS to serve as a Hearing Officer. Additionally, a Hearing Officer may not be employed by or represent schools or parents in any manner in any jurisdiction, nor be an employee of any parent rights or disability rights agency or organization. A Hearing Officer must decline an assignment or ask to be recused as soon as a conflict is known .

§ 600.3 Ex Parte Communications Prohibited

A Hearing Officer may not communicate with either party or counsel about substantive matters in the case without the knowledge and/or participation of the other party(ies) or counsel when the party is represented. This prohibition does not include communication regarding scheduling. If an unrepresented parent is uncertain about what matters may or may not be discussed, they may ask the Hearing Officer what is appropriate. Especially when a parent or student is not represented, a Hearing Officer shall, to the extent possible, without becoming an advocate, assist the unrepresented party in developing the record. Counsel seeking clarification from a Hearing Officer shall always involve the other party's/parties' counsel.

§ 600.4 Disqualification of Hearing Officer

The Student Hearing Office shall ensure that the Hearing Officer assigned to a particular hearing is fair and impartial. The Hearing Officer shall disqualify him/herself from presiding over any case in which the Hearing Officer has a personal or professional interest which might conflict with the Hearing Officer's objectivity in the hearing. If a Hearing Officer is recused, the Student Hearing Office shall appoint another Hearing Officer as a replacement.

A. PROCEDURES FOR DISQUALIFYING A HEARING OFFICER

1. Any party to a hearing may challenge the assignment of a particular Hearing Officer. If any party to the hearing objects to the assigned Hearing Officer based on conflict of interest, bias or other reason, the objection shall be presented to the Hearing Officer in writing not less than five (5) business days prior to the date of the hearing.

2. If any party to the hearing objects to the participation of the assigned Hearing Officer for any reason except bias after the five-day disclosure, the Hearing Officer shall use discretion in determining whether to disqualify him/herself from the proceedings. The Hearing Officer assignment will be changed if the Hearing Officer agrees.

3. The Hearing Officer shall issue a written ruling on any objection to their participation. The written objection of any party to the participation of the Hearing Officer and the subsequent written ruling by the Hearing Officer shall preserve the issue for appellate review.

4. No objection to the participation of a Hearing Officer shall be raised for the first time at the hearing itself, unless the grounds for such objection first became known after the deadline for filing the request for recusal or at the time of the hearing.

5. All requests for recusal based on allegations of bias shall be reviewed by the Director of the SHO or an impartial and independent person, designated by the Director of the SHO, who meets the qualifications required for a hearing officer outlined above. In the event that the allegation of bias is substantiated, or upon a determination that it is in the best interests of the student and the parties, the Student Hearing Office shall assign a different Hearing Officer to the case within 2 business days.

§ 700 HELPFUL INFORMATION ABOUT ADMINISTRATIVE HEARINGS

§ 700.1 General Information

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. An impartial Hearing Officer assigned by the Student Hearing Office on a rotating basis will conduct the hearing.

§ 700.2 Purpose

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

§ 700.3 Failure to Appear

If the party who requested the hearing (complainant) does not appear at the hearing, the hearing may be dismissed by the 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, a Hearing Officer is absent from a scheduled hearing, the Student Hearing Office will expedite a rescheduling by either rescheduling the hearing for the next available date or assigning another Hearing Officer who can hear the case sooner than the next available date.

§ 700.4 Conducting the Hearing

The hearing is not governed by formal rules of procedure or evidence. The Hearing Officer will attempt to ensure that all parties have an adequate opportunity to present their cases. 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. 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 Hearing Officer turns on a recorder to make a record of the hearing and, after identifying the case and the parties for the record, briefly explains how the hearing will proceed. The Hearing Officer then usually clarifies the issues to be decided by discussing the case with the parties (and reviews the pre-hearing conference stipulations). If the recorder malfunctions during the hearing, the proceedings must be stopped and an attempt made to remedy the situation. If the problem cannot be solved, the hearing must be continued until such time when proper recording equipment is available. The Student Hearing Office shall ensure that all equipment is in good working order.

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

Once preliminary matters are completed, the parties are generally given an opportunity to make opening statements. Opening statements should provide the Hearing Officer with a brief summary of the parties' positions on the issues for hearing. Following opening statements, the party presenting first will call its witnesses. Oral evidence may be taken only after oath or affirmation and may be provided via telephone. In cases where oral evidence is provided via telephone, the hearing officer shall use appropriate measures to ensure that the circumstance for the taking of that testimony are fair, appropriate, and designed to ensure accuracy and credibility. For example, a hearing officer may ask a witness testifying by telephone to state on the record, under oath, whether anyone else is present in the room from which he or she is giving testimony by telephone and if so, allow the other party to object.

After one party has presented its witnesses and other evidence, the other party(ies) will call its (their) witnesses. Each party will be given an opportunity to ask questions of the other parties' witnesses, and the Hearing Officer may also ask questions of the witnesses. The length of the due process hearing can vary, but the hearing officer shall run the hearing efficiently.

At the end of the hearing, each party is allowed to make a closing statement. The 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 Hearing Officer may also continue the hearing to request written briefs on particular legal issues and schedule additional oral argument, if necessary. 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 Hearing Officer then has up

to 10 days to prepare a written decision, unless a decision is due sooner, which will be provided to the Student Hearing Office for distribution to all parties.

§ 700.5 Burden of Proof

As of June 30, 2006, DCPS Board of Education policy regarding the burden of proof was amended (53 DCR 5249 (June 30, 2006)). The revised rule shall apply to all hearing requests filed on or after Monday July 3, 2006.

§ 800 RIGHTS

§ 800.1 Rights of All Parties

All parties have the following rights:

1. Right to representation. All parties have the right to be represented by legal counsel, and to be accompanied and assisted by persons with special knowledge or training related to the problems of disabled children.

2. 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. The will also be given the opportunity to argue the merits of their cases.

3. 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.

4. 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 or other form of notification. Only if a relevant witness refuses to appear at the hearing voluntarily, the party requesting the witness has the right to request the hearing officer to issue a "Notice to Appear" to the requested party. Any Notice to Appear shall be issued by the Chief Hearing Officer and shall be served by the party requesting the Notice.

   Procedures:

   a. The party should complete and file a Notice to Appear no later than fourteen (14) calendar days prior to the date of the scheduled

hearing. A copy of the Notice must be served on all counsel of record.

b. 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.

c. The Notice to Appear shall be signed and issued by the Chief Hearing Officer within two (2) business days. [A]ny opposing party has a right to request that the hearing officer withdraw or quash the Notice to Appear.

d. 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 witness' attorney of record.

e. 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.

5. Right to a record of the hearing. The Hearing Officer shall make an electronic record of the hearing. The Student Hearing Office 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. The parties have a right to a written or electronic copy of the electronic recording at no cost. A copy of the electronic recording will be provided within 5 (five) business days of the request. A transcript will be provided within 30 (thirty) calendar days of the request.

6. Right to written finding of fact and decision. The Hearing Officer must prepare a written decision setting forth his or her findings of fact, analysis of the law, and final order. Copies of the decision will be provided to the parties by the Student Hearing Office.

7. Right to prohibit the introduction of surprise evidence. The Hearing Officer 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

8. Right to request the exclusion of witnesses. A party may ask the Hearing Officer to order the prospective witnesses to remain outside the hearing room while other witnesses are testifying. The 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.

9. Right to an interpreter. If the primary language of a party is other than English, an interpreter will be provided by the Student Hearing Office without charge. It is important that the parties notify the Student Hearing Office at least 10 days before the hearing when an interpreter is needed. In such circumstances, the party whose primary language is other than English shall also have a right to have their own interpreter present for confidential communications with their counsel. Neither DCPS nor the Student Hearing Office shall be required to pay for this interpreter. When an interpreter is present, the 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. The Student Hearing Office, all parties and the Hearing Officer shall plan for the hearing with the recognition that this process requires approximately twice the amount of time that would otherwise be needed for the hearing

§ 800.2 Special Rights of Parents

The law also provides the following special rights of parents in addition to the rights set out above:

1. Right to examine pupil records. Parents have the right to examine all records maintained by the school that are related to their child. Parents should call or write their individual LEA or school(s) to request access to pupil records. Parents may authorize counsel, advocates, investigators or other individuals to review and obtain copies of their children's records.

2. Right to a public hearing. Parents have the right to elect to have a hearing closed to the public or to allow members of the public to attend the hearing.

3. 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.

4. 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 the Student Hearing Office. There is no cost to the parent(s) or their counsel.

§ 900 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.

§ 1000 ATTORNEYS AND ATTORNEYS FEES

All parties have the right to be represented at all stages of the hearing process by an attorney of their choosing. This does not mean that DCPS must pay for the parent's attorney. Parents may be entitled to have costs of attorney's fees reimbursed if they prevail as a consequence of initiating a due process hearing. A court of competent jurisdiction, in its discretion, may award reasonable attorney's fees to the parent(s) of a child who is the prevailing party. The Student Hearing Office will provide all parties, if requested, with a list of local persons and organizations that can provide free or low cost representation, and this list shall be posted on the DCPS website and updated regularly. No referral to any public or private attorney, law firm, or legal service provider shall constitute an endorsement, representation, warranty, or guarantee by DCPS, the government of the District of Columbia, or the Student Hearing Office about the quality of the legal work or services provided by the attorney, law firm, or legal service provider.

§ 1001 EVIDENCE

Evidence is anything that helps a party prove a fact that is 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.

All witnesses must give testimony under oath if their testimony is to be used as evidence in the hearing. The Hearing Officer will give the 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 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(ies) at least five business days prior to the hearing.

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. All parties should also bring an extra copy of their evidence in a folder for use by witnesses.

Parties wishing to call witnesses should request their presence by contacting him or her to come to the hearing voluntarily. Parents wishing to call a witness who is an employee of the LEA should follow the procedures in § 800.1.4.

§ 1002 OUTCOMES

§ 1002.1 Settlement

It is the policy of the DC Public Schools to encourage resolution of disputes in special education through negotiation and other alternative dispute devices. The resolution process and mediation may prevent future costs to all participants by establishing a partnership between parents and educators, thereby protecting the cooperative relationship between them. Together, the parent(s) and the school system may reach an agreement, thus eliminating the need for a due process hearing or any other resolution action. The Hearing Officer has authority to dismiss a hearing 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 Hearing Officer if the hearing goes forward.

§ 1002.2 Dismissal

The Hearing Officer shall dismiss the case if he/she determines that a hearing has been initiated for reasons other than those under the Hearing Officer's jurisdiction

or authority to resolve under IDEA. The Hearing Officer will have a maximum of 10 days from the date of the hearing to issue an Order of Dismissal, noting the reason for dismissal of the hearing.

§ 1002.3 Withdrawal

If the party requesting the hearing decides it does not want to proceed to hearing, that party shall inform the Student Hearing Office and the other party(ies) in writing of the decision to withdraw at the earliest opportunity. If the party requesting the hearing wishes to withdraw the case after the hearing has begun and testimony has been heard, the party shall make a motion to the presiding Hearing Officer. It is within the discretion of the Hearing Officer whether to grant the withdrawal with or without prejudice.

§ 1003 THE HEARING OFFICER'S DETERMINATION

The final decision of the 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 Hearing Officer's Determination must also include findings of fact and conclusions of law; identify who prevailed on what issue; and specify what the school system, the parent(s), and the child are expected to do to carry out the decision.

The decision of the 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 Hearing Officer prior to closing arguments.

Except as provided in this Standard Operating Procedures Manual or in the *Blackman/Jones* Consent Decree, the final decision must be signed, dated, and issued within 10 days following the hearing and no more than seventy-five (75) days following the request for hearing (subject to any extensions requested by a party and granted by the Hearing Officer). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based solely on the evidence presented at the hearing. The Hearing Officer may at his or her discretion render his or her decision orally at the conclusion of the hearing, to be followed by the written final decision. The Hearing Officer's final decision is considered "issued" on the date that the Student Hearing Office transmits the decision of the Hearing Officer to the parties by Certified Mail/Return Receipt Requested, in person, or by facsimile. All final decisions received from the Hearing Officer and arriving in the Student Hearing Office prior to 3:00 p.m. on a regular business day will be transmitted to the parties that day; all final decisions received after 3:00 p.m. on a regular business day will be transmitted the next business day.

The Student Hearing Office will transmit the Hearing Officer's Determination to all parties as near-simultaneously as possible and will not disclose the content of any Hearing Officer's Determination to any party prior to the dissemination of the decision to all parties. Specifically, the Student Hearing Office will distribute a copy of the Hearing Officer's Determination to: (1) the Superintendent or Director of the LEA or their representative, (2) the child's parent or representative, and (3) the student (if greater than 18 years of age). The Student Hearing Office and the Hearing Officer will retain a copy of the final decision and maintain a record of the transmittal (fax confirmation, signature of personal delivery, and/or certified mail receipt). After deleting personally identifiable information from the Hearing Officer's Determination, the Student Hearing Office shall make the findings and decisions available to the public by publication or at a reasonable cost and within 30 days of issuance.

§ 1004 FINAL DECISION AND RIGHT OF APPEAL

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer 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 a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).

§ 1005 RECONSIDERATION OF HEARING DECISION

Reconsideration of a hearing decision may be granted on the timely filing of a motion for reconsideration.

Any motion for reconsideration must be filed within ten (10) days of the date of the Order is issued. The hearing officer shall afford the opposing party or parties an opportunity to respond prior to granting the motion. No response to a motion for reconsideration is required unless ordered by the Hearing Officer, which order shall specify the deadline for filing of a response.

Unless otherwise ordered by the hearing officer, the filing of a motion for reconsideration shall not stay the effectiveness of the order. The filing of a motion for reconsideration on a final order, if such motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Hearing Officer or is denied by operation of law.

A motion for reconsideration shall be deemed denied by operation of law if the Hearing Officer has not ruled upon the motion within thirty (30) days of the date that the motion is filed with the Student Hearing Office.

If a motion for reconsideration is granted, the Hearing Officer may reopen the record in the matter, amend the findings of fact and conclusions of law, correct errors or mistakes, or make new findings of fact, conclusions of law, and issue a new order.

§ 1006 HEARING RECORD AND TRANSCRIPTS

After the hearing and all other legal proceedings have been completed, the Hearing Officer shall deliver all documents (which constitute the complete record of the due process hearing) to the Student Hearing Office. The following items shall constitute the hearing record:

a. All documents and tangible things submitted to the Hearing Officer during the hearing, whether or not formally admitted into evidence, along with an index of exhibits admitted;
b. All correspondence and pleadings filed with the Student Hearing Office (exhibits, letters, pleadings, files or orders); and
c. All Interim Orders and the Hearing Officer's Determinations.

In addition, the Student Hearing Office and/or the Hearing Officer shall complete a "Certification of Record" to certify that the above listed documents itemize the entire record. The original Certification of Record will be provided to and retained by the Student Hearing Office along with the record.

§ 1007 REQUESTING A TRANSCRIPT

Unless a court reporter is used, the Hearing Officer will make an electronic record of the hearing which will be maintained by the Student Hearing Office. Any party to the hearing may request a copy of the hearing audio tape or a verbatim written transcript of the hearing by submitting a request in writing to the Student Hearing Office. The parent has a right to a written or electronic copy of the record at no cost to the parent. A copy of the audio tape of the hearing will be provided within 5 business days of the request.

§ 1008 EXPEDITED DUE PROCESS HEARING

(A.) Special Rule for Expedited Due Process Hearings

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. Special education law authorizes certain issues be heard in an expedited time frame. Expedited hearings generally are required when the dispute is related to discipline, including a proposal to expel a student.

(1.) An expedited hearing must occur within twenty (20) days after the hearing is requested, and will result in a determination within ten (10) days after the hearing.

(2.) Resolution Meeting. When an expedited hearing is requested, a resolution meeting must occur within ten (10) 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 of the receipt of the request for an expedited hearing.

(3.) Each party must disclose its list of prospective witnesses and documents as specifically described in Rule 305 described in Rule 305 no later than three (3) business days before the date of the hearing.

(4.) No continuances will be granted for expedited hearings unless the party was not consulted regarding the date or the parties agree. Where parties have no counsel a hearing officer must determine if the pro se parent's assent to the continuance is knowing and willing.

Section IV
CONCLUSION

It is the intent of the District of Columbia Public Schools, State Enforcement & Investigation Division for Special Education Programs representing the State Education Agency (SEA) in the execution of IDEA, to resolve all disputes related to special education in as efficient and cooperative a manner as possible. DCPS also encourages the use of mediation processes and other less formal dispute resolution options to the maximum extent possible when a parent is dissatisfied with a decision, or lack thereof, regarding identification, evaluation, the educational placement of a child, or the

provisions of free appropriate public education. Any suggestions for improving this handbook should be forwarded to the Student Hearing Office.

APPENDIX

State Educational 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, non-public 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: _____ Birth Date: _____

Address: _____

Home School: _____

Present School of Attendance: _____

Is this a charter school? _____ (If yes, you must also provide a copy of this notice to the charter school principal or director)

Parent/Guardian of the Student: _____

Address (if different from the student's above): _____

Phone/Contact Number: _____ Fax Number (if applicable): _____

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

Name: _____

Complete Address: _____

_____

Phone: (h) _____ (w) _____ (Fax) _____ (e-mail) _____

Relationship to the Student:

☐	Parent	☐	Legal Guardian	☐	Parent Surrogate
☐	Self/Student	☐	Local Education Agency (LEA)	☐	Parent Advocate

C. Legal Representative/Attorney (if applicable):

Name: _____

Address: _____

_____

Phone: (w) _____ (Fax) _____ (e-mail) _____

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)_____

☐ 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?

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

3. Issues presented:

H. Estimated amount of time needed for the hearing: _____

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)_____
- Special Communication (please describe the type)_____
- Special Accommodations for Disability (please be specific)_____
- Other_____

J. 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.

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)
825 North Capitol Street, NE, 8th Floor
Washington, DC 20002

Fax number: 202/442-5556

STATE EDUCATION AGENCY
DISTRICT OF COLUMBIA PUBLIC SCHOOLS

In the matter of:	§	BEFORE A SPECIAL EDUCATION
	§	
_____	§	
Petitioner	§	
	§	HEARING OFFICER
vs.	§	
	§	
_____	§	
Respondent	§	DC PUBLIC SCHOOLS

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 styled cause. The hearing is scheduled for:

Date: _____

Time: _____

Place: Special Education Student Hearing Office
825 North Capitol St., NE
8th Floor
Washington, DC 20002

This 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. § 3031.1(b), and § 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.

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: _____

Signed this _____ day of _____, 2006.

_____
ATTORNEY

_____
SPECIAL EDUCATION 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:

_____ Certified mail, return receipt requested

_____ Fax transmission

_____ Hand delivery

By: _____
(Person executing service)

Date: _____

GUIDELINES FOR THE FILING OF A GRIEVANCE AGAINST AN IMPARTIAL HEARING OFFICERS OR THE CHIEF HEARING OFFICER

The following guidelines shall be implemented when any representative of the Office of the State Superintendent of Education (OSSE) receives a grievance against a hearing officer or the Chief Hearing Officer under contract with the Student Hearing Office (SHO).

1. A "grievance" shall be defined as any written allegation that a hearing officer or the Chief Hearing Officer has engaged in inappropriate conduct of such significance that if found to be valid it would warrant consideration of discipline or sanction. Any person making such an allegation verbally will be requested to reduce it to writing. Such inappropriate conduct shall not be deemed to include a ruling, decision or other action taken by the hearing officer during the course of the hearing process which a party could challenge on appeal, and if the party did so, could provide all the relief appropriate to address the alleged improper conduct.

2. Any grievance shall be promptly referred to the Chief Hearing Officer (CHO), unless the grievance is against the CHO, in which case the grievance shall be referred to the independent evaluator of the CHO (who shall thereafter handle the matter as if the CHO under these guidelines utilizing the Evaluation Work Plan for the CHO).

3. The CHO shall review the situation underlying the grievance by initially interviewing the complainant, then the hearing officer and thereafter taking such other steps as the CHO deems necessary, if any, to determine whether the hearing officer engaged in the alleged inappropriate conduct. If the CHO finds the hearing officer did engage in inappropriate conduct, the conduct shall be addressed in accordance with the provisions of the Evaluation Work plan for Hearing Officers, which includes various possible sanctions.

4. The CHO shall advise the grievant in writing when the review of the grievance has been completed and that any conduct found inappropriate is being addressed with the hearing officer in accordance with the Evaluation Work Plan.

7/2009

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** 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: [1] _____ Date of Birth: _____
Address of the residence of the student:[2] _____

_____
Present School of Attendance: _____
Uniform Student Identification Number: _____

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

Name of the Parent(s): _____
Address of the Parent(s), (if different from the student's above):
_____

_____
Home Phone Number(s): _____
Mobile Phone Number(s): _____
Fax Number: _____
Email Address(es): _____

[1] 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))

[2] In the case of a homeless child or youth, provide the available contact information for the child for residence.

810 First Street, NE, 2nd floor, Washington, DC 20002
Phone: 202.698.3819 • Fax: 202.478.2956 • www.osse.dc.gov

C. ATTORNEY, (IF APPLICABLE)*

Name: _____
Address: _____
Office Phone Number(s): _____
Mobile Phone Number(s): _____
Fax Number(s): _____
Email Address (es):_____
**If this section is completed all further communication from the Student Hearing Office and the Hearing Officer will be with the attorney.*

D. COMPLAINT MADE AGAINST

☐ Public Educational Agency:

Name(s) of the agency(s) and known contact information: _____

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:_____

810 First Street, NE, 2nd floor, Washington, DC 20002
Phone: 202.698.3819 • Fax: 202.478.2956 • www.osse.dc.gov

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

G. DESCRIPTION OF THE PROPOSED RESOLUTION OF THE PROBLEM

To the extent known and available at this time

G. NAME AND SIGNATURE OF REQUESTING PARTY

_____
Name

_____ Date: _____
Signature

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

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:

v

Case No:

LEA,

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
1150 Fifth Street, S.E.
First Floor
Washington, DC 20003

This 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. §3031.1(b), and §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

*If Student is a minor.

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:

_____ Certified mail, return receipt requested

_____ Fax transmission

_____ Hand delivery

By: _____

(Person executing service)

Date: _____

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

PARENT NAME, on behalf of
STUDENT,*

Petitioner,

Hearing Officer:

v

Case No:

LEA,

Respondent.

MOTION FOR CONTINUANCE

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

The reason for the continuance is:

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

_____
_____
_____.

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

_____
_____
_____.

The LEA representative/LEA witness/LEA counsel is unavailable because:

_____
_____
_____.

*If the Student is a minor.

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

_____
_____
_____.

Other reason for request of Parent/LEA [strike one]:

_____
_____
_____.

Second Or Greater Continuance. 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] object to the continuance requested.

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

Date: _____ _____

Petitioner/Respondent [strike one] Counsel

[Mailing Address]
[Phone Number and Email Address]

Office of the
State Superintendent of Education

RESOLUTION PERIOD DISPOSITION FORM

This form is designed to assist the LEA in notifying the Hearing Officer and the Student Hearing Office (SHO) regarding the outcome of the resolution meeting(s). **Failure to notify the Hearing Officer and the SHO 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: _____
SHO 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
If Meeting was not held within 15/7days, reason for delay *(reason does not excuse the LEA from the obligation to comply with the 15/7 day timeline):*

_____
_____
_____
_____
_____

810 First Street, NE, 2nd floor, Washington, DC 20002
Phone: 202.698.3819 • Fax: 202.478.2956 • www.osse.dc.gov

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.[1]

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

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. [2]

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.

[1] 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 SHO, and the Blackman/Jones Database email address below.

[2] 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 SHO, and the Blackman/Jones Database email address below.

810 First Street, NE, 2nd floor, Washington, DC 20002
Phone: 202.698.3819 • Fax: 202.478.2956 • www.osse.dc.gov

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.

_____ _____
Signature of Parent/guardian Date

_____ _____
Signature of LEA Representative Date

Mail, fax, e-mail, or deliver this form to:
Office of the State Superintendent of Education
Student Hearing Office
810 First Street, NE 2nd floor
Washington, DC 20002
(202) 478-2956
hearing.office@dc.gov

In addition, please email this form to the Blackman Jones Database:
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.

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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 Student Hearing Office’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.

Signature of Parent/Guardian_____ Date_____

Signature of LEA Representative_____Date_____

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

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COMPENSATORY EDUCATION

HEARING OFFICER TRAINING – D.C.
Wednesday, February 9, 2011

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I. INTRODUCTION

A. This outline provides a concise summary of the case law concerning compensatory education services under the Individual with Disabilities Education Act[1] ("IDEA").

B. Recent decisions handed down by district courts in the District of Columbia can be read to suggest that compensatory education is a matter of absolute right once a denial of a free and appropriate public education ("FAPE") has been established. These decisions also raise a question on who bears the burden of producing evidence and ultimately fashioning a fact-specific award of compensatory education.[2]

C. It is this writer's opinion that there is not an absolute right to compensatory education and that an award of compensatory education continues to be discretionary with the hearing officer and/or court. It is also the writer's opinion that the parent bears responsibility to present sufficient evidence to justify a specific award of compensatory education but that the hearing officer ultimately should fashion an award of

[1] In 2004, Congress reauthorized the Individuals with Disabilities Education Act as the Individuals with Disabilities Education Improvement Act. *See* Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with Disabilities Education Act. *See* Pub. L. 108-446, § 101, 118 Stat. at 2647; 20 U.S.C. § 1400 (2006) ("This chapter may be cited as the 'Individuals with Disabilities Education Act.'").

[2] *See*, *e.g.*, *Gill v. District of Columbia*, 55 IDELR 191, n.2 (D.D.C. 2010) ("A remaining question is who bore the burden of producing evidence and ultimately fashioning a fact-specific award of compensatory education."); *Cf. Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. 2010) ("The task of 'designing [the student's] remedy will require a fact-specific exercise of discretion by either the district court or a hearing officer' … not by the parties themselves.") (*citing Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005)).

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compensatory education when s/he determines that there has been a denial of a FAPE and compensatory education is due.

II. OVERVIEW

A. Remedies Under IDEA and/or Caselaw. The IDEA empowers a hearing officer and/or court to grant the relief that s/he / it determines to be appropriate.[3] Some of the commonly requested and awarded remedies are as follows:

1. Appropriate education to meet the unique needs of a child with a disability, such as:

   a. A particular educational placement[4]

   b. Specially designed instruction

   c. Related services

   d. Test accommodations

   e. Qualified personnel that can implement the child's Individualized Education Program ("IEP")[5]

2. Tuition reimbursement

   a. A local educational agency ("LEA") may be required to reimburse parents for their tuition payment to a private school for the services obtained for the student by his or her parents if the services offered by the LEA were inadequate or inappropriate, the services selected by the parents were appropriate under the Act, and equitable considerations support the parents' claim.[6]

   b. In *Burlington*, the Court found that Congress intended retroactive reimbursement to parents by an LEA as an available remedy in a proper case.[7]

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[3] 34 C.F.R. § 300.516(c)(3).

[4] *See Educational Placements: Decoded* outline dated Wednesday, January 12, 2011 for a full discussion of the term "educational placement."

[5] This is other than a "highly qualified special education teacher," as the term is defined by IDEA. *See* 20 U.S.C. § 1401(10)(F); 34 C.F.R. § 300.18.

[6] *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 20 IDELR 532 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 103 LRP 37667 (1985).

[7] *Burlington*, 471 U.S. at 370-71.

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c. "Reimbursement merely requires [an LEA] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP."[8]

d. The mere fact that the state educational agency and/or the LEA has not approved the private school placement does not bar the parents from reimbursement.[9]

3. Order related to evaluations, IEPs or placements

a. An order requiring one of the parties to take a specific action (e.g., development/implementation/revision of IEP[10]; allow the observation of a student by an independent evaluator[11])

b. Independent educational evaluation ("IEE")[12]

4. Preliminary injunctive relief

a. When seeking an order preventing an LEA from taking certain action, the parents must demonstrate

i. irreparable harm; and

ii. either a likelihood of success on the merits, or sufficiently serious questions going to the merits of the case, and a balance of hardships tipping decidedly in the parents' favor.[13]

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[8] *Id.*

[9] *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

[10] *See*, *e.g.*, *Williamson County Bd. of Educ. v. C.K.*, 52 IDELR 40 (M.D. Tenn. 2009) (upholding the ALJ's administrative order requiring the LEA to develop an IEP for a gifted student with AD/HD).

[11] *See*, *e.g.*, *School Bd. of Manatee County, Fla. v. L.H.*, 666 F. Supp. 2d 1285, 53 IDELR 149 (M.D. Fla. 2009) (upholding the ALJ's due process decision ordering the LEA to allow an in-school observation of a child with Asperger Syndrome by an independent evaluator).

[12] 20 U.S.C. § 1415(d)(2)(A); 34 C.F.R. § 300.502. Also note that the hearing officer can request an IEE as part of a hearing on a due process complaint to, for example, enable him/her to craft a remedy. *See* 34 C.F.R. § 300.502(d).

[13] *D.D. v. New York City Dep't of Educ.*, 465 F.3d 503, 46 IDELR 181 (2d Cir. 2006); *see also B.T. v. Department of Educ., State of Hawaii*, 51 IDELR 12 (D. Hawaii 2008) (The court enjoined the Hawaii ED from terminating the special education services of a 20-year-old student with autism who had purportedly "aged-out" because the ED allowed non-disabled students to attend high school through age 21.)

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b. When seeking an order requiring an LEA to perform a certain action, the parents must demonstrate

i. irreparable harm; and

ii. make a clear or substantial showing that they are likely to succeed on the merits of their claim.[14]

5. Permanent injunctive relief

a. A party seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A party must demonstrate:

i. that it has suffered an irreparable injury;

ii. that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;

iii. that, considering the balance of hardships between the parties, a remedy in equity is warranted; and

iv. that the public interest would not be disserved by a permanent injunction.[15]

b. The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion.[16]

[14] *D.D. v. New York City Dep't of Educ.*, 465 F.3d 503, 46 IDELR 181 (2d Cir. 2006); *see also Cave v. East Meadow Union Free Sch. Dist.*, 480 F. Supp. 2d 610, 47 IDELR 162 (E.D.N.Y. 2007) (The court denied a request for a mandatory injunction that would allow a student with a hearing impairment to bring his service dog to school.)
[15] *See*, *e.g.*, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-313 (1982); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987).
[16] *See*, *e.g.*, *Romero-Barcelo*, 456 U.S., at 320.

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6. Monetary damages

a. The U.S. Supreme Court has not decided whether parents can seek monetary damage for a denial of a free appropriate public education ("FAPE"). In Burlington, however, the Court noted that tuition reimbursement is permissible because it does not qualify as monetary damages, suggesting that the Court does not see IDEA as permitting awards of compensatory or punitive damages.[17]

b. However, a majority of Circuit Courts have held that compensatory or punitive damages are not available under the IDEA.[18]

c. A number of Circuit Courts have held that monetary damages are available under Section 504[19] and at least one Circuit decision suggests that it may be available under Section 1983[20].

7. Compensatory education

[17] *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 103 LRP 37667 (1985) ("In this Court, the Town repeatedly characterizes reimbursement as "damages," but that simply is not the case. Reimbursement merely requires the Town to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. Such a post hoc determination of financial responsibility was contemplated in the legislative history[.]")

[18] *See Nieves-Marquez v. Commonwealth of Puerto Rico*, 353 F.3d 108, 40 IDELR 90 (1st Cir. 2003); *Polera v. Board of Educ. of the Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 36 IDELR 231 (2d Cir. 2002); *Sellers v. School Bd. of the City of Manassas*, 141 F.3d 524, 27 IDELR 1060 (4th Cir. 1998); *Gean v. Hattaway*, 330 F.3d 758, 39 IDELR 62 (6th Cir. 2003); *Charlie F. v. Board of Educ. of Skokie Sch. Dist. 68,* 98 F.3d 989, 24 IDELR 1039 (7th Cir. 1996); *Heidemann v. Rother*, 84 F.3d 1021, 24 IDELR 167 (8th Cir. 1996); *Robb v. Bethel Sch. Dist. #403*, 308 F.3d 1047, 37 IDELR 243 (9th Cir. 2002); *Ortega v. Bibb County Sch. Dist.*, 397 F.3d 1321, 42 IDELR 200 (11th Cir. 2005).

[19] *See, e.g., Mark H. v. Lemahieu*, 513 F.3d 922, 49 IDELR 91 (9th Cir. 2008); *Sellers v. School Bd. of the City of Manassas*, 27 IDELR 1060 (4th Cir. 1998).

[20] *See N.B. v. Alachua County Sch. Bd.*, 84 F.3d 1376, 24 IDELR 270 (11th Cir. 1996). For a district court decision in the District of Columbia finding that monetary damages are available for IDEA violations under Section 1983 *see*, *e.g.*, *Walker v. District of Columbia*, 969 F. Supp. 794, 26 IDELR 996 (D.D.C. 1997).

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B. Definition. An award of compensatory education is an equitable remedy[21] that "should aim to place disabled children in the same position they would have occupied but for the school district's violation of the IDEA."[22] It is not a contractual remedy.[23] More specifically, "[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court [and/or hearing officer] to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student."[24]

C. Authority of HO to Grant. Both the Office of Special Education Programs[25] ("OSEP") and the courts[26] have established that hearing officers do have the authority to award compensatory education.

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[21] *Reid v. District of Columbia,* 401 F.3d 516, 523 – 524, 43 IDELR 32 (D.C. Cir. 2005) (finding that compensatory education is not a "form of damages" because the courts act in equity when remedying IDEA violations and must "'do equity and … mould each decree to the necessities of the particular case'") (*quoting Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)); *Gill v. District of Columbia*, 55 IDELR 191 (D.D.C. 2010) ("[W]hether to award compensatory education is a question for the Court's equity jurisdiction, and is not a matter of legal damages.")

[22] *Reid,* 401 F.3d at 518 (Compensatory education is "replacement of educational services the child should have received in the first place.")

[23] *Reid*, 401 F.3d at 523 *citing Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994).

[24] *Reid*, 401 F.3d at 523 *citing G. ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 309, 40 IDELR 4 (4th Cir. 2003).

[25] *See*, *e.g.*, *Letter to Riffel*, 34 IDELR 292 (OSEP 2000) (discussing a hearing officer's authority to grant compensatory education services); *Letter to Anonymous*, 21 IDELR 1061 (OSEP 1994) (advising that hearing officers have the authority to require compensatory education); *Letter to Kohn*, 17 IDELR 522 (OSEP 1991).

[26] *See*, *e.g.*, *Reid v. District of Columbia,* 401 F.3d 516, 522, 43 IDELR 32 (D.C. Cir. 2005); *D.W. v. District of Columbia*, 561 F. Supp. 2d 56, 50 IDELR 193 (D.D.C. 2008); *Diatta v. District of Columbia*, 319 F. Supp. 2d 57, 41 IDELR 124 (D.D.C. 2004) (finding that the hearing officer erred in determining that he lacked authority to grant the requested compensatory education); *Harris v. District of Columbia*, 1992 WL 205103, 19 IDELR 105 (D.D.C. Aug. 6, 1992) (declaring that hearing officers possess the authority to award compensatory education, otherwise risk inefficiency in the hearing process by inviting appeals); *Cocores v. Portsmouth Sch. Dist.*, 779 F. Supp. 203, 18 IDELR 461 (D.N.H. 1991) (finding that a hearing officer's ability to award relief must be coextensive with that of the court); *cf. Lester H. v. Gilhool*, 916 F.2d 865, 16 IDELR 1354 (3d Cir. 1990) (where the Third Circuit commented, in dicta, that the hearing officer "had no power to grant compensatory education.")

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D. Threshold Matters to Consider.

1. Available beyond age 21[27]

2. Two year statute of limitations applies[28]

3. Exhaustion doctrine applies[29]

4. Mootness doctrine applies when the student is no longer eligible under IDEA.[30] It possibly applies when the student has graduated.[31] It does not apply when the student moves from one LEA to another and the first LEA denied the student a FAPE[32]; the student has dropped out of school and s/he is no longer required to attend school[33]; or the parties reached an agreement but did not resolve the compensatory education issue.[34]

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[27] *Barnett v. Memphis City Schools*, 113 F. App'x 124, 42 IDELR 56 (6th Cir. 2004) (holding that the now 24-year-old student was entitled to compensatory education).
[28] 20 U.S.C. § 1415(f)(3)(C); *see also* 20 U.S.C. § 1415(b)(6)(B); *but see Draper v. Atlanta Indep. Sch. System*, 518 F.3d 1275, 49 IDELR 211 (11th Cir. 2008) (finding that because the family did not have enough information about the student's misdiagnosis and misplacement by the LEA until several years later, the family should not be blamed for not being experts about learning disabilities).
[29] *Honig v. Doe*, 484 U.S. 305 (1988) (failure to exhaust administrative remedies under the IDEA generally precludes judicial review).
[30] *M.L. v. El Paso Independent Sch. Dist.*, 610 F. Supp. 2d 582, 52 IDELR 159 (W.D. Tex. 2009).
[31] *See, e.g., San Dieguito Union High Sch. Dist. v. Guray-Jacob*, 44 IDELR 189 (S.D. Cal. 2005) ("[G]raduation from high school is not a per se indication that a student has received a FAPE. [It] is certainly a factor in determining whether a student has received a FAPE"); *Jessie v. Bullitt County Bd. Of Educ.*, 43 IDELR 112 (W.D. Ky. 2005) (a factor to consider among others). *See also Barnett v. Memphis City Sch. Sys.*, 113 Fed. Appx. 124 (6th Cir. 2004) ("Compensatory education is a judicially-constructed form of relief designed to remedy past educational failings for students who are no longer enrolled in public school due to their age or graduation.")
[32] *Shank v. Howard Road Academy*, 562 F. Supp. 2d 126, 50 IDELR 191 (D.D.C. 2008); *Brown v. Bartholomew Consol. Sch. Corp.*, 442 F.3d 588 (7th Cir. 2006).
[33] *See Garcia v. Bd. of Educ.*, 520 F.3d 1116, 49 IDELR 241 (10th Cir. 2008).
[34] *See Lesesne v. Dist. of Columbia*, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. 2006); *Flores v. District of Columbia*, 437 F. Supp. 2d 22, 46 IDELR 66 (D.D.C. 2006). However, although the mootness doctrine may not apply in instances where the parties execute a settlement agreement, consideration should be given to whether the settlement agreement includes a broad form release and, if so, whether compensatory education is carved out in said release.

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5. Whether it needs to be pled depends on whether it is perceived as an issue that warrants inclusion in the due process complaint[35] or simply a remedy available to the hearing officer should s/he find a denial of a FAPE for which compensatory education may be warranted.[36]

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[35] The IDEA requires the complaining party to provide sufficient notice to the other side. Failure to provide sufficient notice may result in the complaining party not having a hearing or in a reduction of attorneys' fees if the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint. 34 C.F.R. § 300.507(c); 34 C.F.R. § 300.517(c)(4)(iv).

The complaining party, however, is not required to include in the due process complaint all the facts relating to the nature of the problem. *Escambia County Bd. of Educ. v. Benton*, 406 F. Supp. 2d 1248, 1259 – 1260, 44 IDELR 272 (S.D. Ala. 2005). Nor is the complaining party required to set forth in the due process complaint all applicable legal arguments in "painstaking detail." *Id*. *See also Anello v. Indian River Sch. Dist.*, 47 IDELR 104 (Del. Fam. Ct. 2007) (finding that the alleged facts and requested relief contained in the parents' due process complaint were consistent with a child find claim and that the school district was not denied ample notice to prepare for a child find claim because of the parents' failure to explicitly cite the child find provisions of the IDEA). *But see Lago Vista Independent Sch. Dist. v. S.F.*, 50 IDELR 104, (W.D. Tex. 2007) (finding that the hearing officer acted outside the scope of his authority by deciding the appropriateness of the 2006 – 2007 IEP despite the issue not being properly raised in the due process complaint).

The IDEA's due process requirements imposes "minimal pleading standards." *Schaffer v. Weast,* 546 U.S. 49, 54, 44 IDELR 150 (2005). *But see M.S.-G., et. al v. Lenape Regional High Sch. Dist. Bd. of Ed.*, 306 Fed. Appx. 772, 775, 51 IDELR 236 (3d Cir. 2009) (unpublished) (refusing to accept the suggestion that Schaffer's "minimal" pleading standard equates to a "bare notice pleading requirement").

[36] The IDEA does not require that the complaining party specify a particular remedy when filing a due process complaint. Specifically, the IDEA simply requires that the complaining party proposes a solution to the problem, to the extent known and available to the complaining party at the time. *See* 34 C.F.R. § 300.508(b)(6). *See also Dep't of Educ., State of Hawaii v. E.B.*, 45 IDELR 249 (D. Hawaii 2007) (finding that where the Hearing Officer clearly articulated at a pre-hearing conference his understanding that the parent requested an award of compensatory education, and the Hearing Officer indicated at that conference (and in a subsequent letter and order) that he would consider making such an award, the Hearing Officer was not barred from making such an award simply because compensatory education was not explicitly requested in the DPC).

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III. AVAILABILITY – THE WHEN

A. For Denials of FAPE. When an LEA deprives a child with a disability of a FAPE in violation of the IDEA, a court and/or hearing officer fashioning appropriate relief[37] may order compensatory education.[38] Said denial must be more than *de minimis*.[39] Only material failures are actionable under the IDEA.[40] Thus, under the IDEA for an award of compensatory education to be granted, a court and/or hearing officer must first ascertain whether the aspects of the IEP that were not followed were "substantial or significant," or, in other words, whether the deviations from the IEP's stated requirements were "material."[41]

B. Presumption of Educational Deficit. If a parent presents evidence that her child has been denied a FAPE, she has met her burden of proving that the child may be entitled to compensatory education.[42]

C. Limited for Procedural Violations. While substantive violations of the IDEA may give rise to a claim for compensatory relief, "compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA."[43]

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[37] *See* 20 U.S.C. 1415(i)(2)(C)(iii); 34 C.F.R. 300.516(c)(3); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 103 LRP 37667 (1985).

[38] *Reid*, 401 F.3d at 522 – 523. The refusal of a parent to cooperate with an evaluation request or participate in an IEP Team meeting cannot serve as the basis for denying the parent's claim for compensatory education for IDEA violations that preceded an evaluation or IEP Team meeting request. *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36, 49 IDELR 38 (D.D.C. 2007).

[39] *Catalan v. District of Columbia*, 478 F. Supp. 2d 73, 75, 47 IDELR 223 (D.D.C. 2007) (court found no evidence that the handful of missed speech therapy sessions added up to a denial of FAPE) *quoting Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 348 – 349, 31 IDELR 185 (5th Cir. 2000).

[40] *Banks v. District of Columbia*, 720 F. Supp. 2d 83, 54 IDELR 282 (D.D.C. 2010); 583 F. Supp. 2d 169; *S.S. v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 51 IDELR 151 (D.D.C. 2008); *Catalan v. District of Columbia*, 478 F. Supp. 2d 73, 47 IDELR 223 (D.D.C. 2007).

[41] *Catalan v. District of Columbia*, 478 F. Supp. 2d 73, 47 IDELR 223 (D.D.C. 2007).

[42] *Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland*, 534 F. Supp. 2d 109, 49 IDELR 183 (D.D.C. 2008); *Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. 2010).

[43] *Maine Sch. Admin. Dist. No. 35 v. Mr. R.*, 321 F.3d 9, 19 (1st Cir. 2003). *See also* 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

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D. Sins of the Father Can Be Visited on the Child.[44] Courts have recognized that in setting an award of compensatory education, the conduct of the parties' may be considered.[45]

IV. CALCULATING THE AWARD – THE HOW

A. Period. Generally, the starting point in calculating a compensatory education award is when the parent knew or should have known of the denial of a FAPE.[46] Its duration (i.e., the end point) is the period of denial.[47]

B. Extent. An award of compensatory education "must be reasonably calculated to provide the educational benefits that likely would have accrued."[48] "This standard 'carries a qualitative rather than quantitative focus,' and must be applied with '[f]lexibity rather than rigidity.'"[49] In crafting the remedy, the court or hearing officer is charged with the responsibility of engaging in "a fact-intensive analysis that includes

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[44] *See Exodus* 20:5.

[45] *Parents of Student W.* 31 F.3d 1489, 1497, 21 IDELR 723 (9th Cir. 1994) (holding that the parent's behavior is also relevant in fashioning equitable relief but cautioning that it may be in a rare case when compensatory education is not appropriate); *Reid v. District of Columbia,* 401 F.3d 516, 524, 43 IDELR 32 (D.C. Cir. 2005); *Hogan v. Fairfax Cty. Sch. Bd.*, 645 F. Supp. 2d 554, 572, 53 IDELR 14 (E.D. Va. 2009).

[46] 20 U.S.C. § 1415(f)(3)(C); 20 U.S.C. § 1415(b)(6)(B); *See also Reid*, 401 F.3d at 523 ("'[C]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student.'") (*quoting G. ex rel. RG v. Fort Brag Dependent Schs.*, 343 F.3d 295, 343 F.3d 295, 309 (4th Cir. 2003)). *Brown v. District of Columbia*, 568 F. Supp. 2d 44, 50 IDELR 249 (D.D.C. 2008) *citing Peak v. District of Columbia*, 526 F. Supp. 2d 32, 49 IDELR 38 (D.D.C. 2007) ("Because compensatory education is a remedy for past deficiencies in a student's educational program, however, [] a finding [of the relevant time period] is a necessary prerequisite to a compensatory education award.") Note, however, that although the comments to the regulations suggest that the statute of limitations discuss in § 1415(f)(3)(C) is the same as § 1415(b)(6)(B), *see Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, 46706 (August 14, 2006), this is open to interpretation. § 1415(f)(3)(C) requires a party to request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. In contrast, § 1415(b)(6)(B) allows a party to present a complaint which sets forth an alleged violation that occurred not more than 2 years *before* the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint. Arguably, read together, the claim may extend back as much as four years.

[47] *See id.*

[48] *Reid*, 401 F.3d at 524.

[49] *Mary McLeod Bethune Day Academy Pub. Charter Sch. v. Bland*, 555 F. Supp. 2d 130, 135, 50 IDELR 134 (D.D.C. 2008) (*quoting Reid*, 401 F.3d at 524).

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individualized assessments of the student so that the ultimate award is tailored to the student's unique needs."[50] For some students, the compensatory education services can be short, and others may require extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.[51]

Reid rejects an outright "cookie-cutter approach," i.e., an hour of compensatory instruction for each hour that a FAPE was denied.[52] However, while there is no obligation, and it might not be appropriate to craft an hour for hour remedy, an "award constructed with the aid of a formula is not *per se* invalid."[53] Again, the inquiry is whether the "formula-based award … represents an individually-tailored approach to meet the student's unique needs, as opposed to a backwards-looking calculation of educational units denied to a student."[54]

An IEP must provide some educational benefit going forward.[55] Conversely, compensatory education must compensate for the prior FAPE denials[56] and must "yield tangible results."[57]

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[50] *Mary McLeod*, 555 F. Supp. 2d at 135 (*citing Reid*, 401 F.3d at 524).
[51] *Id.*
[52] *Reid*, 401 F.3d at 523.
[53] *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt ("Nesbitt I")*, 532 F. Supp. 2d 121, 124 (D.D.C. 2008).
[54] *Id. See, e.g., Mary McLeod Bethune Day Acad. Pub. Charter Sch.*, 555 F. Supp. 2d 130, 50 IDELR 134 (D.D.C. 2008) (finding that, although the hearing officer awarded the exact number of service hours that the LEA had denied, the hearing officer nonetheless conducted a fact-specific inquiry and tailored the award to the student's individual needs by taking into account the results of an assessment and the recommendations of a tutoring center). *But see Brown v. District of Columbia*, 568 F. Supp. 2d 44, 50 IDELR 249 (D.D.C. 2008) (though agreeing with the hearing officer that a "cookie-cutter" approach to compensatory education was inappropriate, remanded the matter to the hearing officer for further proceedings).
[55] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 553 IDELR 656 (1982).
[56] *Reid*, 401 F.3d at 525.
[57] *D.W. v. District of Columbia*, 561 F. Supp. 2d 56, 61, 50 IDELR 193 (D.D.C. 2008).

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A presently appropriate educational program does not abate the need for compensatory education.[58] However, even if a denial of a FAPE is shown, "[i]t may be conceivable that no compensatory education is required for the denial of a [FAPE] … either because it would not help or because [the student] has flourished in his current placement."[59]

C. Sufficient Record. The hearing officer cannot determine the amount of compensatory education that a student requires unless the record provides him with sufficient "insight about the precise types of education services [the student] needs to progress."[60] Pertinent findings to enable the hearing officer to tailor the ultimate award to the student's unique needs should include the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services requested, and the student's current educational abilities.[61]

The parent has the burden of "propos[ing] a well-articulated plan that reflects [the student's] current education abilities and needs and is supported by the record."[62] However, "*Reid* certainly does not require [a parent] to have a perfect case to be entitled to a compensatory education award…."[63] Once the parent has established that the student may be entitled to an award because the LEA denied the student a FAPE, simply refusing

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[58] *See*, *e.g.*, *D.W. v. District of Columbia*, 561 F. Supp. 2d 56, 61, 50 IDELR 193 (D.D.C. 2008) *citing Flores ex rel. J.F. v. District of Columbia*, 437 F. Supp. 2d 22, 46 IDELR 66 (D.D.C. 2006) (holding that even though the LEA had placed the student in an appropriate school and revised the IEP, the student may still be entitled to an award of compensatory education).

[59] *Phillips v. District of Columbia*, 55 IDELR 101 (D.D.C. 2010) *citing Thomas v. District of Columbia*, 407 F. Supp. 2d 102, 115, 44 IDELR 246 (D.D.C. 2005). *See also Gill v. District of Columbia*, 55 IDELR 191 (D.D.C. 2010) ("The Court agrees that there may be situations where a student who was denied a FAPE may not be entitled to an award of compensatory education, especially if the services requested, for whatever reason, would not compensate the student for the denial of a FAPE.")

[60] *Mary McLeod Bethune Day Acad. Pub. Charter Sch.*, 555 F. Supp. 2d 130, 50 IDELR 134 (D.D.C. 2008) *citing Branham v. District of Columbia*, 427 F.3d 7, 44 IDELR 149 (D.C. Cir. 2005). *See also Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 53 IDELR 314 (D.D.C. 2010) ("[T]he record in an IDEA case is supposed to be made not in the district court but primarily at the administrative level[.]")

[61] *Branham v. District of Columbia*, 427 F.3d 7, 44 IDELR 149 (D.C. Cir. 2005). *See also Mary McLeod Bethune Day Acad. Pub. Charter Sch.*, 555 F. Supp. 2d 130, 50 IDELR 134 (D.D.C. 2008).

[62] *Phillips v. District of Columbia*, 2010 WL 3563068, at *6, 55 IDELR 101 (D.D.C. Sept. 13, 2010) *quoting Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt ("Nesbitt II")*, 583 F. Supp. 2d 169, 172, 51 IDELR 125 (D.D.C. 2008). *But see Gill v. District of Columbia*, 55 IDELR 191 (D.D.C. 2010) (commenting that a remaining question is who bears the burden of producing evidence and ultimately fashioning a fact-specific award of compensatory education).

[63] *Phillips*, 2010 WL 3563068, at *6 *quoting Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 53 IDELR 314 (D.D.C. 2010).

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to grant one clashes with *Reid*.[64] The hearing officer may provide the parties additional time[65] to supplement the record if the record is incomplete to enable the hearing officer to craft an award.[66] Simply "[c]hoosing instead to award [the parent] nothing does not represent the 'qualitative focus' on [the child's] 'individual needs' that *Reid* requires."[67]

V. SCOPE – THE WHAT

A. Form. Compensatory education can come in many forms and both hearing officers and courts have fashioned varying awards of services to compensate for denials of FAPE. Awards have included, but are not limited to, tutoring, summer school[68], teacher training[69], assignment of a consultant to the LEA[70], postsecondary education[71], prospective tuition award[72], full-time aides[73] and assistive technology[74].[75]

B. Continued Eligibility. Courts have also awarded compensatory education beyond age 22.[76]

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[64] *Id.*

[65] Should said additional time go beyond the 45-day timeline, the hearing officer may grant an extension of time at the request of either party. 34 C.F.R. § 300.515(c). The hearing officer cannot unilaterally extend the 45-day timeline. *See id.*

[66] *Nesbitt I*, 532 F. Supp. 2d at 125. If the parent is unable to provide the hearing officer with additional evidence that demonstrates that additional educational services are necessary to compensate the student for the denial of a FAPE, then the hearing officer may conclude that no compensatory award should be granted. *Phillips*, 2010 WL 3563068, at *8 n.4.

[67] *Phillips*, 2010 WL 3563068, at *6 *quoting Nesbitt I*, 532 F. Supp. 2d at 125.

[68] *Jeremy H. v. Mount Lebanon Sch. Dist.*, 95 F.3d 272, 24 IDELR 831 (3d Cir. 1996).

[69] *See*, *e.g.*, *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 46 IDELR 151 (9th Cir. 2006).

[70] *P. v. Newington Bd. Of Educ.*, 546 F.3d 111, 51 IDELR 2 (2d Cir. 2008).

[71] *Streck v. Board of Educ. of the E. Greenbush Cent. Sch. Dist.*, 642 F. Supp. 2d 105, 52 IDELR 285 (N.D.N.Y. 2009) (ordering a New York district to pay $7,140 for a graduate's compensatory reading program at a college for students with learning disabilities) *aff'd Streck v. Bd. of Educ. of the E. Greenbush Cent. Sch. Dist.*, 55 IDELR 216 (2d Cir. 2010) (unpublished).

[72] *Draper v. Atlanta Indep. Sch. System*, 518 F.3d 1275, 49 IDELR 211 (11th Cir. 2008).

[73] *See*, *e.g.*, *Prince Georges Cty. Pub. Sch.*, 102 LRP 12432 (SEA Md. 2001).

[74] *See*, *e.g.*, *Matanuska-Susitna Borough Sch. Dist. v. D.Y.*, 54 IDELR 52 (D. Ak. 2010).

[75] Thought should also be given to whether the child requires ancillary services to effectuate the compensatory education (e.g., transportation to the tutoring site when said services are being provided by an independent provider).

[76] *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 54 IDELR 274 (3d Cir. 2010); *Barnett v. Memphis City Schools*, 113 F. App'x 124, 42 IDELR 56 (6th Cir. 2004); *Manchester Sch. Dist. v. Christopher B.*, 807 F. Supp. 860, 19 IDELR 389 (D.N.H. 1992).

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VI. IMPLEMENTATION

A. Who Decides. Compensatory education is to be determined by a hearing officer or a court.[77] The hearing officer "may not delegate his authority to a group that includes an individual specifically barred from performing the hearing officer's functions."[78]

B. Who Provides. Both independent providers and/or school personnel can provide compensatory education. However, school personnel providing compensatory services should meet the same requirements that apply to personnel providing the same types of services as a part of a regular school program.[79]

C. Failure to Provide. The failure to provide the student an award of compensatory education is not necessarily a harmless procedural violation.[80]

VII. DEVELOPING / COMPLETING THE RECORD

A. Can It Be Done. IDEA mandates resort in the first instance to the administrative due process hearing so as to develop the factual record and resolve evidentiary disputes concerning the identification, evaluation or educational placement of a child with a disability, or the provision of a free and appropriate public education to the child.[81] The

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[77] *Reid v. District of Columbia,* 401 F.3d 516, 523 – 524, 43 IDELR 32 (D.C. Cir. 2005); *see also Bd. of Educ. of Fayette Cty, Ky. v. L.M.*, 478 F.3d 307, 47 IDELR 122 (6th Cir. 2007) ("We therefore hold that neither a hearing officer nor an Appeals Board may delegate to a child's IEP team the power to reduce or terminate a compensatory-education award."); *Cf. State of Hawaii, Dept. of Educ. v. Zachary B.*, 52 IDELR 213 (D. Haw. 2009) (where the court distinguished *Reid* an upheld a hearing officer's decision to allow the private tutor and psychologist who were to provide the compensatory education the responsibility to determine the specific type of tutoring the child would receive provided that it did not exceed once weekly sessions for 15 months); *Mr. I. and Mrs. I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, 47 IDELR 121 (1st Cir. 2007) (where the First Circuit upheld the district court's decision declining to award compensatory education on the grounds that the ordered "IEP will necessarily take into account" the effect of the denial of a FAPE).

[78] *Reid*, 401 F.3d at 526.

[79] *Letter to Anonymous*, 49 IDELR 44 (OSEP 2007).

[80] *D.W. v. District of Columbia*, 561 F. Supp. 2d 56, 50 IDELR 193 (D.D.C. 2008).

[81] *See*, *e.g.*, *W.B. v. Matula*, 67 F.3d 484, 23 IDELR 411 (3d Cir. 1995) (determining that the parents were not required to exhaust their administrative remedies prior to coming to the district court because, in part, the factual record had been developed, and the substantive issues were addressed, at the administrative due process hearing rendering the action ripe for judicial resolution); *see also*, *Hesling v. Avon Grove Sch. Dist.*, 428 F. Supp. 2d 262, 45 IDELR 190 (E.D. Pa. 2006) *aff'd sub nom. Hesling v. Seidenberger*, 286 F. App'x 773, 108 LRP 39506 (3d Cir. 2008) (unpublished) (explaining that allowing the parent not to exhaust her administrative remedies would promote judicial inefficiency).

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hearing officer's primary role is to make findings of fact and ultimately decide the issues raised in the due process complaint.[82]

When the record evidence is insufficient – whether because the parent appears pro se or counsel has done an inadequate job – and prior to the conclusion of the hearing, the hearing officer has the authority/discretion and, perhaps, the obligation or responsibility, to develop at least the minimal record necessary to determine the issue(s) presented and craft appropriate remedies for denials of FAPE.[83]

B. When and How. Should the hearing officer exercise his authority/discretion, or state law mandates that the hearing officer completes the record, the following steps would constitute good practice:

1. Consider the issue(s) prior to the pre-hearing conference and, if necessary, research the law applicable to the issue(s). At the pre-hearing conference, when reviewing the issue(s), also discuss the type of evidence necessary for the hearing officer to decide the issue(s) and craft a remedy.[84]

2. During the hearing, ask the party, or his representative, whether the answer to a particular question, or a particular line of questioning, document or testimony, might be necessary to determine an issue / craft a remedy. Should the party agree, the party should then be given the opportunity to ask the question, admit the document, or present the testimony of a witness.

3. Should the party disagree, consider asking the question(s) directly or calling the additional witness. The hearing officer should explain on the record why he has chosen to seek the additional evidence despite whatever objection might have been voiced by any given party; phrase questions carefully; and, allow the parties to ask follow up questions of their own.

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[82] *See*, *generally*, 34 C.F.R. § 300.512(a)(5) and 34 C.F.R. § 300.513.

[83] The hearing process and, by extension, the hearing officer, serves as the primary vehicle by which all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. *See*, *generally*, 34 C.F.R. § 300.1(a), 34 C.F.R. § 300.2 and 34 C.F.R. § 300.511. A further purpose of IDEA is to ensure that the rights of children with disabilities and their parents are protected, and the hearing officer is charged with the specific responsibility to accord each a meaningful opportunity to exercise his rights during the course of the hearing. 34 C.F.R. § 300.1(b); *Letter to Anonymous*, 23 IDELR 1073 (OSEP 1995).

[84] The Pre-Hearing Conference Summary and Order should accurately reflect the discussions had with the parties. Should any given party choose not to present the needed evidence, the hearing officer would have afforded the party the opportunity to develop the record without necessitating the hearing officer's direct involvement in the hearing.

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4. Grant the parties additional time to supplement the record if the record is incomplete to enable the hearing officer to craft an award.

5. Consider an IEE.[85]

VIII. DISCUSSION

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THIS OUTLINE IS INTENDED TO PROVIDE WORKSHOP PARTICIPANTS WITH A SUMMARY OF SELECTED STATUTORY PROVISIONS AND SELECTED JUDICIAL INTERPRETATIONS OF THE LAW. THE PRESENTER IS NOT, IN USING THIS OUTLINE, RENDERING LEGAL ADVICE TO THE PARTICIPANTS.

[85] When weighing whether to seek an IEE, thought should be given to the impact on the 45-day timeline. Keep in mind, however, that a hearing officer may grant specific extensions of time beyond the 45 days only when it is at the request of either party. 34 C.F.R. § 300.515(c). The hearing officer cannot unilaterally extend the 45-day timeline. *See id.*

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EDUCATIONAL PLACEMENTS: DECODED

HEARING OFFICER TRAINING – D.C.
Wednesday, January 12, 2011

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I. OVERVIEW

A. Once an Individualized Education Program ("IEP"), or its contents, is determined, a multidisciplinary team ("MDT") is tasked with identifying an appropriate educational placement where the IEP can be implemented.[1]

B. Neither the Individuals with Disabilities Education Act[2] ("IDEA"), nor its implementing regulations, however, define the term "educational placement."[3]

C. Too often parties use the term "educational placement" without precisely identifying its significance in the context that it is being used. Some, for example, liberally substitute the term "placement" with "location." Clarifying the difference between the two is essential to managing the issues presented in a due process complaint.

D. Managing the issues presented is critical to effective and efficient management of the hearing process. When the issues in the due process complaint are clear, the responding party is able to prepare for the hearing, the hearing is focused, there is meaningful opportunity for resolving the complaint during the resolution meeting or thereafter, and the hearing officer is able to better determine whether s/he has jurisdiction

[1] 34 C.F.R. § 300.116.
[2] In 2004, Congress reauthorized the Individuals with Disabilities Education Act as the Individuals with Disabilities Education Improvement Act. *See* Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with Disabilities Education Act. *See* Pub. L. 108-446, § 101, 118 Stat. at 2647; 20 U.S.C. § 1400 (2006) ("This chapter may be cited as the 'Individuals with Disabilities Education Act.'").
[3] *See*, *generally*, 20 U.S.C. § 1400 *et seq*.; 34 C.F.R. § 300 *et seq*.

over the specific issues.[4]

II. PLACEMENT DECISIONS – GENERALLY

A. A placement decision is a determination of where the local educational agency ("LEA") will implement the student's IEP in the least restrictive environment ("LRE").[5]

B. In determining the educational placement of a child with a disability, 20 U.S.C. § 1412(a)(5) and 34 C.F.R. § 300.116 require of the LEA that –

1. The placement decision –

a. Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;[6] and

b. Is made in conformity with IDEA's LRE provisions, including 34 C.F.R. §§ 300.114 through 300.118;[7]

2. The child's placement –

a. Is determined at least annually;

b. Is based on the child's IEP[8]; and

c. Is as close as possible to the child's home;[9]

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[4] *See* Letter to Wilde (OSEP 1990)(unpublished)("Determinations of whether particular issues are within the hearing officer's jurisdiction … are the exclusive province of the impartial due process hearing officer who must be appointed to conduct the hearing.").
[5] An LEA must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(2)(i).
[6] 34 C.F.R. § 300.116(a)(1).
[7] 34 C.F.R. § 300.116(a)(2).
[8] Placement decisions can only be made after the development of the IEP. *Spielberg v. Henrico County Public School*, 853 F.2d 256, 441 IDELR 178 (4th Cir. 1988). Only after the IEP has been developed does the MDT have a basis for determining where the student's needs can be served. Should the process be reversed, the child's IEP would be written to conform with a predetermined setting, possibly denying the child a free and appropriate public education ("FAPE").
[9] 34 C.F.R. § 300.116(b).

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3. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that s/he would attend if nondisabled;[10]

4. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that s/he needs; and[11]

5. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.[12]

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[10] 34 C.F.R. § 300.116(c). There is not an absolute requirement that a child with disability be placed in his or her neighborhood school. *See*, *e.g.*, *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 39 IDELR 182 (5th Cir. 2003)(the LEA's policy of providing cued speech transliterators at centralized locations rather than in neighborhood schools did not violate IDEA because there is no right to a neighborhood school assignment under the IDEA); *McLaughlin v. Holt Public Sch. Bd. of Educ.*, 320 F.3d 663, 38 IDELR 152 (6th Cir. 2003)(holding that the LRE mandate and regulations do not mandate placement in the neighborhood school); *Kevin G. v. Cranston Sch. Comm.*, 130 F.3d 481, 27 IDELR 32 (1st Cir. 1997)("[W]hile it may be preferable for Kevin G. to attend a school located minutes from his home, placement [where a full-time nurse is located] satisfies the [IDEA]. …The school district has an obligation to provide a school placement which includes a nurse on duty full-time, but it is not required to change the district's placement of nurses when, as in this case, care is readily available at another easily accessible school."); *Hudson v. Bloomfield Hills Public Sch.*, 108 F.3d 112, 25 IDELR 607)(upholding the lower court's opinion that concluded that neither the IDEA nor its regulations required a neighborhood placement); *Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 24 IDELR 465 (10th Cir. 1996)(IDEA does not entitle the student to transition services delivered at his neighborhood school); *Schuldt v. Mankato Indep. Sch. Dist. No. 77*, 937 F.2d 1357, 18 IDELR 16 (8th Cir. 1991)(LEA not required to modify a neighborhood school for a student with spina bifida); *Barnett v. Fairfax County Sch. Bd.*, 927 F.2d 146, 17 IDELR 350 (4th Cir. 1991)(LEA complied with IDEA by providing a deaf student with a cued speech program in a centralized school approximately five miles farther than the neighborhood school), *cert. denied*, 502 U.S. 859 (1991); *Wilson v. Marana Unified Sch. Dist. of Pima County*, 735 F.2d 1178, 556 IDELR 101 (9th Cir. 1984)(LEA may assign child to a school 30 minutes away because teacher certified in the child's disability was assigned there, rather than move the service to the neighborhood school).

Rather, the neighborhood school requirement is one of a number of relevant factors to be considered when making the placement decision and, at most, IDEA creates a "preference" for education in the neighborhood school. *Murray v. Montrose County Sch. Dist. Re-1J*, 51 F.3d 921, 22 IDELR 558 (10th Cir. 1995); *Accord Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 91 F.3d 689, 24 IDELR 673 (5th Cir. 1996).

[11] 34 C.F.R. § 300.116(d).

[12] 34 C.F.R. § 300.116(e).

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C. Placement Decision Need Not Be Made by IEP Team. Note that 34 C.F.R. § 300.116(a)(1) does not require the IEP Team to make the placement decision.[13] Because IDEA does not assign any particular name to the placement team, MDT is common nomenclature.

D. Continuum of Alternative Placements. Each LEA must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.[14] In general, the continuum must include the alternative placements listed in the definition of special education under 34 C.F.R. § 300.39[15] and make provision for supplementary services[16] to be provided in conjunction with regular class placement.[17]

E. No Right To Veto. The proposed IDEA regulations in 2005 included language in 34 C.F.R. §§ 300.116(b)(3) and (c) intended to clarify that a parent may send a child to a charter, magnet, or other specialized school without violating the LRE mandate. Specifically, proposed IDEA regulation 34 C.F.R. § 300.116(b)(3) said that the placement must be as close as possible to the child's home, "unless the parent agrees otherwise." 34 C.F.R. § 300.116(c) had the same proviso (i.e., it provided that unless the IEP requires another arrangement, the child must be educated in the school the child would attend if not disabled, "unless the parent agrees otherwise").

The 2006 IDEA Part B regulations removed the "unless the parent agrees otherwise" qualification from the dual requirements[18] because the phrase was "unnecessary, confusing," and could have been understood to mean that parents have a right to veto the placement decision made by the MDT.[19]

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[13] Generally, in D.C., the IEP Team also functions as the placement team but IDEA does not mandate it. *See* D.C. Mun. Reg. tit. 5-E § 3001.1 (definition of "IEP team"). *But see* Briggs, Ph.D., Kerri L. Memo to Chancellor, *et. al*, Policies and Procedures for Placement Review, Revised, Office of the State Superintendent of Education, 5 Jan. 2010 (advising LEAs that when an LEA anticipates that it may not be able to meet its obligations to provide a full continuum of placements in the LRE, it must notify the OSSE, Department of Special Education ("DSE"). The OSSE DSE will assume an "advisory role" to the IEP Team and will provide "technical assistance to support efforts related to LRE objectives. *Id.* at 2.

[14] 34 C.F.R. § 300.115(a).

[15] Specifically, the alternative placements are instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.39(a)(1)(i); 34 C.F.R. § 300.115(b)(1).

[16] For example, resource room or itinerant instruction. 34 C.F.R. § 300.115(b)(1).

[17] 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115.

[18] *See* 34 C.F.R. §§ 300.116(b)(3) and (c).

[19] *See Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46588 (August 14, 2006).

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F. Extent of Participation. Parents do have the right to participate in decisions about their children's placements. However, the IDEA does not give parents the right to control or veto placement decisions.[20]

1. Parents are an essential part of the placement team.[21] However, parents are not necessarily denied a meaningful opportunity to participate in the placement decision when the LEA engages in preparatory activities in advance of the IEP / placement meeting. The IEP Team or MDT may meet in advance of the placement meeting to discuss potential placements for the child.[22] Nonetheless, the LEA must keep an open mind and must give meaningful consideration to the parents' input on the child's placement.[23] Failure to give meaningful consideration to the parents' input may be a denial of a FAPE.[24]

2. A placement decision may be made without the involvement of the parent, provided the LEA is unable to obtain the parent's participation in the decision.[25] As with the IEP process, however, the LEA must document its attempts to ensure parental involvement before the placement team makes the placement decision without the parent's participation.[26] Failure by the LEA to make meaningful attempts to ensure parental involvement in the placement decision may be a denial of FAPE.[27]

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[20] *See* Section II. D., *supra*. *See also White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 39 IDELR 182 (5th Cir. 2003)(noting that, while the IDEA requires the LEA to provide services to allow the child the requisite basic floor of opportunity, it does not require the LEA to make special accommodations at the parent's request, particularly where the request is not related to helping the child achieve academic potential).

[21] 20 U.S.C. § 1414(e); 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.116(c); *See Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46585 (August 14, 2006).

[22] *See*, *e.g.*, *T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 51 IDELR 176 (2d Cir. 2009)(noting that the school staff can discuss potential services and placements in advance of the IEP / placement meeting, so long as the school staff arrives at the meeting with an open mind).

[23] *H.B. by Penny B. v. Las Virgenes Unified Sch. Dist.*, No. 04-cv-08572-FMC, 52 IDELR 163 (C.D. Cal. 2008) *aff'd*, 370 F. App'x 843, 54 IDELR 73 (9th Cir. 2010)(holding that the superintendent's pronouncement at the start of the meeting that the IEP Team would discuss the student's transition to public school showed that the LEA predetermined the child's placement).

[24] *See, e.g., H.B. by Penny B. v. Las Virgenes Unified Sch. Dist.*, No. 04-cv-08572-FMC, 52 IDELR 163 (C.D. Cal. 2008) *aff'd*, 370 F. App'x 843, 54 IDELR 73 (9th Cir. 2010).

[25] 34 C.F.R. § 300.501(c)(4).

[26] *Id.*

[27] *See*, *e.g.*, *Drobnicki v. Poway Unified Sch. Dist.*, 358 F. App'x 788, 53 IDELR 210 (9th Cir. 2009)(unpublished)(holding that a California LEA should have attempted to schedule an IEP meeting at a mutually agreeable time and place rather than offering to allow the parent to participate by teleconference).

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3. Meaningful opportunity to participate in the placement decision is achieved when, for example, parents help to develop the IEP itself and are afforded the chance to share with the other members of the MDT their (the parents) educational preferences.[28]

4. IDEA, however, does not permit a placement decision to be based solely on parental preference. 34 C.F.R. § 300.116(b)(2) requires that the educational placement for each child be based on his or her IEP.[29] However, although parental preference cannot be the sole or predominant factor in a placement decision, parental choice is not inconsistent with the IDEA, provided the chosen placement is consistent with 34 C.F.R. § 300.116 and meets the LRE requirements found at 34 C.F.R. § 300.114 through § 300.118.[30]

G. Designation of Specific Site, Classroom or Teacher. IDEA does not require a placement decision to identify the particular site, classroom or teacher in which a child's IEP must be implemented.[31] The MDT, however, may make such decisions.[32]

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[28] *Paolella v. District of Columbia*, 210 F. App'x 1, 46 IDELR 271 (D.C. Cir. 2006)(unpublished). *See also Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 49 IDELR 71 (D.D.C. 2007); *T.T. v. District of Columbia*, No. 06-0207-JDB, 48 IDELR 127 (D.D.C. 2007).

[29] *See also Letter to Burton*, 17 IDELR 1182 (OSERS 1991)(OSEP found Indiana's "parent option" provision to be inconsistent with IDEA because the State law permitted the LEA to base a placement decision solely on "parent option" or "parent preference") *But see Board of Educ. Of Community Consol. Sch. Dist. No. 21, Cook County v. Illinois State Bd. Of Educ.*, 938 F.2d 712, 18 IDELR 43 (7th Cir. 1991), *cert. denied*, 502 U.S. 1066 (1992)("a child whose parents oppose an IEP so vehemently and vocally as to 'doom' its prospects should not be enrolled in the placement merely to enable educational agencies and federal courts to 'discipline' parents").

[30] *Letter to Bina*, 18 IDELR 582 (OSERS 1991).

[31] *Letter to Wessels*, 16 IDELR 735 (OSEP 1990). *But see A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 47 IDELR 245 (4th Cir. 2007), *cert. denied*, 552 U.S. 1170, 110 LRP 19412 (2008)(holding that the IEP must identify a particular school to offer a FAPE when the parents express doubt concerning the existence of said school).

[32] *Id*.

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The assignment of a child to a specific site, classroom or teacher can be an administrative determination that need not be made by the placement team, provided that the particular site, classroom or teacher is consistent with the placement decision, including the LRE aspect.[33]

H. Relevant Factors. Although IDEA does not require that each school building in an LEA be able to provide all the special education and related services for all types and severities of disabilities, the LEA has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the extent appropriate.[34]

Placement decisions must be determined individually based on each child's abilities, unique needs, and IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.[35]

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[33] *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 39 IDELR 182 (5th Cir. 2003)("Schools have significant authority to determine the school site for providing IDEA services."). *See also Letter to* Veazey, 37 IDELR 10 (OSEP 2001)(advising that if an LEA has two or more equally appropriate locations that meet the child's special education and related services needs, the assignment of a particular school may be an administrative determination, provided that the determination is consistent with the placement team's decision); *Letter to Anonymous*, 21 IDELR 674 (OSEP 1994)(advising that it is permissible for a student with a disability to be transferred to a school other than the school closest to home if the transfer school continues to be appropriate to meet the individuals needs of the student); *Letter to Wessels*, 16 IDELR 735 (OSEP 1990)(advising that OSEP does not interpret the educational placement regulations as requiring a placement decision to identify the particular classroom or teacher in which a child's IEP must be implemented, if more than one of these is available and would be consistent with the placement decision).

[34] *See Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46588 (August 14, 2006).

[35] *See Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46588 (August 14, 2006). *See also Letter to Anonymous*, 21 IDELR 674 (OSEP 1994)(clarifying that the LEA does not have a "main goal" which it must achieve when making a placement decision and that what is pertinent in making the placement decision will vary based upon the child's unique and individual needs).

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III. EDUCATIONAL PLACEMENT DEFINED

A. Definition. The term "educational placement" refers only to the general type of educational program in which the child is placed.[36] Stated differently, "educational placement" is the "overall instructional setting in which the student receives his education."[37]

B. Location. IDEA defines IEP to include, *inter alia*, "the anticipated frequency, *location*, and duration of those services."[38] The term "location," however, as used in IDEA, refers to the type of environment that is the appropriate place for the delivery of services, and not a *particular* school or facility, classroom or teacher.[39]

The Comments to the IDEA regulations discuss the difference between placement and location. "Placement" refers to the points along the continuum of placement options available for a child with a disability, and "location" refers to the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services.[40] When an LEA has two or more equally appropriate locations that meet

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[36] *Concerned Parents v. New York City Bd. of Educ.*, 629 F.2d 751, 552 IDELR 147, (2d Cir. 1980), *cert. denied*, 449 U.S. 1078, 110 LRP 34494 (1981). *See also White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 39 IDELR 182 (5th Cir. 2003)(placement does not mean a "particular school," and instead means "a setting"); *Hale v. Poplar Bluff R-1 Sch. Dist.*, 280 F.3d 831, 36 IDELR 61 (8th Cir. 2002)(change from home to school was a change in placement); *Bd. of Educ. of Cmty. High Sch. Dist. No. 218, Cook County, Ill. v. Ill. State Bd. of Educ.*, 103 F.3d 545, 25 IDELR 132 (7th Cir. 1996)(finding that expulsion was a change in educational placement but when fiscal concerns cause a transfer of the student, the focus is on the student's general educational program); *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 556 IDELR 270 (D.C. Cir. 1984)(adopting the *Concerned Parents* definition of the term "educational placement"); *DeLeon v. Susquehanna Cmty. Sch. Dist.*, 747 F.2d 149, 556 IDELR 260 (3d Cir. 1984)(noting that parents are not entitled to a due process hearing when a "minor" decision alters the school day of their children and finding that a change in transportation services was not a change in placement); *Tilton v. Jefferson County Bd. of Educ.*, 705 F.2d 800, 554 IDELR 513 (6th Cir. 1983)(distinguishing *Concerned Parents* in finding that a change in placement did occur when students were transferred from a year-round school to a 180-day program).

[37] *N.D. v. State of Hawaii Dept. of Educ.*, 600 F.3d 1104, 54 IDELR 111 (9th Cir. 2010) *citing A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 41 IDELR 119 (4th Cir. 2004).

[38] 20 U.S.C. § 1414(d)(1)(A)(i)(VII) (emphasis added).

[39] *T.Y. v. New York City Dept. of Educ.*, 584 F.3d 412, 53 IDELR 69 (2d Cir. 2009), *cert. denied*, No. 09-1066, 110 LRP 28696 (U.S. May 17, 2010). *See also* Section II. G., *supra*.

[40] *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46588 (August 14, 2006).

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the child's special education and related services needs, the MDT has the flexibility to assign the child to a particular school or classroom.[41]

C. Change in Educational Placement. An LEA, in the traditional exercise of its discretions, can implement minor changes to the educational program as it may determine to be necessary within the educational programs provided for its students.[42] Said adjustments do not constitute a change in the educational placement sufficient to trigger the prior written notice provisions.[43] In order for the change to qualify as a change in educational placement, a fundamental change in, or elimination of a basic element of the education program, must be identified.[44] [T]he 'touchstone' is whether the modification 'is likely to affect in some significant way the child's learning experience.'"[45]

A case-by-case analysis must be conducted to determine whether a change in placement materially or substantially alters a student's program. In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.[46]

If this inquiry leads to the conclusion that a substantial or material change in the child's educational program has occurred, the public agency must provide prior written notice.[47]

IV. THE PLACEMENT OFFER

A. The placement offer must be in writing, and must meet certain procedural and substantive requirements.[48] The requirement of a formal, written offer –

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[41] *Id.*
[42] *Concerned Parents v. New York City Bd. of Educ.*, 629 F.2d 751, 552 IDELR 147, (2d Cir. 1980), *cert. denied*, 449 U.S. 1078, 110 LRP 34494 (1981).
[43] *See id.*
[44] *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 556 IDELR 270 (D.C. Cir. 1984). *Compare Knight v. District of Columbia*, 877 F.2d 1025, 441 IDELR 505 (D.C. Cir. 1989)(a change from a private school placement to a public school placement, when that is the only significant difference between programs offered, does not constitute a change in educational placement) *with McKenzie v. Smith*, 771 F.2d 1527, 557 IDELR 119 (D.C. Cir. 1985)(moving a learning disabled child from a full-time special education program to a part-time regular education program did result in a change in educational placement).
[45] *J.R. v. Mars Area Sch. Dist.*, 318 F. App'x 113, 52 IDELR 91 (3d Cir. 2009) *citing DeLeon v. Susquehanna Cmty. Sch. Dist.*, 747 F.2d 149, 556 IDELR 260 (3d Cir. 1984).
[46] *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).
[47] *Id.*
[48] 20 U.S.C. §§ 1415(b)(3) and (4), 1415(c)(1); 34 C.F.R. § 300.503.

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> creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in 'present[ing] complaints with respect to any matter relating to the…educational placement of the child.'[49]

B. The LEA's failure to make a formal, written offer of placement may give rise to a per se denial of a FAPE.[50]

C. The failure to provide specificity in the formal, written offer, or in the IEP[51], may amount to a denial of a FAPE.[52] However, identifying a particular location at which the

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[49] *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 20 IDELR 987 (9th Cir. 1994), *cert. denied*, 513 U.S. 965, 109 LRP 36508 (1994). *See also Letter to Lieberman*, 52 IDELR 18 (OSEP 2008)(advising that prior written notice would be required even when the LEA and the parent agreed to a change in the child's services because it would allow the parent the time to fully consider the change and determine if s/he has additional suggestions, concerns, questions, and so forth).

[50] *See*, *e.g.*, Redding *Elementary Sch. Dist. v. Goyne*, No. Civ. S-00-1174 WBS, 34 IDELR 118 (E.D. Ca. 2001)(relying on *Smith* that the requirement of a formal, written offer "should be enforced rigorously," the district court concluded that, for purposes of determining a parent's right to reimbursement for the unilateral placement of a child in private school, an LEA's failure to make a formal offer of placement constitutes a per se denial of a FAPE). *But see T.Y. v. New York City Dept. of Educ.*, 584 F.3d 412, 53 IDELR 69 (2d Cir. 2009)(in denying reimbursement to the parents, the Second Circuit explained that an IEP's failure to identify a specific location does not constitute a per se procedural violation of the IDEA), *cert. denied*, No. 09-1066, 110 LRP 28696 (U.S. May 17, 2010).

[51] An LEA can use the IEP as part of the prior written notice so long as the document(s) the parent receives meets all the requirements in 34 C.F.R. § 300.503. *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46691 (August 14, 2006); *Letter to Lieberman*, 52 IDELR 18 (OSEP 2008).

[52] *See*, *e.g.*, *A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 47 IDELR 245 (4th Cir. 2007), *cert. denied*, 552 U.S. 1170, 110 LRP 19412 (2008)(holding that, because the parents expressed doubt concerning the existence of a particular school that can satisfactorily provide the level of services that the IEP described, the failure of the LEA to identify a particular location on the IEP denied the student a FAPE). *See also Mill Valley Elem. Sch. Dist. v. Eastin*, No. 98-03812 CW, 32 IDELR 140 (N.D. Ca. 1999)(an LEA's mere skeletal outline of a proposed plan that informed the parents that the LEA was "looking at" three schools did not constitute the formal, written offer of placement required by IDEA and resulted in a reimbursement award to the parents).

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special education services are expected to be provided is not always required, and a fact specific inquiry is necessary to determine whether a FAPE has been offered.[53]

[53] *Compare A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 47 IDELR 245 (4th Cir. 2007), *cert. denied*, 552 U.S. 1170, 110 LRP 19412 (2008) *with T.Y. v. New York City Dept. of Educ.*, 584 F.3d 412, 53 IDELR 69 (2d Cir. 2009), *cert. denied*, No. 09-1066, 110 LRP 28696, (U.S. May 17, 2010).

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V. MANAGING EDUCATIONAL PLACEMENT ISSUES

A. Authority. Hearing Officers have expansive discretionary authority when handling pre-hearing procedural matters. IDEA and its implementing regulations delineate the specific rights accorded to any party to a due process hearing.[54] The hearing officer is charged with the specific responsibility "to accord each party a meaningful opportunity to exercise these rights during the course of the hearing."[55] It is further expected that the hearing officer "ensure that the due process hearing serves as an effective mechanism for resolving disputes between parents" and the school district.[56] In this regard, apart from the hearing rights set forth in IDEA and the regulations, "decisions regarding the conduct of [IDEA] due process hearings are left to the discretion of the hearing officer," subject to appellate review.[57]

Such discretionary authority also extends to various pre-hearing procedural matters, provided that any decision made by the hearing officer is consistent with basic elements of due process hearings and the rights of the parties set out in the statute and the regulations.[58] In this regard, the Comments to the Regulations are informative.[59]

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[54] *See* 34 C.F.R. § 300.512.
[55] *Letter to Anonymous*, 23 IDELR 1073 (OSEP 1995).
[56] *Id*.
[57] *Id*.
[58] *See Letter to Steinke*, 18 IDELR 739 (OSEP 1992)(regarding the applicability of the five-day rule and the discretion of the hearing officer to grant continuances); *Letter to Stadler*, 24 IDELR 973 (OSEP 1996)(advising that IDEA does not prohibit or require use of discovery proceedings and that the nature and extent of discovery methods used are matters left to discretion of the hearing officer, subject to State or local rules and procedures).
[59] Specifically, the Comments say, in part –

> We do not believe it is necessary to regulate further on the other pre-hearing issues and decisions mentioned by the commenters because we believe that States should have considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings and rights of the parties set out in the Act and these regulations. The specific application of those procedures to particular cases generally should be left to the discretion of hearing officers who have the knowledge and ability to conduct hearings in accordance with standard legal practice. There is nothing in the Act or these regulations that would prohibit a hearing officer from making determinations on procedural matters not addressed in the Act so long as such determinations are made in a manner that is consistent with a parent's or a public agency's right to a timely due process hearing.
>
> …
>
> The Act does not address whether the non-complaining party may raise other

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IDEA and its regulations do not comprehensively specify what particular remedies, including penalties and sanctions, are available to due process hearing officers.[60] Ultimately, the state educational agencies have the responsibility to ensure that hearing officers are given the authority required to grant whatever relief is necessary to effectively and efficiently resolve due process complaints.[61] Nonetheless, a hearing officer has the authority to grant whatever relief he deems necessary, under the particular facts and circumstances of each case, to ensure that a child receives the FAPE to which the child is entitled.[62] The due process hearing system established by a State must provide for such authority.[63]

B. Specification of the Issues. Said authority extends to requiring specification of the issues raised in the due process complaint, even in the absence of a sufficiency

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> issues at the hearing that were not raised in the due process complaint, and we believe that such matters should be left to the discretion of hearing officers in light of the particular facts and circumstances of a case. The Act also does not address whether hearing officers may raise and resolve issues concerning noncompliance even if the party requesting the hearing does not raise the issues. Such decisions are best left to individual State's procedures for conducting due process hearings.

See Analysis and Comments to the Regulations, Federal Register, Vol. 71, No. 156, Pages 46704, 46706 (August 14, 2006).

[60] Unlike the specific rights accorded to any party to a due process hearing that are listed, primarily, at 34 C.F.R. § 300.512, the few remedies, penalties and sanctions specified in IDEA and its regulations are infused throughout various provisions. For example, when the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the school district can request that a hearing officer dismiss the parent's due process complaint. 34 C.F.R. § 300.510(b)(4).

[61] *Letter to Armstrong*, 28 IDELR 303 (OSEP 1997). Equally important, the state educational agencies are also charged with the responsibility to ensure that a hearing officer's orders are implemented, and that whatever actions are necessary to enforce those orders are taken. *Id*.

[62] *See Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985)(IDEA empowers courts [and hearing officers] to grant the relief that the court determines to be appropriate); *Cocores v. Portsmouth Sch. Dist.*, 18 IDELR 461 (D.N.H. 1991)(finding that a hearing officer's ability to award relief must be coextensive with that of the court); *Letter to Kohn*, 17 EHLR 522 (OSEP 1991). *See also Letter to Riffel*, 34 IDELR 292 (OSEP 2000)(discussing a hearing officer's authority to grant compensatory education services); *Letter to Armstrong*, 28 IDELR 303 (OSEP 1997)(relating to a hearing officer's authority to impose financial or other penalties on local school districts, issue an order to the state educational agency who was not a party to the hearing, and invoke stay put when the issue is not raised by the parties).

[63] *Letter to Armstrong*, 28 IDELR 303 (OSEP 1997).

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challenge.[64] OSEP, too, suggests that hearing officers have a role to play in managing the issues presented. Specifically, the Comments to the Regulations states:

> To assist parents in filing a due process complaint, § 300.509 and section 615(b)(8) of the Act require each State to develop a model due process complaint form. While there is no requirement that States assist parents in completing the due process complaint form, resolution of a complaint is more likely when both parties to the complaint have a clear understanding of the nature of the complaint. Therefore, the Department encourages States, to the extent possible, to assist a parent in completing the due process complaint so that it meets the standards for sufficiency. However, consistent with section 615(c)(2)(D) of the Act, the final decision regarding the sufficiency of a due process complaint is left to the discretion of the hearing officer.
>
> …
>
> With regard to parents who file a due process complaint without the assistance of an attorney or for minor deficiencies or omissions in complaints, we would expect that hearing officers would exercise appropriate discretion in considering requests for amendments.

Analysis and Comments to the Regulations, Federal Register, Vol. 71, No. 156, Page 46699 (August 14, 2006).

C. Addressing the Issue at the Pre-Hearing Conference. An objective of the due process complaint – and, specifically the requirement that the complaint includes a description of the nature of the problem – is to serve as the basis for discussion at the resolution meeting. Secondarily, however, effective management of the issue(s) presented allows for the fair and timely conduct of the hearing in an efficient and effective manner. To assist the parties in identifying the issues with precision, the hearing officer should –

> 1. Review the due process complaint and the response to said complaint in advance of the pre-hearing conference to get acquainted with the problem identified in the complaint and to further consider the questions to ask of the parties to enable the hearing officer to narrow down the issue(s);
>
> 2. Get specifics by reviewing the IEP and/or placement offer in question (even if line-by-line) and the parties' relative position on each issue in dispute;

[64] *See Ford v. Long Beach Unified School District*, 37 IDELR 1, (9th Cir. 2002)(holding that the parents due process rights were not violated when the hearing officer, in her written decision, formulated the issues presented in words different from the words in the due process complaint).

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3. Ask clarifying questions (What do you mean by educational placement? Are you taking issue with the setting, school site, or particular classroom? How was the parent denied meaningful participation in the placement decision?);

4. Consider starting from the end, when the complaining party is a pro se parent who has difficulty identifying the issue(s). Ask the parent to identify the remedy.

5. Consider issuing an order listing specific questions that would need to be answered by the complaining party when more time is needed to respond. A schedule should be set identifying by when the complaining party should submit the answers and by when the responding party should submit his relative position on each identified issue.

VI. DISCUSSION – HYPOTHETICALS

NOTE: REDISTRIBUTION OF THIS OUTLINE WITHOUT EXPRESSED, PRIOR WRITTEN PERMISSION FROM ITS AUTHOR IS PROHIBITED.

THIS OUTLINE IS INTENDED TO PROVIDE WORKSHOP PARTICIPANTS WITH A SUMMARY OF SELECTED STATUTORY PROVISIONS AND SELECTED JUDICIAL INTERPRETATIONS OF THE LAW. THE PRESENTER IS NOT, IN USING THIS OUTLINE, RENDERING LEGAL ADVICE TO THE PARTICIPANTS.

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ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

RULE 701. OPINION TESTIMONY BY LAW WITNESSES

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inference is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

RULE 702. TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

RULE 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

RULE 704. OPINION ON ULTIMATE ISSUE

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) [not pertinent]

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

RULE 706. COURT APPOINTED EXPERTS

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b), (c) and (d) [not pertinent]

CLC Tip Sheet

Filing State Complaints

What is a State Compliant?

- A state complaint is a letter written to request that the state education agency investigate violations of the Individuals with Disabilities Education Act ("IDEA") or alleged violation of the special education services provided to children in the District of Columbia.
- In the District, state complaints are filed with DC's state education agency, the Office of the State Superintendent of Education ("OSSE"), which is then charged with investigating the complaint and issuing a Letter of Determination with findings and a corrective action plan to remediate the issue if noncompliance is found.

Who Can File A State Complaint?

- Any individual or organization may submit a state complaint that alleges any District of Columbia public agency has failed to comply with a requirement of the IDEA or the District's laws and regulations regarding special education, including the identification, evaluation, and educational placement of the child or the provision of a Free and Appropriate Public Education (FAPE) to such child.
- Requirements for filing a state complaint are set forth at 34 CFR §§ 300.151-300.153.
    - In the District, for information about filing a state complaint with the Office of the State Superintendent of Education ("OSSE"), refer to policy and procedures available at http://osse.dc.gov/service/specialized-education-state-complaints.

What Are the Advantages of Filing a State Complaint Instead of a Due Process Complaint?

- No evidentiary hearing – it may be a good alternative for clients with limited time or who are nervous about testifying;
- Can be used to address systemic issues – one complaint may address the same problem with noncompliance for multiple students; and
- Relief can include orders that a public agency must take certain remedial action to address violations.

What are the Disadvantages of Filing a State Complaint Instead of a Due Process Complaint?

- Longer and more flexible timeline (a decision, or Letter of Determination, generally must be issued within 60 days of the Complaint being filed, but OSSE can request an extension to the 60-day timeline) so relief may be delayed;
- The statute of limitations for alleging violations is generally one year as opposed to two years;

- OSSE conducts an investigation (as opposed to an evidentiary hearing) so the filer has less control over what information is reviewed;
- Decisions are public and may be considered authoritative for substantive non-related proceedings, so if you lose on a systemic issue, it may hurt other students; and
- No clear appeal process.

Can I File Both a State Complaint and a Due Process Complaint at the same time?

Yes, but if a due process complaint is pending, OSSE will toll the investigation on the state complaint until the due process complaint has been adjudicated.

The DO's and DON'Ts of State Complaints

- **DO** make sure your complaint contains all of the information requested by the form.
- **DO** provide specific information where available and appropriate to assist OSSE with the investigation (e.g., school years, names of individuals spoken with or involved, case numbers of prior due process hearings where applicable).
- **DO** attach exhibits (school records, evaluations , affidavits, correspondence) where helpful to expedite the investigation.
- **DON'T** file a state complaint if you have already lost a due process hearing on the same case. Due process complaint holdings are binding on state complaints.

State Complaints

Pursuant to federal (Individuals with Disabilities Educational Act IDEA '04) and local laws, the Office of the State Superintendent of Education (OSSE) receives and investigates written complaints regarding an alleged violation of the special education services provided to children in the District of Columbia. The content of the complaint can include any issue related to compliance with IDEA including, but not limited to: disagreements about the identification of a child with a disability, an evaluation of a child with a disability, the educational placement and/or services of a child with disability, and the provision of a free and appropriate public education (FAPE) to a child with a disability. Upon completion of a thorough investigation, a Letter of Determination is issued explaining whether the local school district is in compliance or is not in compliance with federal and local laws. If the district is not in compliance, then a corrective action plan is issued to ensure compliance.

The OSSE seeks to resolve issues and/disputes ***early*** that arise in the delivery of special education services to children with disabilities through various Alternative Dispute Resolution (ADR) mechanisms such as mediation, state complaints, and early intervention strategies of staff. The goal is to assist parents and school system staff in working collaboratively together to resolve their concerns early. In this manner children with disabilities can receive a free and appropriate education without interruption. Some of the ways in which staff achieves this goal include the following:

- Provide training/workshops for school district personnel regarding the benefits of early dispute resolution like mediation and state complaints
- Provide information to school district staff to ensure that they are up to date with legal mandates, compliance issues and best practices in other jurisdictions
- Provide orientation and technical assistance to school districts on effective ways to resolve disputes through early intervention strategies
- Assist school districts in complying with mandated legal responsibilities to ensure that they are in compliance with all of the provisions necessary to provide children with disabilities a FAPE
- Effectively investigate and process disputes and written complaints to ensure that parents and children with disabilities receive what they are entitled to under federal and local laws

For additional information regarding the State complaint process, please contact:

Office of the State Superintendent of Education
Division of Special Education
810 First Street, N.E. – 5th Floor
Washington, D.C. 20002
Phone: 202-727-6436 Fax: 202-741-0227

DISTRICT OF COLUMBIA

FORMAL STATE COMPLAINT

POLICY & PROCEDURES

Revised November 2009

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

810 First Street, NE – 5th Floor, Washington, DC 20002
Phone: 202.727.6436 • Fax: 202.727.0227 • www.osse.dc.gov

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)[1], 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 – 5th 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

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.*

[1] 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.[2] 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 – 5th Floor
Washington, DC 20002

Telephone: (202) 727-6436

BY FAX:
Fax: (202) 741-0227

BY E-MAIL ATTACHMENT:
osse.IDEAstatecomplaints@dc.gov

[2] 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,[3] 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:

[3] 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 parity 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 – 5th Floor
Washington, DC 20002
Telephone: (202) 727-6436
BY FAX: (202) 741-0227
BY E-MAIL ATTACHMENT: osse.IDEAstatecomplaints@dc.gov

OR
Student Hearing Office
810 First Street, NE – 2nd 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.

<u>The SCO may extend the 60-day deadline:</u>

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 t 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

CAP	Corrective Action Plan; plan of action to correct violations committed
Complaint	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.
Complainant	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.
Day	Calendar day, unless specified otherwise
DC	District of Columbia
DCPS	District of Columbia Public School
Due Process Hearing	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.
Due Process Complaint	**A** request for a due process hearing that must be filed with the Student Hearing Office and copies served on all other parties.
FAPE	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.
IDEA	Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., 34 CFR Part B and C.
Mediation	A voluntary process in which a neutral individual (mediator) assists the parties in having a full discussion and reaching an agreement.
LEA	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.

Private Service Providers	A private, non-public entity that provides early intervention services under Part C of the IDEA.
Public agency	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.
OSSE	Office of the State Superintendent of Education, the District of Columbia's state education agency
SEA	State Education Agency. In the District of Columbia the SEA is the Office the State Superintendent of Education.
SCO	State Complaint Office, where complaints are filed and investigated
Special Education	Specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disability.
Student Hearing Office	The office within the OSSE that coordinates that provision of due process hearings and mediation services.

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 *(Optional)*:
Address (Street, City, State, Zip):	**Phone Number:**
	Alternate Phone Number, if available (*Optional)*:
	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 *(Optional)*:**
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 *(Optional)*:	

STATEMENT OF COMPLAINT

Directions: Please describe the alleged violation (Number and list each alleged violation separately. Describe the violation and specific facts that relate to the violation. If possible, include dates, names and locations.) It is suggested, but not required, that you, the complainant, should also attach copies of any relevant documentation that supports the allegation(s) made in the complaint.

PROPOSED RESOLUTION (For Part B (children 3 through 21) only) (For Part C (infants and toddlers birth through 2, *Optional*)

Directions: If alleging violations with respect to a specific child, please describe your proposed resolution of the problem to the extent known and available to you at the time the complaint is filed.

Mediation[4]

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 – 5th Floor
Washington, DC 20002
Telephone: (202) 727-6436
BY FAX: (202) 741-0227
BY E-MAIL ATTACHMENT: osse.IDEAstatecomplaints@dc.gov

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[4] 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.

Office of the
State Superintendent of Education

State Complaint Form[1]

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

Complainant Information

Name:	Relationship to Child, if alleging violations with respect to a specific child *(Optional)*:
Address:	Phone Number and hours when you may be reached at this number:
	Alternate Phone Number, if available:
	E-mail Address, if available:

Child Information (If alleging violations about a specific child)

Name:	School Name (or Early Intervention Service (EIS) Provider if alleging a violation of Part C):
Date of Birth *(Optional)*:	
Address:	If the child is homeless, available contact information for the child:

Mediation

Mediation is a voluntary process in which a neutral individual assists the parties in having a full discussion and reaching an agreement. Mediation services are available, at no cost to the complainant, through OSSE's Student Hearing Office.

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

[1] This is a model form that was 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 State Complaint Office that the complaint will not be investigated.

Office of the
State Superintendent of Education

Statement of Complaint

Please describe the alleged violation(s). Number and list each alleged violation separately. Describe the violation and specific facts that relate to the violation including dates, names and locations. If possible, attach copies of any relevant documentation that supports the allegation(s) made in the complaint. Please include in your statement what school, EIS Provider, or public agency you allege violated the IDEA.

_____

_____

_____

_____

_____

_____

_____

_____

_____

Please describe your proposed resolution of the problem.

_____

_____

_____

Signature: _____ **Date**: _____

You may file a signed, completed complaint and any attachments or supporting documentation by mail, fax, or email. If you are alleging a violation of Part B, you must also submit a copy of the complaint to the Local Educational Agency or other applicable public agency at the same time you file your complaint with the OSSE State Complaint Office. If you are alleging a violation of Part C, you must also submit a copy of the complaint to the Early Intervention 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 Special Education Attn: Mary Boatright 810 First Street, NE, 5th Floor Washington, DC 20002
BY FAX:	202-741-0227
BY EMAIL ATTACHMENT:	osse.IDEAstatecomplaints@dc.gov

CLC Tip Sheet

Filing a Complaint with the U.S. Department of Education Office of Civil Rights ("OCR Complaints")

What is an OCR Complaint?

An OCR Complaint is a complaint anyone can file with the U.S. Department of Education Office of Civil Rights where that person believes that an educational institution that receives federal funding is discriminating against someone on the basis of race, color, national origin, sex, disability or age. An OCR complaint can be filed by the victim of such discrimination, or by someone complaining on behalf of another person or group.

When Might You File an OCR Complaint?

- To allege a school's policy that all students who have repeated the 9th grade once must attend specialized programs has a disparate impact on students with disabilities;
- To allege that a college's failure in handling sexual violence allegations discriminated on the basis of gender;

What Happens Once I File an OCR Complaint?

- Evaluation of the Complaint: First, OCR evaluates the complaint (and each allegation contained therein) to determine whether OCR has the legal authority to investigate the complaint. Based on that evaluation, OCR will either dismiss the complaint or open the complaint for investigation.
    - NOTE: In certain cases, OCR may contact the complainant to request more information. When that occurs, the complaint is granted 20 calendar days to response to OCR's request for information.
- Opening of an Investigation: if OCR determines it will investigate the complaint, it will issue letters of notification to the complainant and the respondent. During the investigation, OCR serves as a neutral fact-finder and may take up to 180 days to fully investigate each allegation in the complaint, using such fact-finding techniques as reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, the respondent and other sources as appropriate and/or conducting site visits.
- Issuing a Letter of Findings: at the conclusion of the investigation, OCR will issue a letter of findings with contains fact-specific investigative findings with respect to each allegation in the complaint.
- Efforts to Resolve the Complaint after a Determination of Noncompliance: if OCR determines that the respondent failed to comply with one of the civil rights laws that OCR enforces, it will contact the respondent and attempt to secure their participation in a voluntary resolution agreement. If the respondent refuses to negotiate a voluntary resolution agreement, OCR will inform the respondent that it has 30 days to indicate its willingness to engage in negotiations or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for noncompliance. If after that letter is issued, the respondent continues to refuse to negotiate, OCR will issue a Letter of Impending Enforcement Action and try one more time to get voluntary compliance. If those efforts fail, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the respondent, or will refer the case to the Department of Justice for further legal action.

Does Filing an OCR Complaint Impact My Right to File Other Types of Complaints?

Yes. You cannot file a complaint with OCR if you are in the process of addressing the issues raised in your complaint with another agency, or through a school's grievance procedure "if OCR anticipates that agency […] will provide you with a resolution process comparable to OCR's." You can refile your complaint with OCR after the other complaint process has completed, but OCR will independently determine whether or not to defer to the prior adjudication (but a prior adjudication is not *de facto* binding on the OCR complaint process).

The DO's and DON'Ts of filing an OCR Complaint

- **DO** keep track of your timeline! OCR has a relatively short statutes of limitations -- violations must have taken place within six months of filing your complaint.
- **DO** follow up with OCR to check on the status of the resolution process and remind them of their ability to take further legal action if the school continues to refuse to negotiate a resolution agreement.

United States Department of Education
Office for Civil Rights

DISCRIMINATION COMPLAINT FORM

District of Columbia Office
400 Maryland Avenue, SW
Washington, DC 20202-1475

TEL (202) 453-6020
FAX (202) 453-6021
TTY (877) 521-2172

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter, instead of this form, but the letter must include the information in items one through nine and item fourteen of this form. If you decide to use this form, please **type or print all information** and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: http://www.ed.gov/ocr/complaintintro.html

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information, Bases for Granting a Waiver, the Consent Form, and the Resolution Between Parties Process.

1. Name of person filing this complaint:

(Mr./Ms.) _____
(Last) (First) (Middle)

ADDRESS: _____

CITY & STATE: _____
(Zip Code)

TELEPHONE #: _____ **(Home)** _____ **(Work)**

E-MAIL ADDRESS: _____

2. Name of person discriminated against (if **other** than person filing). If 18 years or older please have this person also sign this complaint form and the consent/release form.

(Mr./Ms.) _____
(Last) (First) (Middle)

ADDRESS: _____

CITY & STATE: _____
(Zip Code)

TELEPHONE #: _____ **(Home)** _____ **(Work)**

E-MAIL ADDRESS: _____

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

NAME OF INSTITUTION: _____

ADDRESS: _____

CITY & STATE: _____

(Zip Code)

DEPT./SCHOOL: _____

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐ Discrimination **based on race (specify)**

_____

_____

_____

☐ Discrimination **based on color (specify)**

_____

_____

_____

☐ Discrimination **based on national origin (specify)**

_____

_____

_____

☐ Discrimination **based on sex (specify)**

_____

_____

_____

☐ Discrimination **based on disability (specify)**

_____

_____

_____

☐ Discrimination **based on age (specify)**

_____

_____

_____

☐ **Retaliation because you filed a complaint or asserted your rights (specify)**

_____

_____

_____

5. As of January 8, 2002, OCR enforces the Boy Scouts of America Equal Access Act, Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

☐ **Violation of the Boy Scouts of America Equal Access Act (specify)**

_____

_____

_____

6. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

_____

_____

_____

_____

_____

_____

_____

7. What is the most **recent date** you were discriminated against?

_____

8. If this date is **more than 180 days ago,** you may request a waiver of the filing requirement.

□ I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

_____

_____

_____

_____

_____

_____

9. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing? □ **YES** □ **NO**

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

_____

_____

_____

10. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

AGENCY OR COURT: _____

_____

_____

DATE FILED: _____ **CASE NUMBER OR REFERENCE:** _____

RESULTS OF INVESTIGATION/FINDINGS BY AGENCY OR COURT:

_____

_____

_____

11. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required,** but it will be helpful to us.

(Mr./Ms.)_____
(Last) (First) (Middle)

TELEPHONE #: _____ **(Home)** _____ **(Work)**

12. OCR has a voluntary expedited complaint resolution process called **Early Complaint Resolution (ECR).** In this process, we attempt to help the complainant and the institution reach an agreement prior to OCR commencing its investigation and case resolution procedures. Both the complainant and the institution must want to take part in ECR. The complainant, the institution, or OCR may end the ECR process at any time if it appears that an agreement cannot be reached. If this happens, we will use other approaches to resolve the complaint allegations. One of the primary benefits of ECR is that it may be possible to resolve your complaint quickly.

Are you interested in the Early Complaint Resolution Process? □ **YES** □ **NO**
Note: If OCR determines ECR may be appropriate, we will contact you to discuss our ECR procedures in detail.

13. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

_____

_____

_____

_____

14. **We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.**

_____ _____
(Date) (Signature)

_____ _____
(Date) (Signature of person in Item 2)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to:

U.S. Department of Education
Office for Civil Rights
District of Columbia Office
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1475

FAX # (202) 453-6021

CLC Tip Sheet

Formal Grievances in the District of Columbia

What is a Formal Grievance?

A grievance is a complaint that can be filed directly with a local school or instructional superintendent when there has been a violation of one or more of several federal and District laws, including:

- Section 504 of the Rehabilitation Act of 1973 (prohibits discrimination based on individuals' disability) (*see* 29 U.S.C. §§ 701 *et seq.*);
- Title II of the Americans with Disabilities Act (also prohibits discrimination against individuals with disabilities) (42 U.S.C. §§ 12101 *et seq.*);
- Title IX of the Education Amendments Act of 1972 (prohibits discrimination based sex) (*see* 20 U.S.C. §§ 1681 *et seq.*);
- Title VI of the Civil Rights Act of 1964 (prohibits discrimination based on race, color or national origin) (*see* 42 U.S.C. §§ 2000d *et seq.*);
- The Age Discrimination Act of 1975 (prohibits discrimination based on age in employment) (*see* 42 U.S.C. §§ 6101-6107); and
- The District of Columbia Human Rights Law (prohibits discrimination based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, familial responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business) (*see* D.C. Code Ann. §§ 2.1401.01 *et seq.*).

The Grievance Procedures described in 5 D.C.M.R. §§ E-2405.1 *et seq.* also include a "catch all" provision that applies this procedure to bullying, harassment, denial of educational opportunity for a student or group, abridgment of a student's rights or "any other violation or a right granted by law that does not have a specific grievance procedure or hearing process provided in this title." 5 D.C.M.R. § E-2405.1 (f).

The Grievance Procedure **DOES NOT APPLY** to appeals of suspensions or expulsions, because those procedures are covered in Chapter 25 of the DCMR. *See* 5 D.C.M.R. § E-2405.3. (Refer to the section of this Toolkit discussing school discipline).

When Might You File a Grievance?

- When a school fails to follow its own bullying policy or intervene as requested in response to a report of bullying (e.g., parent requests a safety transfer and school fails to respond);
- When a school unfairly penalizes a parenting or pregnant teen for excused absences related to pregnancy (which equals discrimination under Title IX); or
- When a teacher makes inappropriate comments to a student (e.g., calling a student a homophobic slur, or making sexually inappropriate comments to a student).

Who Can File A Grievance?

The student may file a grievance on his or her own behalf, or the parent or guardian of the aggrieved student may file a grievance on the student's behalf. *See* 5 D.C.M.R. § 2405.4.

Does Filing a Grievance Impact My Right to File Other Types of Complaints?

No. You can file a grievance and still file other kinds of complaints in other forums. However, it is possible that if the resolution of the grievance is still pending other forums may wait for the adjudication of the grievance before processing your additional complaint.

The DO's and DON'Ts of Formal Grievances

- **DO** read the grievance procedure in its entirety before filing a grievance. In particular, 5 D.C.M.R. § 2405.5 provides specific information as to what a grievance should contain, and what the investigation process is once a grievance has been filed

- **DON'T** file your grievance with the school principal if the principal is referenced in your complaint, or if the principal knew about the subject of the grievance and failed to intervene. *5* D.C.M.R. § 2405.4 (b) allows you to go directly to the instructional superintendent.

- **DO** provide legal citations for your allegations where applicable (which rights are violated), as well as specific factual information when you have it. As an example, in a case of gender-based bullying in which students have called another student sexually derogatory names, an appropriate grievance may allege violations of the Student Bill of Rights, the "catch-all" bullying provision, and Title IX.

- **DO** keep track of the grievance timelines and follow up when they are not being followed.

- **DO** consider involving other community stakeholders when helpful and applicable. For instance, it may be useful to copy Suzanne Greenfield, Director of the Citywide Bullying Prevention Program, on a grievance regarding bullying that has not been remediated. (See contact information in the Toolkit section on Bullying).