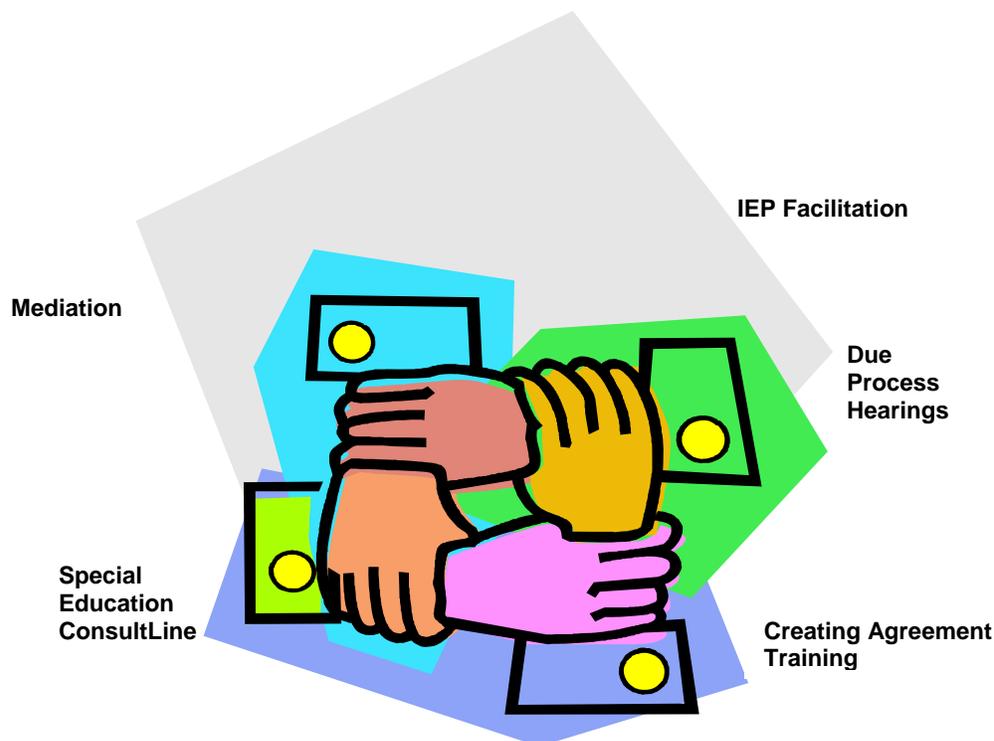


Pennsylvania Special Education Dispute Resolution Manual



Office for Dispute Resolution
ODR

Office for Dispute Resolution
6340 Flank Drive
Harrisburg, Pa. 17112-2764
<http://odr.pattan.net>

2009 Edition

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its regulations, direct that in a one-tier system such as the one Pennsylvania shifted to in July 2008, state educational agencies must ensure that mediation is available, and that as part of guaranteeing that procedural safeguards are provided, administer a special education due process hearing system. The Pennsylvania Department of Education (PDE) accomplishes this by funding, through a contract allowed by statute and regulation, with the Central Susquehanna Intermediate Unit (CSIU) for fiscal administration of the Office for Dispute Resolution (ODR), which administers the mediation and due process systems. The Due Process Hearing Officers and Mediators are free from interference or influence on any substantive matters from any entity, individual, or group, including without limitation, parents, advocacy groups, school districts, intermediate units including CSIU, ODR staff, and PDE, affecting the outcome of individual mediations and due process hearings. At the same time, those Hearing Officers and Mediators are provided with administrative support, as well as training delivered in a manner preserving their impartiality through ODR, which itself is also free of such outside entity, individual, or group, interference or influence on substantive matters affecting individual outcomes.

Table of Contents

Chapter 1 - General Information

- 101. The Office for Dispute Resolution (ODR)**
- 102. Purpose and Basis for Manual**
- 103. Children Served by ODR**
- 104. Withdrawing a Request for Due Process Hearing**
- 105. Definitions**

Chapter 2 - Training

- 201. Creating Agreement Training (formerly “Dispute Resolution Skills Training”)**
- 202. Solutions Panel Training**
- 203. Additional Trainings**

Chapter 3 – Early Dispute Resolution Activities

- 301. Informal Meeting**
- 302. IEP Facilitation Services (Applicable to IDEA Claims)**

Chapter 4 - Mediation

Chapter 5 – Due Process Procedures

- 501. Due Process Procedures**
- 502. Due Process Procedures for Cases Involving Chapter 16/Gifted Issues**

Chapter 6 – Parties and Representation in Hearings under Sections 501 and 502

- 601. Permissible Parties**
- 602. Impermissible Parties**
- 603. Right to Representation**
- 604. Change in Legal Representation under Sections 501 or 502**
- 605. Attorney Qualifications and Out-of-State Attorneys**

Chapter 7 – Hearing Procedures

- 701. Presiding Hearing Officers**
- 702. Hearing Calendar**
- 703. Postponements and Disclosure**
- 704. Pre-Due Process Hearing Telephone Conferences**
- 705. Contacting the Hearing Officer Prior to a Hearing**
- 706. Testimony of Hearing Officers**

Chapter 8 – General Hearing Procedures

- 801. Order of Presentation**
- 802. Failure to Appear at a Hearing**
- 803. Open and Closed Hearings**
- 804. Transcripts**
- 805. Recording at a Hearing**
- 806. Accommodations at a Hearing**
- 807. Hearing Location**
- 808. Conduct of Hearings**
- 809. Procedural Rulings**
- 810. Burden of Proof**
- 811. Settlements**

Chapter 9 – Exhibits and Witnesses

- 901. Exhibits**
- 902. Witness Testimony**
- 903. The Use of Notes or Other Items to Refresh Memory**
- 904. The Use of Interpreters and Translators**
- 905. Background and Qualifications of Expert Witnesses**
- 906. Questioning Witnesses**
- 907. Questioning of Witnesses by a Hearing Officer**
- 908. Relevant Evidence**
- 909. Hearsay**
- 910. Sequestration of Witnesses**
- 911. Witnesses Represented by Counsel**
- 912. Telephone Testimony**
- 913. Subpoenas**
- 914. Depositions**
- 915. Hearing Officer Order for Additional Evidence**
- 916. Hearing Officer Order for Additional Evaluations**
- 917. Briefs**

Chapter 10 – Hearing Officer Decisions

- 1001. Justification for Hearing Officer Decisions and Orders**
- 1002. Timelines**
- 1003. Distribution of the Hearing Officer Decision**
- 1004. Implementation of the Decision**

Chapter 11 - Appeals

- 1101. Appeal of Hearing Officer Decision**
- 1102. Completion of Assurance Forms by LEA**

Chapter 12 – Questions of Jurisdiction and *Res Judicata*

Chapter 13 – Hearing Procedures Related to the Disciplinary Exclusion of a Student with a Disability

- 1301. The Purpose of Expedited Due Process Hearings**
- 1302. Timelines**
- 1303. Disclosure of Evidence**
- 1304. Limitation of Issues**
- 1305. Applicability of Mediation**

Chapter 14 – Hearing Procedures for a Student who may be Entitled to Extended School Year Services (ESY)

- 1401. Eligibility for Extended School Year Services (ESY)**
- 1402. The Purpose of Expedited Due Process Hearings**
- 1403. Timelines**
- 1404. Disclosure**
- 1405. Limitation of Issues**
- 1406. Applicability of Mediation**

Chapter 15 – Hearing Procedures for a Charter School Student

- 1501. Gifted**

Chapter 16 – Obtaining Information Regarding a Hearing for a Child Under the Age of Three in Need of Early Intervention

- 1601. Description**
- 1602. Dispute Resolution**
- 1603. Contact Information**

Chapter 17 - Hearing Officers

- 1701. Responsibilities**
- 1702. Qualifications**
- 1703. Disqualification**
- 1704. Ex Parte Communication**

Chapter 18 – Requesting Documents from the Office for Dispute Resolution

[Reserved]

Chapter 19 – Forms

- 1901. Department of Public Welfare Due Process Request Form**
- 1902. Due Process Complaint Notice**
- 1903. Mediation Request Form**
- 1904. IEP Facilitation Form**

Chapter 1 - General Information

This Manual conforms to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), as well as federal regulations pursuant to it and state regulations in Chapters 14, 16, and 711 of the Pennsylvania Code. The current version of the Manual is available on the Office for Dispute Resolution (ODR) website, <http://odr.pattan.net>, or by contacting ODR. Any changes to this Manual that occur after it is posted will be identified on the website under "Updates to the Special Education Dispute Resolution Manual".

101. The Office for Dispute Resolution (ODR)

The Office for Dispute Resolution (ODR) is an office which coordinates the administration of the statewide special education dispute resolution system. ODR provides training on dispute resolution skills, manages administrative aspects of the IEP Facilitation process, coordinates the scheduling of mediations and due process hearings, and provides technical assistance regarding mediation and due process hearings.

- A. Mediation and due process hearings are used to resolve disputes between a parent and the Local Education Agency (LEA) responsible for providing the child with an education (e.g., a school district, intermediate unit, charter school or Department of Corrections). These disputes concern the identification, evaluation, educational placement, or the provision of a free appropriate public education (referred to as FAPE) for students with disabilities, students who are gifted, protected handicapped students, and children with disabilities three (3) years and older served by the early intervention system. Mediation and due process is also available for infants aged birth to three (3).
 1. ODR is funded by the Pennsylvania Department of Education with fiscal administration provided under contract with the Central Susquehanna Intermediate Unit (CSIU).
 2. Non-litigation complaints filed against educational agencies that are not requests for due process hearings are handled by the Department of Education, Bureau of Special Education, unless the student is identified as gifted, in which event this non-litigation oversight is provided by the Bureau of Teaching and Learning. ODR does not manage or coordinate either non-litigation complaint review process.
 3. In 2008, the State Board of Education dissolved the "second tier" Appeals Panel, which heard appeals from due process hearing officer decisions. Accordingly, Pennsylvania is considered to be a "one-tier" state, in which appeals of due process hearing decisions proceed directly to the court system. This Manual contains information for one-tier processes. Information about the Appeals Panel is available by contacting ODR directly.
 4. If a Hearing Officer orders an LEA to take a particular action, the Department of Education, Bureau of Special Education, monitors the implementation of those orders by the LEA, when the parent alleges non-compliance, except for students identified as gifted, since oversight of gifted education is provided by the Bureau of Teaching and Learning.
 5. ODR does not remain involved in a case on appeal to the court system other than to provide a certified copy of the record to the court upon request.

6. ODR is a neutral administrative office, neither aligned with parents nor LEAs.
7. Established solely to provide coordination services, ODR cannot provide legal advice or opinion to either party in a dispute.
8. Once ODR has assigned a Hearing Officer to a particular matter, all questions, requests, motions, or other communications with respect to it must be directed to the Hearing Officer. Only the Hearing Officer then has the authority to respond to a party's questions, requests, motions, or other communications. While usually that authority terminates when a final decision is rendered, the case is settled, or the Hearing Officer otherwise relinquishes jurisdiction, it still does not then rest with ODR and any remaining difficulties a party has must be resolved through judicial appeal or the above described non-litigation complaint process.

a. ODR may be contacted at the following address and phone numbers:

ODR
6340 Flank Drive
Harrisburg, PA 17112-2764
Phone: 800-222-3353 or 717-541-4960
TTY Users: PA Relay 711
Fax: 717-657-5983

b. Additional information may be obtained from ODR at the following website:

<http://odr.pattan.net>

c. The Special Education ConsultLine is a helpline available to parents to learn more about special education regulations and procedural safeguards. ConsultLine can be reached at 800-879-2301 (Voice) or TTY Users: PA Relay 711.

Additional resources for parents include:

PARENT EDUCATION NETWORK (PEN)

2107 Industrial Highway

York, PA 17402

717-600-0100 (Voice/TTY)

800-522-5827 (Voice/TTY)

800-441-5028 (Spanish in PA)

717-600-8101 (Fax)

www.parentednet.org

PEN is part of a national system of Parent Training and Information Centers (PTIs), serving North Central, South Central, Northeast, Southeast and Philadelphia, Pennsylvania. PEN is a coalition of professionals and parents of children representing a range of disabilities and ages. We are committed to serving parents of all special needs children-- birth to adulthood; including parents of children in pre-school, regular education classes, educational/residential placement, adult systems and those children not yet identified as needing service. PEN provides technical assistance, information, skill development trainings, workshops and referral services to parents to help children reach their full potential in educational, vocational and community settings.

PARENT EDUCATION AND ADVOCACY LEADERSHIP CENTER (PEAL)

1119 Penn Avenue
Suite 400
Pittsburgh, PA 15222
412-281-4404 (Voice)
866-950-1040 (Voice)
412-281-4409 (TTY)
412-281-4408 (Fax)
www.pealcenter.org

The work of the PEAL Center reflects a resounding call to parents, professionals and persons living with disabilities to join in celebrating our common bonds and to be the collective voice that reverberates in our communities. The PEAL Center serves families of children with disabilities and special health care needs providing information and training in Western and Central and Western Pennsylvania and on health care needs statewide.

HISPANICS UNITED FOR EXCEPTIONAL CHILDREN (HUNE, INC.)

2200 North 2nd Street
Philadelphia, PA 19133
215-425-6203 (Voice)
215-425-6204 (Fax)
www.huneinc.org

HUNE is a not-for-profit organization established in 1998 providing free bilingual English and Spanish training, technical assistance, and individual assistance to parents of infants, toddlers, children, and youth with disabilities and to professionals who work with children. This assistance helps parents to participate more effectively with professionals in meeting the educational needs of children and youth with disabilities. HUNE works to improve educational outcomes for children and youth with all disabilities (emotional, learning, mental, and physical) from 0-21 years of age.

THE MENTOR PARENT PROGRAM, INC.

P. O. Box 47
Pittsfield, PA 16340
814-563-3470 (Voice)
888-447-1431 (Voice in PA)
814-563-3445 (Fax)
www.mentorparent.org

The Mentor Parent Program exists to provide support and services to parents of children with disabilities through a coalition of united efforts of parents, educators, service providers, and professionals to effectively meet the needs of children with disabilities in the rural Appalachian region of Pennsylvania.

THE ARC OF PENNSYLVANIA

101 South Second Street
Suite 8
Harrisburg, PA 17101
800-692-7258 (Toll-Free Voice)
717-234-2621 (Voice)
717-234-7615 (Fax)
www.thearcpa.org

The ARC is the largest advocacy organization in the United States for citizens with cognitive, intellectual, and developmental disabilities, and their families. The ARC of Pennsylvania is the state chapter of The ARC. The ARC's mission is to work to include all children and adults with cognitive, intellectual, and developmental disabilities in every community. Local chapters of The ARC focus on

providing resources and individual advocacy services. The ARC of Pennsylvania focuses on systems advocacy and governmental affairs, demonstrating leadership and guidance among all disability organizations in Pennsylvania.

DISABILITIES RIGHTS NETWORK

1414 North Cameron Street
Suite C
Harrisburg, PA 17103
800-692-7443 (Toll-Free Voice)
877-375-7139 (TDD)
717-236-8110 (Voice)
717-346-0293 (TDD)
717-236-0192 (Fax)
www.drnpa.org

The Philadelphia Building
1315 Walnut St., Suite 400
Philadelphia, PA 19107-4798
(215) 238-8070 (Voice)
(215) 789-2498 (TDD)
(215) 772-3126 (Fax)
drnpa-phila@drnpa.org

429 Fourth Avenue, Suite 701
Pittsburgh, PA 15219-1505
(412) 391-5225 [Voice]
(412) 467-8940 [TDD]
(412) 391-4496 [Fax]
drnpa-pgh@drnpa.org [Email]

Disability Rights Network of Pennsylvania (DRN) is a statewide, non-profit corporation designated as the federally-mandated organization to advance and protect the civil rights of adults and children with disabilities. DRN works with people with disabilities and their families, their organizations, and their advocates to ensure their right to live in their communities with the services they need, to receive a full and inclusive education, to live free of discrimination, abuse and neglect, and to have control and self-determination over their services. DRN works to ensure that people with disabilities have equal and unhindered access to employment, transportation, public accommodations, and government services; to enforce their rights to vocational, habilitative, post-secondary educational, health, and other services; and to protect them from abuse and neglect. DRN identifies systemic issues which are important to people with disabilities and seeks change and reform through litigation, administrative advocacy, and public education.

PENNSYLVANIA BAR ASSOCIATION

100 South Street
Harrisburg, PA 17101
800-932-0311 (Phone)
www.pabar.org

102. Purpose and Basis for Manual

This Manual replaces all prior editions of the Special Education Dispute Resolution Manual, issued by the Office for Dispute Resolution (ODR) and should be cited as “Special Education Dispute Resolution Manual 2009”.

- A. Parents (designated as “parent” in this Manual), school districts, charter schools, intermediate units, other educational agencies, other public agency officials, as well as their representatives, and Hearing Officers—should use this Manual when accessing the services of ODR.
- B. The Manual provides information regarding a variety of mechanisms available in Pennsylvania to resolve special education disputes between parents and the LEAs who serve their children. Information on dispute resolution at the local level is provided, along with information on the services administered by ODR, which includes Creating Agreement Training, IEP Facilitation, Mediation, and Due Process.
- C. Federal and Pennsylvania special education laws and regulations can be found on the Pennsylvania Training and Technical Assistance Network (“PaTTAN”) website, www.pattan.net. Basic Education Circulars (BECs) are issued by the Department of Education on various educational topics and can be obtained at http://www.pde.state.pa.us/pde_internet/site/default.asp.

103. Children Served by ODR

ODR is responsible for coordinating dispute resolution activities for any child who has been identified as or who is thought to be:

- A. **An eligible young child.** An eligible young child is a child who meets all three of the following criteria:
 - 1. The child is at least three (3) years old, but is less than the age of beginners (i.e., a beginner is a child who enters a school district’s lowest elementary school grade that is above kindergarten);
 - 2. The child has been evaluated as having one or more of the following disabilities: mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or development delay(s) in cognitive, communicative, physical, social/emotional, and/or self-help areas, and/or multiple disabilities; and
 - 3. Because of the disability, the child is in need of special education and related services.
- B. **A student with a disability.** A student with a disability is a child who meets all three of the following criteria:
 - 1. The student is of school age;
 - 2. The student has been evaluated as having one or more of the following

disabilities: mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities; and

3. Because of the disability, the student is in need of special education and related services.

C. A student with a disability who has been removed from his or her educational placement because of a disciplinary action. In this situation, an expedited due process hearing is held when specific disciplinary actions have been taken, and:

1. A parent requests a hearing to dispute a LEA's determination that a child's behavior was not a manifestation of the child's disability; or
2. A parent requests a hearing to dispute a disciplinary exclusion that constitutes a change in educational placement. A change in educational placement has occurred if exclusion is longer than ten (10) consecutive school days, or if the student is excluded for more than fifteen (15) total school days in one school year. Any removal from school of a student who is identified as mentally retarded is considered a change in educational placement, except if the disciplinary event involves drugs, weapons, and/or serious bodily injury.
3. A parent requests a hearing to dispute a forty-five (45) day interim alternative educational placement ordered by school personnel; or
4. An LEA requests a hearing to establish that it is dangerous for a child to remain in that child's current educational placement.

D. A protected handicapped student. Students protected by Chapter 15 of the Pennsylvania regulations, and Section 504 are defined and identified as protected handicapped students. A protected handicapped student is a student who meets all three of the following criteria:

1. The student is of an age at which public education is offered in the LEA.
2. The student has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program.
3. The student is not eligible as defined by Chapter 14 (relating to special education services and programs) or is eligible, but is raising a claim of discrimination under 22 Pa. Code §15.10.
4. A request for a due process hearing for matters pertaining solely to Chapter 15/Section 504 is the fiscal responsibility of the LEA, so that the LEA will be billed for the Hearing Officer's services and is responsible for the hearing transcript costs.

E. A student who has been discriminated against because of his or her handicap. A due process hearing may be requested for any student who has been denied access to an educational program, equal treatment, or has been discriminated against based on his or her handicap. A student for whom such a claim is made does not have to be identified as a student with a disability under Chapter 14.

Hearings for claims regarding discrimination against a student based on any factor other than handicap, including, but not limited to, race, religion, national origin, and gender are not subject to the due process system coordinated by ODR or the procedures in this Manual.

- F. **A student with a disability who may be entitled to extended school year (ESY) services.** An expedited due process hearing is held when there is a dispute regarding the need for or the type of ESY for a student with a disability.
- G. **A gifted student.** A gifted student is a student who meets both of the following criteria:
 - 1. The student is of school age; and
 - 2. The student has outstanding intellectual and creative ability, the development of which requires specially-designed programs or support services, or both, not ordinarily provided in the regular education program.
 - 3. A request for a due process hearing for matters pertaining solely to gifted education is the fiscal responsibility of the LEA, so that the LEA will be billed for the Hearing Officer's services and is responsible for the hearing transcript costs.

H. An infant aged birth to three.

Infants and toddlers (birth to three years of age) might be eligible for Early Intervention Services if they have:

- 1. A significant delay in one or more areas of development;
- 2. A specialist's determination that there is a delay even though it doesn't show up on assessments;
 - a. Known physical or mental conditions which have a high probability for developmental delays.
- 3. A request for a due process hearing for matters pertaining solely to infants aged birth to three is the fiscal responsibility of the Tuscarora Intermediate Unit, so that the Tuscarora Intermediate Unit will be billed for the Hearing Officer's services and is responsible for the hearing transcript costs.

104. Withdrawing a Request for Due Process Hearing

- A. A Due Process Complaint Notice may only be withdrawn by the party that requested the hearing.
- B. If both parties request due process and only one party withdraws his or her request for due process, the remaining party's due process request will proceed.
- C. If a Hearing Officer has not yet been assigned to a due process matter and a party elects to withdraw his or her request for due process, a written request for withdrawal should be sent to the ODR Case Manager assigned to the matter with a copy of the withdrawal request to the opposing party.

- D. Once a Hearing Officer has been assigned to the due process matter, the Hearing Officer has the sole authority to cancel a hearing. Therefore, a party wishing to withdraw his or her hearing request must notify the Hearing Officer and the opposing party in writing. The Hearing Officer will determine whether or not to grant the request to withdraw the pending due process request. See *In re Educational Assignment of K.C., Spec. Educ. Op. 1416 (2003)*.
- E. Regardless of whether or not a party withdraws a request for hearing, or if some other reason is involved, only the Hearing Officer has the authority to cancel a scheduled hearing.

105. Definitions

The term parent means a natural, adoptive or foster parent of a child, a guardian, an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent.

The term "local educational agency" (LEA) means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. An LEA may be a school district, charter school, intermediate unit (in cases involving preschool students), an agency providing early intervention services under arrangement with the Pennsylvania Department of Education (referred to as the "MAWA"), or the Department of Corrections (in cases regarding students in state correctional facilities).

The term "state educational agency" (SEA) means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

Chapter 2 - Training

201. Creating Agreement Training (formerly “Dispute Resolution Skills Training”)

In response to requests by LEAs and parent groups for strategies to approach special education disputes in a positive manner to promote successful outcomes, ODR has been providing Dispute Resolution Skills Training since 2003. This skill-building training looks at successful ways to respond to conflict, improve communication, and become aware of roadblocks to conflict resolution. This training, provided by ODR, is available to school districts, intermediate units, parent groups and educational agencies at no cost.

In 2008, ODR partnered with the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) (www.directionservice.org/CADRE) and The IDEA Partnership at NASDSE (National Association of State Directors of Special Education) (www.ideapartnership.org) to introduce to Pennsylvania its “Creating Agreement” model, which is similar to Dispute Resolution Skills Training. Introduction and refinement of this training continues to occur.

To obtain further information on these forms of training, or to request scheduling of them, please contact Suzanne McDougall at 717-541-4960, ext. 3315.

202. Solutions Panel Training

Through a federal grant from the Department of Education, two intermediate units participated in a pilot training program for Solutions Panels sponsored by ODR. Solutions Panels offer a local, informal and alternative method for looking at special education disputes. Panel members have been trained in mediation skills, and each Panel consists of one parent and one educator. Parents and school districts within Capital Area Intermediate Unit 15 or Central Susquehanna Intermediate Unit can contact the local intermediate unit for more information.

203. Additional Trainings

Check the ODR website for additional trainings as they become available.

Chapter 3 - Early Dispute Resolution Activities

301. Informal Meeting

Often, if a Parent disagrees with an educational issue involving their child, the first and best step to take is to ask to meet with representatives of the school to discuss the concern. This may be all that is needed to resolve the matter to the parent's satisfaction, however, the Parent must remember that timelines applying to a request for due process may continue to run while such a meeting is set-up and held, so that a request for an informal meeting should not be delayed. See Section 501 of this Manual.

302. IEP Facilitation Services (Applicable to IDEA Claims)

IEP Facilitation is a voluntary process that can be utilized when all parties to the IEP meeting agree that the presence of a neutral third party would assist in the facilitation of communication and the successful drafting of an IEP for the student. This process is not necessary for most IEP meetings – it is most often utilized when there is a sense from any of the participants that the issues at the IEP meeting are creating an impasse or acrimonious climate, when it may be helpful to have a neutral, trained facilitator guide the process.

The facilitator's primary task is to assist the IEP team's effort to communicate, to ensure that the IEP team focuses on developing the IEP while addressing any disagreements that may arise during the meeting. The facilitator does not make recommendations or decisions for the IEP team. The members of the IEP team remain the sole decision-makers.

Either the parents or LEA can request IEP Facilitation; however, since the process is voluntary, both parties must agree. If either the parents or the LEA decline to participate, facilitation cannot be used. Therefore, both parties must sign a request form that is available from ODR.

A copy of the request form can be found at the back of this Manual. For further information on IEP Facilitation, please visit the ODR website at <http://odr.pattan.net>.

Chapter 4 - Mediation

Mediation is a voluntary process in which the parent and LEA involved in a dispute regarding special education both agree to obtain the assistance of an impartial mediator. Mediation is available whenever a due process hearing is requested. Mediation may be requested at other times as well.

- A. Mediation services may be requested from the LEA responsible for providing a child's education or by contacting ODR.
- B. Mediation can be requested alone, or in conjunction with due process.
- C. The Mediator's services are paid for by ODR.
- D. Mediations are scheduled in a timely manner and are held in a location that is convenient for the parties to the dispute.
- E. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or court proceeding.
- F. ODR maintains a list of individuals who are qualified Mediators and knowledgeable in laws and regulations regarding the provision of special education and related services. The list is available on the ODR website, <http://odr.pattan.net>, or can be requested from ODR.
- G. Mediators are not employed by any local or state agency that is involved in the education or care of the child, and the Mediator must not have a personal or professional interest that conflicts with the person's objectivity.
- H. The Mediator may not be called as a witness in future proceedings.
- I. In the event the parties resolve the dispute through mediation, they are required to execute a legally-binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA. This agreement is enforceable by a court.
- J. Mediation cannot be used to deny or delay the parent's right to a due process hearing or to deny any other rights of the parent.

Chapter 5 - Due Process Procedures

501. Due Process Hearing Procedures

These procedures, extended to charter schools for purposes of this Section 501, derive from IDEA as well as its enabling regulations, such that they are likewise applied to hearings which ODR administers which involve charter schools.

- A. **General Hearing Requirements** – Under IDEA, a due process hearing involving a student with a disability, or thought to be a student with a disability, is required to conform with the following.
1. The hearing must be conducted and held in the LEA, at a place and time reasonably convenient to the parent and student involved.
 2. The hearing must be an oral, personal hearing and must be closed to the public unless the parent requests an open hearing. If the hearing is open, the decision issued in the case, and only the decision, will be available to the public. If the hearing is closed, only a redacted version of the decision will be available.
 3. The decision of the Hearing Officer must include findings of fact, discussion and conclusions of law. Although technically the formal rules of evidence are not controlling, the Hearing Officer is permitted to consider them for guidance where relevant, and the decision must be based upon the preponderance of the evidence presented at the hearing.
 4. The hearing officer shall have the authority to order that additional evidence be presented.
 5. A written, or at the option of the parent, electronic verbatim record of the hearing will be provided to the parent at no cost. The LEA shall also have the option of receiving its verbatim record of the hearing in writing or electronically.
 6. Parent may be represented by legal counsel, but only accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities, commonly referred to as “advocates”.
 7. Parents or parent representatives must be given access to educational records, including any tests or reports upon which the proposed action is based.
 8. A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party, by the opposing party, at least five (5) business days before the hearing.
 9. A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.
 10. A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

B. Contents of the Due Process Complaint Notice

For all requests, regardless of the issues involved, the following information must be supplied in the Due Process Complaint Notice:

The name of the child, the address of the residence of the child (or available contact information as described below in the case of a homeless child), and the name of the school the child is attending;

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.A. §11434a(2)), available contact information for the child and the name of the school the child is attending;

A description of the nature of the problem involving the child and his/her education;

A proposed resolution of the problem to the extent known and available to the party.

A copy of the Due Process Complaint Notice form can be found on the ODR website: <http://odr.pattan.net>.

C. Scope of Due Process Hearing

The parent or LEA may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE).

D. Time Limit for Requesting Due Process

The parent or LEA must request a due process hearing through the filing of a Due Process Complaint Notice within two (2) years of the date the parent or the LEA knew or should have known about the alleged action that forms the basis of the Due Process Complaint Notice.

There are limited exceptions to this. It will not apply to the parent if the parent was prevented from requesting the due process hearing due to the specific misrepresentations by the LEA that it had resolved the problem forming the basis of the Due Process Complaint Notice, or if the LEA withheld information from the parent which was required to be provided to the parent.

E. Service of Due Process Complaint Notice

A copy of the Due Process Complaint Notice must be sent to the other party and, at the same time, to ODR.

F. Challenging Sufficiency of the Due Process Complaint Notice

The Due Process Complaint Notice will be considered to be sufficient unless the party receiving same notifies the Hearing Officer and the other party in writing within fifteen (15) days of receipt that it believes the Notice does not meet the requirements listed in Section 501 (A) above.

G. Hearing Officer Determination of Sufficiency of Due Process Complaint Notice

Within five (5) days of receiving a party's challenge to the sufficiency of the Due Process Complaint Notice, the Hearing Officer must make a determination based solely on the information contained within the Notice, whether the Notice meets the requirements listed in Section 501 (A) above. The Hearing Officer must immediately notify both parties in writing of his or her determination.

H. Response to Request

If the LEA has not sent prior written notice (Notice of Recommended Educational Placement or "NOREP") to the parent regarding the subject matter contained in the parent's Due Process Complaint Notice, the LEA must send to the parent, within ten (10) days of receiving the Due Process Complaint Notice, a response including the following information:

1. An explanation of why the LEA proposed or refused to take the action raised in the parent's Due Process Complaint Notice;
2. A description of other options the Individualized Education Program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
4. A description of the factors that is relevant to the LEA proposal or refusal.

Filing this response to the parent's Due Process Complaint Notice does not prevent the LEA from challenging the sufficiency of the Due Process Complaint Notice. Likewise, if the LEA has already sent prior notice in the form of a NOREP to the parent, or it is the parent receiving the Due Process Complaint Notice, then a response to the Due Process Complaint Notice must be sent to the other side within ten (10) days of receipt of the request. The response should specifically address the issues raised in the Due Process Complaint Notice.

I. Amended Due Process Complaint Notice

Either the parent or a LEA may amend its Due Process Complaint Notice only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the issues raised in the Due Process Complaint Notice through a preliminary meeting/resolution session; or
2. The Hearing Officer grants permission for the party to amend the Due Process Complaint Notice. However, the Hearing Officer may grant this permission not later than five (5) days before a due process hearing occurs.

The party requesting the due process hearing is not permitted to raise issues at the due process hearing that were not raised in the Due Process Complaint Notice (or Amended Due Process Complaint Notice) unless the other party agrees.

J. Resolution Session/Preliminary Meeting

The LEA has thirty (30) days from receipt of a due process complaint to resolve the issues raised to the parents' satisfaction, within the first fifteen (15) days of which this resolution session/preliminary meeting must take place.

The LEA must convene, unless it and the parents agree to waive same in writing or to use mediation, such a resolution session/preliminary meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts and issues identified in the Due Process Complaint Notice, in an attempt to resolve them without a due process hearing. A representative of the LEA who has decision-making authority must be present at this meeting, and it may not have an attorney attend the meeting unless the parent is also accompanied by an attorney. At the meeting, the parent will discuss the Due Process Complaint Notice, and the LEA will be provided the opportunity to resolve the Due Process Complaint Notice. The LEA should report the results of the resolution session/preliminary meeting to the assigned Hearing Officer who will forward that information to ODR, which must collect this data for federal reporting purposes.

The failure of the parent filing a due process complaint to participate in the resolution session/preliminary meeting not waived in writing, where mediations has not been agreed to by both parties, will delay the timelines for the resolution process and due process hearing until the meeting is held.

If the LEA is unable to obtain the participation of the parent in the resolution session/preliminary meeting after reasonable and documented efforts have been made, the LEA may, at the end of the 30-day period, request that the Hearing Officer dismiss the parent's Due Process Complaint Notice.

If the LEA fails to hold the resolution session/preliminary meeting within fifteen (15) days of receiving the parent's due process complaint or fails to participate in the resolution session/preliminary meeting, where mediation has not been agreed to and it has not been waived in writing, the parent may ask the Hearing Officer to begin the running of the due process timelines.

If the parent and LEA resolve the issues in the Due Process Complaint Notice at the resolution session/preliminary meeting, they must put the agreement terms in writing, and both the parent and a representative of the LEA who has the authority to bind the LEA must sign the agreement. The agreement is a legally-binding document and may be enforced by a court.

Either the parent or LEA may void the agreement within three (3) business days of the date of the agreement and continue with the due process request. After three (3) days, the agreement is binding on both parties.

K. Timeline for Completion of Due Process Hearing

1. Each party must compile a list of all the documents and witnesses it will introduce at the due process hearing, and share this list with the opposing party no less than five (5) business days prior to the hearing. The list must be specific enough so that the opposing party can identify particular documents and know the identity of the witnesses.

2. If the LEA has not resolved the Due Process Complaint Notice within thirty (30) days of receiving it, or within thirty (30) days of receiving the Amended Due Process Complaint Notice, the due process hearing may proceed and applicable timelines commence. The timeline for completion of due process hearings is forty-five (45) days, unless the Hearing Officer grants specific extensions of time at the request of either party.
3. If one of the following events occur, the 30-day resolution period will be adjusted and the 45-day timeline for the due process hearing starts the day after:
 - a. both parties agree in writing to waive the resolution session/preliminary meeting;
 - b. after either the mediation or resolution session/preliminary meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
 - c. if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or LEA withdraws from the mediation process.

L. Disclosure of Evaluations, Recommendations, Documents, and Witnesses

1. Not less than five (5) business days prior to a due process hearing, each party must disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations that the party intends to use at the due process hearing. Failure to disclose this information may result in a Hearing Officer prohibiting the party from introducing the information at the hearing unless the other party consents to its introduction.
2. Each party must compile a list of all the documents and witnesses it will introduce at the due process hearing, and share this list with the opposing party not less than five (5) business days prior to the hearing. The list must be specific enough so that the opposing party can identify particular documents and know the identity of the witnesses.

M. Decision of Hearing Officer

A decision made by a Hearing Officer must be made on the basis of the preponderance of the evidence presented at the hearing, and a determination of whether that does or does not establish that the child received FAPE. In disputes alleging a procedural violation, a Hearing Officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or caused a deprivation of educational benefits.

A Hearing Officer may still order an LEA to comply with procedural requirements even if the Hearing Officer determines that the student received FAPE. The parent may still file a Complaint with the Bureau of Special Education regarding procedural violations.

N. Attorneys' Fees Under IDEA

A court, but not a Hearing Officer, in its discretion, may award reasonable attorneys' fees as part of the costs:

1. To a prevailing party who is the parent of a student with a disability;
2. To a prevailing party who is a SEA or LEA against the attorney of the parent who files a Due Process Complaint Notice or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
3. To a prevailing SEA or LEA against the attorney of the parent, or against the parent, if the parent's Due Process Complaint Notice or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
4. Fees awarded will be based on rates prevailing in the community in which the action or proceeding arose for the kind and quantity of services furnished.
5. The federal law imposes certain requirements upon the parent and LEA and in some circumstances may limit attorney fee awards. Parents should consult with their legal counsel regarding these matters. The following rules apply:

Attorneys' fees may not be awarded and related costs may not be reimbursed in any civil action or proceeding for services performed subsequent to the time of a written offer of settlement to the parent, if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures, or, in an administrative hearing, if the offer is made at any time more than ten (10) days before the proceeding begins, is not accepted within ten (10) days, and the court finds that the relief finally obtained by the parent is not more favorable to the parent than the offer of settlement, unless it finds that the parent was substantially justified in rejecting the settlement offer.

Attorneys' fees may not be awarded relating for any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

A due process resolution session is not considered to be a meeting convened as a result of an administrative hearing or judicial action, nor an administrative hearing nor judicial action for purposes of reimbursing attorneys' fees.

The Court may reduce the amount of any attorneys' fee award when:

1. The parent, or the parent's attorney, during the course of the action or proceeding unreasonably protracted the final resolution of the controversy;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
3. The time spent and legal services furnished were excessive considering

the nature of the action or proceeding; or

4. The attorney representing the parent did not provide to the LEA the appropriate information in the Due Process Complaint Notice.

These reductions do not apply in any action or proceeding if the court finds that the State or LEA unreasonably protracted the final resolution of the action or proceeding.

502. Due Process Procedures for Cases Involving Chapter 16/Gifted Issues

A. Requesting a Hearing

Parents may request in writing an impartial due process hearing concerning their disagreement with the school district's identification, evaluation or educational placement of, or the provision of a gifted education to a student who is gifted, or who is thought to be gifted, unless that student attends a charter school since such are not responsible for providing gifted education. Absent the school district and the parent of the child agreeing otherwise, the child involved in the hearing shall remain in the child's current educational placement pending the outcome of the hearing.

A school district may request a hearing to proceed with a initial evaluation or a reevaluation when a parent fails to respond to the district's proposed evaluation or reevaluation. When a parent rejects the district's proposed educational placement, other than the initial placement, the school district may request an impartial due process hearing. If the parent fails to respond or refuses to consent to the initial provision of gifted services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.

B. Holding the Hearing

The hearing shall be conducted by and held in the local school district at a place reasonably convenient to the parents. At the request of the parents, the hearing may be held in the evening.

C. Open and Closed Hearings

The hearing must be an oral, personal hearing and be open to the public unless the parents request a closed hearing 5 days in advance of the hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public.

D. Decision of the Hearing Officer

The decision of the hearing officer must include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision must be based solely upon the substantial evidence presented during the course of the hearing.

E. Ordering of Additional Evidence

The hearing officer shall have the authority to order that additional evidence be presented.

F. Transcript of Hearing

A written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

G. Representation at Hearing

Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to students who are gifted.

H. Access to Records

A parent or a parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

I. Evidence

A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least five (5) calendar days before the hearing.

A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

J. Appeal of Hearing Officer Decision

The decision of the impartial hearing officer may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

K. Hearing Officers

A hearing officer may not be an employee or agent of a school district in which the parents or student resides, or of an agency which is responsible for the education or care of the student. A hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

Each school district shall keep a list of the persons who serve as hearing officers. The list must include the qualifications of each hearing officer. School districts shall provide parents with information as to the availability of the list and make copies of it available upon request.

L. Timelines for Hearing

The following timeline applies to due process hearings:

1. A hearing shall be held within 30 calendar days after a parent's or school district's initial request for a hearing.
2. The hearing officer's decision shall be issued within a 45 calendar days after the parent's or school district's request for a hearing.

M. Implementation of Hearing Officer Decision

Upon receipt of a final decision from a hearing officer or a court, the school district shall provide to the Department an assurance of its implementation of the order. The assurance shall be filed within 30 school days of the date of the final decision.

N. Attorneys' Fees

Reimbursement of attorneys' fees to parents is not available when the only issue pertains to gifted education. The due process system does not handle the issue of reimbursement of fees. Parents are encouraged to seek legal counsel to determine whether reimbursement may be available to them where any other issues are involved.

Chapter 6 - Parties and Representation In Hearings Under Sections 501 and 502

601. Permissible Parties

The following are the only parties to a hearing:

- A. The parent. While it may be optimal for both parents to attend all due process sessions, if the absence of one parent will unduly delay the resolution of the due process hearing, the Hearing Officer has the sole discretion to require the parties to proceed with only one parent present.
- B. The LEA responsible for providing a child's education.

602. Impermissible Parties

The following individuals, in their individual capacities, and entities are not parties to, but for other reasons may be present at, the hearing:

- A. Teachers, psychologists, and other witnesses;
- B. Educational agencies or other public agencies which are or might be involved in serving the child, but which are not legally responsible for providing an education to the child;
- C. Representatives of advocacy groups (e.g., ARC of PA, Pennsylvania Protection and Advocacy "PP&A", Pennsylvania Association of Gifted Education "PAGE", etc.);
- D. Attorneys representing the parties.

603. Right to Representation

A. Parent Representation

- 1. A parent may represent him or herself and the student at a hearing. When a parent participates at a hearing without legal counsel, this is called appearing *pro se*.
- 2. A parent may be represented by an attorney at a hearing. Requests by parents for continuances in order to secure counsel after a due process proceeding has commenced must be directed to the Hearing Officer. The Hearing Officer has sole discretion in deciding all continuance requests, including the determination of a reasonable amount of time to allow a parent to secure counsel.
- 3. A parent may also be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities, however, such an individual cannot act as the legal representative of the parent or child unless the accompanying individual is an attorney.
- 4. If a parent chooses to retain an attorney, the parent will be responsible for the costs incurred, subject to the possibility of recovering those costs after the proceedings conclude as previously described.

5. Parents may call the ConsultLine (800-879-2301) for the local bar association number and for contact information for the Local Task Force, both of which may be able to assist parents in locating counsel or an advocate.

B. LEA Representation

The LEA, as well as any of its administrators or other employees appearing at a due process hearing, must be represented by counsel.

604. Change in Legal Representation at Hearings Under Section 501 or 502

To avoid unnecessary delay in the resolution of the due process proceeding, it is the responsibility of each party and/or its legal representative to inform immediately the Hearing Officer, the opposing party, and ODR of any additions or changes in representation. Notification should include the name, address, and telephone number of the new representative, if any are secured.

605. Attorney Qualifications and Out-of-State Attorneys

- A. Only an attorney who is admitted to practice before the Supreme Court of Pennsylvania may represent a party at a due process hearing, unless one of the following exceptions has been met:
 1. If another state allows attorneys from Pennsylvania to represent parties at administrative level special education due process hearings in that state, an attorney admitted to practice before the highest court of that state may represent a party at a due process hearing in Pennsylvania. The following requirements apply:

An attorney wishing to appear under this section must make a written motion to the Hearing Officer at least three (3) business days prior to the due process hearing; and

The written motion must include a specific statement of the request, documentation that the attorney is admitted to practice before the highest court of the state in question, and documentation that the state in question allows attorneys from Pennsylvania to represent parties in special education due process hearings.
 2. Admission *pro hac vice*. An attorney who is qualified to practice law in the courts of another state may also be allowed to represent a party at a due process hearing if sponsored by an attorney in Pennsylvania who is admitted to practice before the Supreme Court of Pennsylvania. The out-of-state attorney shall not, however, be authorized to act as attorney of record.

The following requirements apply to admission *pro hac vice*:

- a. Such admission shall only be on motion of a member of the Pennsylvania bar.
- b. The motion must be made in writing, signed by the member of the Pennsylvania bar, and filed with the Hearing Officer at least three (3) calendar days prior to the due process hearing. The motion must contain all relevant facts and shall indicate that the member of the Pennsylvania bar will retain the role of attorney of record.

- B. If an out-of-state attorney wishes to represent a party at a due process hearing, the exceptions noted in Sections 605 (A) (1) and (2) above must be established to the satisfaction of the Hearing Officer. Only the Hearing Officer has the authority to grant or deny permission for an out-of-state attorney to represent a party at a due process hearing.
- C. Permission for an out-of-state attorney to represent a party may only be granted on a case-by-case basis. If an out-of-state attorney wishes to represent other parents and children at other hearings, or wishes to represent the same parent and child at a new hearing, that attorney must file a new motion with the Hearing Officer assigned to that hearing requesting permission to do so.

Chapter 7 - Hearing Procedures

701. Presiding Hearing Officer

To further foster already and otherwise maintained impartiality, Hearing Officers are assigned based on their geographical location with respect to that of the hearing, as well as availability. While parties may not dictate which Hearing Officer will be assigned to preside over the due process hearing, ODR will consider requests for specific Hearing Officers only if the initial Due Process Complaint Notice indicates that both parties concur, and in the event of unavailability will assign another Hearing Officer consistent with geography and availability.

702. Hearing Calendar

- A. Once a Hearing Officer is assigned, only the Hearing Officer can change the date for a hearing. All requests for changes in hearing dates must be sent to the Hearing Officer.
- B. After the last due process hearing has been completed and the final transcript received, the Hearing Officer will render a decision within fifteen (15) calendar days of the closing of the record. In the event the Hearing Officer cannot abide by this schedule due to unforeseen circumstances, the Hearing Officer will notify the parties of the delay and provide an expected issue date for the decision.
- C. Chapter 11 of this Manual contains additional information about the appeal process.

703. Postponements and Disclosure

- A. Requests for postponements (also called “continuances”) of a due process hearing must be made to the Hearing Officer. Only the Hearing Officer has the authority to grant a postponement.
- B. Requests for postponements must be in writing when practical to do so and sent to the Hearing Officer and the opposing party. The request must include specific reasons in support of the postponement. Telephone requests for postponement must be directed to the Hearing Officer with notice to the opposing party.
- C. Postponements may be granted for good cause at the discretion of the Hearing Officer. ODR cannot override the decision of the Hearing Officer either granting or denying a postponement request.
- D. A hearing for a student with a disability facing a disciplinary exclusion cannot be postponed to any date beyond twenty (20) school days after the initial receipt of the request for the hearing.
- E. If a Hearing Officer grants a postponement, the postponement notice must indicate when the next scheduled activity will occur (i.e., hearing, status report to the Hearing Officer).
- F. In expedited disciplinary hearings, a two (2) business day before the hearing disclosure rule applies to evidence a party will introduce at that hearing.
- G. A Hearing Officer may bar a party from introducing evidence if that party failed to

comply with the applicable disclosure rules. The Hearing Officer may also provide additional time at the hearing for the opposing party to review the undisclosed documentary evidence, or, if the undisclosed evidence is extensive, adjourn and/or postpone the hearing. The Hearing Officer has sole discretion in these matters.

- H. A copy of the disclosed materials should not be sent to the Hearing Officer prior to the hearing unless the Hearing Officer has requested them. The Hearing Officer has sole discretion in determining how to handle unsolicited materials sent to him or her by a party.

704. Pre-Due Process Hearing Telephone Conferences

- A. The Hearing Officer may initiate a conference call to the parties and/or their representatives prior to the date of the hearing if the Hearing Officer believes it is needed. The purpose of the conference call may be to:
 - 1. Discuss the schedule for the hearing, including the order of presentation for each party's case, and any particular scheduling issues of the parties.
 - 2. Discuss procedures that will be followed at the hearing;
 - 3. Determine whether the parties are able to stipulate to any undisputed facts; and/or
 - 4. Answer any questions that either party might have.
- B. Parents who are unable to participate in telephone conferences for logistical or other reasons should notify the Hearing Officer of this circumstance. The Hearing Officer has the discretion to determine how best to proceed.
- C. The Hearing Officer may not engage in telephone conversations with either party outside the presence of the other party unless done with the explicit permission of the opposing party, except for the purpose of scheduling a hearing.
- D. At the discretion of the Hearing Officer, a conference with the parties and/or their representative may be held immediately before opening the record of the hearing in order to facilitate the orderly and efficient presentation of evidence at the hearing.

705. Contacting the Hearing Officer Prior to a Hearing

- A. Prior to the hearing, the Hearing Officer should be contacted:
 - 1. To report on the status of the resolution session in those cases brought under IDEA;
 - 2. To report that the parties have agreed to mediation;
 - 3. To file written motions;
 - 4. To discuss scheduling; or
 - 5. To request a conference call.
- B. A copy of any written correspondence sent to the Hearing Officer must be sent to the opposing party.

- C. The parties should not send any exhibits, school records, or other documents regarding the child to the Hearing Officer prior to the hearing (other than a list of evidence), unless the Hearing Officers requests otherwise.

706. Testimony of Hearing Officers

A Hearing Officer may not be called as a witness in future proceedings.

Chapter 8: General Hearing Procedures

801. Order of Presentation

- A. **Introductory Remarks by the Hearing Officer.** The Hearing Officer will open the hearing and make introductory remarks on the record including, but not limited to, the following:
1. Introduce him or herself and indicate that he or she has been assigned by ODR and by law is empowered to conduct the hearing and to render a decision in the matter;
 2. State the general purpose of the hearing (e.g., that the hearing is being held in order that evidence may be presented to determine the appropriate special education program for the child);
 3. Determine the representative of each party and ensure that a *pro se* parent has been advised of his or her right to be represented by legal counsel;
 4. Explain the differences between an open and a closed hearing and the fact that hearings are treated as closed hearings unless the parent indicates otherwise, determine whether a *pro se* parent understands the differences, and then ascertain whether the parent chooses to have the hearing designated as open;
 5. Inform the parents of their right to a free electronic or printed transcript of the hearing;
 6. Determine whether both parties have complied with the disclosure of evidence requirements prior to the hearing and whether all requests to review evidence prior to the hearing have been honored. The Hearing Officer may inform the parties how he or she will handle the acceptance into evidence of exhibits;
 7. Identify any stipulations of the parties; and
 8. Inform the parties of the right to appeal the Hearing Officer's decision and indicate appeal instructions will be attached to the Hearing Officer's decision.
- B. **Opening Statements.** An opening statement is a statement by a party that provides a concise and specific description of the issue(s) to be decided by the Hearing Officer and how a party would like the Hearing Officer to rule on each issue. The opening statement is not evidence, can not be testimony, and the Hearing Officer cannot base his or her decision on an opening statement.
1. The party that requested the hearing typically gives its opening statement first. For example, when a parent is challenging the appropriateness of an IEP, the parent gives the first opening statement. When an LEA is, for example, challenging a failure to give consent for an evaluation, or has asked for a hearing to demonstrate the appropriateness of its evaluation, the LEA typically gives the first opening statement. If both parties have requested due process, the Hearing Officer will determine the appropriate order of opening statements. In all instances, the Hearing Officer has sole discretion to determine the order of opening statements.
 2. Both parties should state what areas of existing or proposed identification, evaluation, program, and/or placement are, or are not, appropriate, being as specific as possible and referencing the specific regulations and/or other legal authority at issue, if

possible, and recommending how the Hearing Officer should rule. Such issues should be identified in terms of rights and alleged violations, rather than state only in terms of remedies being sought.

3. The opening statement should not be more than ten (10) minutes in length, unless the Hearing Officer in his or her discretion allows additional time.
4. The issues will be used by the Hearing Officer to control and direct the scope of the hearing.

C. **Restatement of the Issues by the Hearing Officer.** After listening to the opening statements from both parties, the Hearing Officer may restate the issues that will be heard at the hearing, if warranted.

D. **Burden of Proof.** See Section 810.

E. **Presentation of Evidence - First Party to Present.**

1. The party required to proceed first, will call its witnesses to testify and introduce exhibits into the record to support the agency's position. This is referred to as direct examination.
2. After a party has conducted its direct examination of a witness, the other or opposing party will have an opportunity to ask questions of the witness, known as cross-examination.
3. Following cross-examination, the party who started with direct examination will have the opportunity to ask questions of its witness (redirect examination) based upon the answers elicited during cross-examination. Redirect examination must be limited to questions that follow up on the questions that were asked on cross-examination. Likewise, re-cross examination is permitted, but limited to follow-up on that which was asked on re-direct examination, Redirect and re-cross examinations will be permitted solely at the discretion of the Hearing Officer.
4. Throughout the course of direct examination, cross-examination, redirect and re-cross examination, the Hearing Officer will rule on any objections ("sustain" or "overrule") raised by either party to the questions being posed to the witness, and is encouraged to briefly indicate the basis for that ruling. The Hearing Officer has the sole discretion to allow or disallow questions posed to a witness.
5. At any time, the Hearing Officer may, at his or her discretion, question a witness.

F. **Presentation of Evidence - Second Party to Present.** After the party proceeding first, as determined by the Hearing Officer, has presented its case, the responding party's case will be presented. The same procedure will be followed with presentation of witnesses and exhibits as listed above in Section E.

G. **Closing Statements.** After all testimony has been given and all exhibits have been entered into the record, the Hearing Officer may ask for closing statements from both parties. Typically, the party who did not request the due process hearing or does not have the burden of proof will present the closing statement first, but the Hearing Officer has sole discretion to determine the order of closing statements.

1. The closing statement may include a summary of the most important evidence the party offered, a statement of relevant legislation and case law, and a suggestion regarding how the Hearing Officer should rule with regard to violations and any remedies.
2. Closing statements are not evidence and the decision is not based on them.
3. The closing statement should not be more than ten (10) minutes in length, unless the Hearing Officer in his or her discretion allows additional time.
4. The Hearing Officer has the discretion to direct the parties to file written closing statements to aid in the Hearing Officer's evaluation and deliberation of the matter.

802. Failure to Appear at a Hearing

- A. If one of the parties is not present at the hearing, the Hearing Officer will contact ODR, if possible, to ascertain the following information:
 1. Whether ample notification of the hearing was conveyed to the party in a timely manner; and
 2. Whether the party gave any indication of an intention not to appear.
- B. The Hearing Officer should attempt to contact the party prior to proceeding with the hearing. If the absent party does not express a desire to attend, or if no valid reason is given for the non-appearance, the hearing should proceed. If the party cannot be contacted, the Hearing Officer must determine whether the hearing should proceed in the absence of the party or if it should be postponed.
- C. If the Hearing Officer decides to proceed, he or she should state on the record that the party is not present and describe the circumstances of the party's absence to the extent known to the Hearing Officer.
- D. If the parent does not appear, and the hearing proceeds, the hearing must be conducted as a closed hearing.
- E. The court reporting service will send a copy of the transcript to the absent party. If the absent party is the parent, the LEA will send any exhibits entered into the record at the hearing to the parent. A copy of the Hearing Officer's decision must be sent to the absent party by regular and certified mail.
- F. By not attending the hearing, the absent party waives his or her right to present evidence and contest the evidence of the other party. However, the Hearing Officer may, for good cause shown by the absent party, reconvene the hearing at a later date at which time the absent party may present evidence and may cross-examine witnesses who testified for the other party. Reconvening of the hearing for the absent party is at the sole discretion of the Hearing Officer. The hearing cannot be reconvened after the Hearing Officer has rendered his or her final decision.

803. Open and Closed Hearings

Due process hearings are closed proceedings unless the parent chooses to have an open hearing. If a parent is not present at the hearing and the hearing proceeds, the hearing will be a closed hearing.

- A. **Open Hearing.** An open hearing is a hearing which anyone from the public may attend. The decision, with the student's first name and last initial, but not the transcript and other materials from the hearing, may be released and made available to the public upon request. On occasion, staff from ODR may attend any due process hearing for observational purposes.
- B. **Closed Hearing.** A closed hearing is one in which the participants are limited to the parent; the student (if the parent desires the student's attendance); the parent's representative; any friends or observers specifically designated by the parent; LEA officials and their representative; witnesses who will be called upon by the parties to give testimony; the Hearing Officer; and the court reporter. On occasion, staff from ODR may attend any due process hearing for observational purposes. The original decision (with identifying information deleted or "redacted") will be released to the parties to the hearing and those persons who must implement the decision.

In a closed hearing, a redacted copy of the decision may be released to the public upon request. Redacted decisions are those with identifying information, or potentially identifying information, removed from the decision to preserve anonymity of the child and family. The redactions do not affect the substantive aspects of the decision.

804. Transcripts

A transcript is a word-for-word report of all of the statements made on the record at a hearing, including all testimony given.

- A. The parent has the right to one free copy of the transcript. That copy will be sent to either the parent or his or her representative.
- B. A party may request that the transcript, including the parents', be in one of the following forms:
 - 1. A printed transcript; or
 - 2. A computer file either on a disk or sent as an e-mail attachment.
- C. A party is not entitled to both a printed copy of the transcript and a computer file of the transcript.
- D. If a parent requires an audiotape version of the transcript in order to understand the transcript, the parent should make that request to ODR prior to the date of the hearing to ensure that the stenographic agency is prepared to provide a tape of the proceedings.

805. Recording at a Hearing

Audio, video, and other electronic recording of the hearing by any person other than the court reporter is not allowed.

806. Accommodations at a Hearing.

- A. At federally or state permitted special education due process hearings referenced in this Manual, ODR will provide a live interpreter, if prior thereto the Hearing Officer is asked for same by a *parent* who is a *party* and has *limited English proficiency*; or
- B. At federally or state permitted special education due process hearings referenced in this Manual, ODR will provide a live interpreter, if it is evident to the Hearing Officer that such assistance is necessary to ensure that a *parent* who is a *party* and has *limited English proficiency* is not disadvantaged.
- C. The term *parent* means, for purposes of this Section 806, the same as provided in Section 105 of this Manual. That is, a natural, adoptive or foster parent of a child, a guardian, an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent.
- D. The term *party* means, for purposes of this Section 806, an individual who, as permitted by the various sections of this Manual as well as relevant law, has properly filed a Due Process Complaint Notice, or other appropriate document for requesting a hearing on behalf of a student.
- E. The term *limited English proficiency* means having a limited ability to read, write, speak or understand English, to the extent that without interpretation services an individual in those circumstances will be unable to meaningfully participate in a special education due process hearing.
- F. Pursuant to the Hearing Officer's authority to manage and conduct the hearing, as provided in this Manual based on the various relevant statutes and regulations, he or she shall make the determinations required under this Section 806.

807. Hearing Location

- A. The hearing must be conducted at a time and place that is reasonably convenient to the parent and student involved.
- B. It is the LEA's responsibility to provide a location for the hearing.
- C. If the parties cannot agree on a location, the Hearing Officer will determine the location of the hearing.
- D. In most instances, the hearing is held in one of the LEA's buildings.

808. Conduct of Hearings

- A. **Authority of the Hearing Officer.** The Hearing Officer regulates all aspects of the hearing process. The Hearing Officer proceeds on the assumption that the parties are ready to proceed with their cases or else due process would not have been requested. The Hearing

Officer is responsible for ensuring that a clear record of the hearing is produced; admitting exhibits into the record; swearing in or supervising the swearing in of witnesses; ruling on procedural matters, objections and other motions; and maintaining order at the hearing. The Hearing Officer will determine the schedule for the day, including breaks for meals or other purposes. The Hearing Officer is required by law to facilitate the prompt resolution of due process matters; accordingly, parties cannot presume that all continuance requests will be granted. *In Re Educational Assignment of J.G., Spec. Educ.Op. 1257 (2002); In Re Educational Assignment of G.R., Spec. Educ. Op. 1301 (2002); In Re Educational Assignment of M.K., Spec. Educ. Op. 1329 (2003); In Re Educational Assignment of A.W., Spec. Educ.Op. 1345 (2003); In Re Educational Assignment of E.R., Spec. Educ. Op. 1405 (2003); In Re Educational Assignment of R.C., Spec. Educ. Op. 1417 (2003).*

- B. Maintaining Order at the Hearing.** The Hearing Officer will ensure that all participants at the hearing, including the parties, witnesses, attorneys, observers, and others who are present, do not become disruptive during the course of the hearing.
1. If a Hearing Officer determines that a person is being disruptive, disrespectful, or acting in an otherwise improper fashion, the Hearing Officer will direct that person to cease the improper conduct.
 2. If the conduct does not stop, the Hearing Officer will note on the record the nature of the conduct and either have the disruptive person leave the room, adjourn the hearing, or suspend the proceedings entirely.
- C. Requests for a Recess.** The Hearing Officer may entertain motions by either party to adjourn or recess the hearing for good cause. If a Hearing Officer grants a motion to adjourn or recess, it must be to a specific date.
- D. Absence of a Witness.** If one of the parties requests a postponement because of the unforeseen absence of a witness, the Hearing Officer will request an offer of proof regarding the relevance of that witness to the proceeding and may, in his or her discretion:
1. Conduct as much of the hearing as possible without that witness and then schedule a subsequent hearing date in order to take testimony from that witness; or
 2. Determine that the testimony is not necessary (because it is either not relevant or will be merely cumulative) and hold the hearing without the testimony of that witness.
- E. Lack of Legal Counsel.** If the parent is not represented by legal counsel, was not previously notified of that right, and does not want to waive that right, then the Hearing Officer may postpone the hearing and, in that case, must set a date for reconvening the hearing allowing reasonable time between the postponement and the new hearing date for that party to obtain counsel. The Hearing Officer has sole discretion in determining what constitutes reasonable time to secure counsel.

809. Procedural Rulings

The Hearing Officer has the authority to make procedural rulings on matters that include, but are not limited to:

- A. Determining the relevancy and admissibility regarding testimony or exhibits;

- B. Limiting testimony and exhibits;
- C. Determining the order in which witnesses will be presented;
- D. Numbering of exhibits presented into evidence; and
- E. Ruling on motions to adjourn, postpone, or dismiss the proceeding.

810. Burden of Proof

- A. In 2005, the United State Supreme Court changed the burden of persuasion, one element of the burden of proof, in due process hearings. In *Schaffer v. Weast*, 546 U.S 49 (2005), the Court held that the burden of persuasion in an administrative proceeding challenging an IEP, is properly placed upon the party seeking relief. In other words, the party who requests the due process hearing has the responsibility to introduce preponderant evidence of his or her position, which did not address which party has the burden of moving forward with the evidence or, simply stated, going first. The Court, however, limited the practical application of this rule to those cases where the evidence on both sides is nearly evenly balanced (“equipoise”), in which case the rule applies. In most cases, one or the other party has usually presented “preponderant evidence”, i.e. more convincing evidence than that of the other party, and the rule therefore does not come into play.
- B. Thus, a Hearing Officer has discretion to change the order of presentation if he or she believes it is warranted. An example is where a LEA seeks to change a student’s placement, and a parent initiates a due process hearing to challenge the change of placement. In that instance, a hearing may be more efficiently conducted by commencing with the LEA’s explanation of the rationale for the change. Parties to a hearing should seek a determination from the Hearing Officer assigned to their dispute regarding the order of presentation in this particular case, which does not, though, change which party has the burden of persuasion under Section 810 (A) above.

811. Settlements

A settlement is an agreement between the parties that one or more of the issues to be raised at a hearing has been resolved. When the parties reach settlement, the Hearing Officer relinquishes jurisdiction.

- A. **Settlements Prior to the Hearing Date.** If a settlement is reached before the hearing date:
 - 1. The party that originally requested the hearing must notify the Hearing Officer that a settlement has been reached and that the request for a hearing is withdrawn.
 - a. That notification must be in writing and sent to the Hearing Officer with a copy to the opposing side and ODR.
 - b. If settlement is reached only a few days prior to a scheduled hearing, the party may notify the Hearing Officer by telephone. The Hearing Officer may require follow up written confirmation of the settlement.
 - 2. Once informed of a settlement and that the requesting party has withdrawn the request for a hearing, the Hearing Officer must dismiss the matter in writing and

cancel the scheduled hearing. The Hearing Officer will notify ODR of the cancellation and dismissal of the case.

- B. Settlements at the Hearing.** If a settlement is reached at the hearing, either before or after the start of the hearing:
1. The party that originally requested the hearing must notify the Hearing Officer that a settlement has been reached and that the request for a hearing is withdrawn.
 2. If the Hearing Officer is informed of the settlement after arriving at the hearing, or during the course of the hearing, the Hearing Officer will state on the record that he or she is relinquishing jurisdiction. The Hearing Officer may, at the request of the parties, and using his or her own discretion, allow the parties to state the terms of the settlement on the record, for their own purposes. The terms of the settlement do not become part of the Hearing Officer's Order.
 3. The Hearing Officer must send a letter dismissing the matter to the parties, their representative, and ODR.
- C. Partial Settlements.** On occasion, the parties are able to reach a settlement on some, but not all, of the issues either prior to convening a hearing or during a hearing.
1. When a partial settlement has been reached, the Hearing Officer should state on the record what issues have been resolved through a settlement and that he or she will not be rendering a decision on those issues.
 2. The Hearing Officer may, at the request of the parties, and using his or her own discretion, allow the parties to state the terms of the settlement on the record, for their own purposes. The terms of the settlement do not become part of the Hearing Officer's Order.
- D. Hearing Officer Involvement in Settlement Discussions.** In order to maintain his or her impartiality at the due process hearing, the Hearing Officer does not participate in any settlement discussions.
1. Because the Hearing Officer does not participate in settlement discussions and because, in most cases, no factual record has been developed, the Hearing Officer cannot approve or disapprove of a settlement.
 2. A settlement cannot be adopted by a Hearing Officer as his or her order and does not become part of a Hearing Officer's decision.
- E. Enforceability of Settlements.** Unless there is a change in circumstances a Settlement agreement is binding on the parties.

Chapter 9 - Exhibits and Witnesses

Evidence at a hearing consists of documentary evidence (i.e., exhibits) and the testimony of witnesses given under oath.

901. Exhibits

- A. Four (4) copies of all exhibits that a party would like to present as evidence at a due process hearing must be brought to the hearing. One (1) copy is used by the Hearing Officer and becomes part of the official record of the hearing; one (1) copy must be provided to the opposing party; one (1) copy is used by the witness; and one (1) copy is kept by the party presenting the exhibit. The original copy of each document should be kept by the party in possession of that document and should not be submitted as an exhibit.
- B. Parent's exhibits should be numbered P-1, P-2, etc. LEA exhibits should be numbered S-1, S-2, etc.
- C. When possible, exhibits should be numbered in chronological order with the earliest exhibit numbered first and the most recent exhibit numbered last. Exhibits do not have to be introduced in the order that they are numbered.
- D. Each page of each exhibit should be numbered. For example, a ten-page exhibit should be numbered using the format "1 of 10" to represent the first of ten pages of a given exhibit, "2 of 10" the second page of ten pages of a given exhibit, etc.
- E. At the conclusion of the hearing, the Hearing Officer will review with the parties the exhibits which were actually used and admitted into the record, and then ensure that the Hearing Officer has copies of all of these exhibits in the proper order to facilitate the prompt review of exhibits by any appellate reviewing body.

902. Witness Testimony

- A. As witnesses are called to testify, the Hearing Officer or a court reporter will ask each witness to swear or affirm that the testimony that he or she is about to give is true and correct. At the discretion of the Hearing Officer, all witnesses may be sworn at one time after opening statements and prior to the taking of a testimony.
- B. The parties may request that anyone with relevant and non-duplicative testimony be allowed to appear as a witness at a due process hearing. The Hearing Officer makes the final determination regarding who will be allowed to give testimony.
- C. The Hearing Officer may direct a witness to answer a question.
- D. If a parent is representing him or herself and is the person questioning witnesses, the parent still has the right to testify at the hearing. The parent may request that his or her testimony be given as a statement under oath, rather than as answers to questions. It is appropriate to have the statement written prior to the hearing. After the parent makes his or her statement for the record, the LEA has the opportunity to cross-examine the parent.

903. The Use of Notes or Other Items to Refresh Memory

A witness may use notes or other items to refresh his or her memory for the purpose of testifying.

- A. If a witness uses notes or other items to refresh his or her memory, the opposing party may:
 - 1. Request to review the notes or other items;
 - 2. Cross-examine the witness on the notes or other items; and
 - 3. Introduce the notes or other items as an exhibit.
- B. If a witness refuses to produce the notes or other items, the opposing party may request that all testimony based on those notes or other items be stricken from the record.

904. The Use of Interpreters and Translators

When an interpreter or translator is used in conjunction with the testimony of a witness, the interpreter or translator must perform his or her duties under oath.

905. Background and Qualifications of Expert Witnesses

- A. If a witness is testifying as an expert and giving a professional opinion as opposed to describing observed facts, information about the witness' credentials, qualifications, experience, and training should be presented. A party can present that information as an exhibit in the form of a resume, if the document has been shared with the other party prior to the hearing in accordance with Section 901 of this Manual. A party must be given the opportunity to ask questions regarding the background and qualifications of a witness.
- B. If sufficient information has not been provided regarding a witness' credentials, qualifications, experience, and training, the Hearing Officer may question the witness about those factors.
- C. The determination of the admissibility of the expert's testimony is within the sole discretion of the Hearing Officer.

906. Questioning Witnesses

- A. In cases where a parent is represented by an attorney, the attorney will be responsible for asking questions to the witnesses.
- B. If a parent is not represented by an attorney, the parent may question the witnesses.

In those cases where a parent is not represented, the parent, as his or her own representative, must separate the role of representative from the role of witness. When acting as a representative, the parent must limit him or herself to asking questions of witnesses, and not providing testimony either through the questions posed to the witness or in response to the witness' answers.

- C. Only a party, a party's attorney, or the Hearing Officer as provided in Section 907, may ask questions of witnesses.

907. Questioning of Witnesses by a Hearing Officer

- A. The Hearing Officer may ask questions of witnesses to clarify his or her understanding of a witness' response or to gain further information to aid in his or her decision.
- B. The Hearing Officer's questions of a witness typically come after both parties have completed their questioning of witnesses, although the Hearing Officer may ask questions at any time throughout the hearing to clarify his or her understanding of the testimony.
- C. When a Hearing Officer asks questions of a witness, he or she will allow both parties the opportunity to ask follow-up questions. The follow-up questions must be directly related to the questions that the Hearing Officer asked and the Hearing Officer will determine the extent of the questioning.

908. Relevant Evidence

- A. A Hearing Officer will allow only evidence that is relevant and material to the issues to be presented at the due process hearing. The Hearing Officer may restrict evidence which is duplicative to evidence already presented, provided there is no reasonable basis for introducing it again, where for example without limitation it is introduced twice as part of the testimony of witnesses from different disciplines.
- B. Where the questions and testimony of a witness are not relevant to the hearing issues, the Hearing Officer has the authority to stop the questioning and testimony, and to direct the attorney and/or witness to limit questions and testimony to the hearing issues. The Hearing Officer has the right to ask the parties for an offer of proof, i.e., a statement explaining why the proposed evidence is necessary.
- C. Testimony given during the hearing by the parent as a witness must be given the same consideration as testimony by other witnesses.

909. Hearsay

Hearsay evidence is testimony repeating a statement made by another individual who is not present to testify at the hearing, or documents introduced without the maker present at the hearing and available for cross-examination.

- A. Although administrative hearings are not required to follow technical rules of evidence, hearsay evidence is subject to objection.
- B. The Hearing Officer may, at his or her discretion, allow hearsay evidence to remain in the record.
- C. Uncorroborated and objected to hearsay evidence may not be relied upon by a Hearing Officer as the sole basis for findings of fact or conclusions of law that are necessary to render a decision.

910. Sequestration of Witnesses

Sequestration of witnesses (the removal of one or more witnesses from the hearing room during the testimony of other witnesses) is typically not done at a due process hearing; however, the Hearing Officer has the discretion to order sequestration of witnesses when appropriate.

911. Witnesses Represented by Counsel

Any witness has the right to have an attorney present to protect his or her rights. This is true even at a closed hearing. However, an attorney who represents a witness and not a party has no right to question witnesses, to present evidence, to object to testimony, or to speak to the Hearing Officer at any time during the hearing. A witness' counsel must confine and direct his or her statements to his client only.

912. Telephone Testimony

- A. Where circumstances dictate the necessity to do so, testimony can be given over the telephone. Typically, telephone testimony is utilized when the witness lives a distance from the hearing or when the witness is a professional such as a physician or psychologist and cannot attend the hearing due to a scheduling conflict.
- B. A request for telephone testimony must be made to the Hearing Officer before the scheduled date for the hearing.
 - 1. The opposing party may object to this type of testimony.
 - 2. It is within the Hearing Officer's discretion to grant or deny the request for telephone testimony.
- C. The telephone testimony must take place during the course of the hearing so that both parties can hear the testimony and have an opportunity to question the witness, and so that the testimony can be recorded on the transcript.

913. Subpoenas

- A. A subpoena is an order by the Hearing Officer compelling the attendance of witnesses or the production of documentary evidence.
- B. Requesting that a witness testify is the responsibility of the party seeking to have that witness testify.
 - 1. If a parent desires LEA personnel to testify at a hearing, the parent should request that individual's attendance from the representative or an administrator of that LEA prior to requesting a subpoena.
 - 2. The parent should be notified by the LEA if any requested person is unwilling or unable to attend. The parent may then request a subpoena from the Hearing Officer.
- C. If a witness refuses a party's request to attend and testify at the hearing, or if an individual or LEA refuses to provide documents for the hearing, a party may ask the Hearing Officer to subpoena the witness and/or document. The party requesting a subpoena must do the following:
 - 1. Send a written request for the subpoena to the Hearing Officer. A copy of that request must be sent to the opposing party;

2. Include in the request a specific statement regarding how the testimony of the witness, or the document requested, is relevant to the issues at the hearing;
 3. Include a statement of the attempts to obtain the witness' cooperation and/or the document, and a statement that the witness has refused to attend and/or has refused to produce the document in question; and
 4. The name, position, and address of the witness or of the individual in control of the requested document.
- D. The Hearing Officer will determine if the presence of the witness is necessary and/or if the document is necessary. If the presence of the witness and/or the document is necessary, the Hearing Officer will issue a subpoena.
- E. If the party requesting a subpoena requires notarization of the subpoena, all requests for subpoenas must be received by the Hearing Officer at least seven (7) business days prior to the hearing.

914. Depositions

A deposition is the testimony of a witness taken outside of a hearing. In the due process hearing context, a deposition may be taken if it is not possible for the witness to testify at the hearing, but such is not to be used for "discovery" as in formal civil litigation.

- A. The representative of each party, or the party if unrepresented, should attend the deposition to examine and cross-examine the witness, as described in Section 801 (E) of this Manual.
- B. A court reporter must be present to record the deposition and shall swear in the witness being deposed.
- C. It is the responsibility of the party requesting the deposition to retain and pay for the court reporter.
- D. Copies of the deposition must be provided to the Hearing Officer and to each party or to the party's representative.
- E. The deposition must be formally introduced into evidence by the party wishing to present the testimony of the deposed witness at the hearing.
- F. If the parties cannot agree on whether a witness should be deposed, the Hearing Officer has the discretion to make a ruling.

915. Hearing Officer Order for Additional Evidence

- A. The Hearing Officer may order that additional evidence be provided by either party or by a witness if he or she feels such would be relevant and helpful in making a decision.
- B. Additional evidence ordered by the Hearing Officer must be entered into the record at a hearing and must be available for review and cross-examination by both parties.

916. Hearing Officer Order for Additional Evaluations

- A. The Hearing Officer may order additional evaluations if he or she believes that there is not sufficient information on which to base a decision.
- B. The hearing should be recessed pending the completion of the ordered evaluations. The Hearing Officer must establish a specific time frame for completing the evaluations and set a specific date to reconvene the hearing.
- C. The results of the ordered evaluation must be entered into the record at a hearing and must be available for review and cross-examination by both parties.
- D. The LEA is responsible for arranging and paying for the ordered evaluations

917. Briefs

The Hearing Officer has sole discretion to determine whether written closing statements, or briefs, are required. Typically, written closing statements or briefs are only required in complicated cases.

Chapter 10 - Hearing Officer Decisions

1001. Justification for Hearing Officer Decisions and Orders

- A. A decision made by a Hearing Officer must be made on substantive grounds, based upon a determination of whether the child received FAPE. In disputes alleging a procedural violation, a Hearing Officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or caused a deprivation of educational benefits.

A Hearing Officer may still order an LEA to comply with procedural requirements even if the Hearing Officer determines that the child received FAPE. The parent may still file a Complaint with the Bureau of Special Education regarding procedural violations.

- B. For all Decisions written by a Hearing Officer, the decision must be supported by a preponderance of the evidence. Preponderance of the evidence is defined as evidence that is of greater weight, or more convincing, than the evidence which is offered in opposition to it. The evidence relied on in support of a decision may be contested. However, if it outweighs the evidence to the contrary, it may serve as the basis for the decision.
- C. A primary responsibility of the Hearing Officer is to make a determination regarding the relative weight to be given evidence presented by the parties. The weight accorded a witness' testimony is based on the person's credibility, background, and qualifications. The Hearing Officer has sole discretion in determining the credibility of witnesses and is obligated to do so.
- D. The Hearing Officer's decision must be based on the evidence, both the documents and the testimony given under oath, received on the record during the hearing. The Hearing Officer's decision cannot be based on information presented during opening statements or closing statements because such statements are not testimony given under oath.
- E. Uncorroborated and objected to hearsay evidence may not be relied upon by a Hearing Officer.
- F. The Hearing Officer's decision must include findings of fact, discussion, and conclusions of law. The decision should indicate the applicable burden of proof and discuss the basis for the Hearing Officer's credibility determinations and ultimate conclusions in the matter.

1002. Timelines

- A. For IDEA claims, the decision should be written within forty-five (45) days of commencement of the applicable time period (i.e. after expiration of the thirty-day (30) period after due process is requested, or after expiration of the thirty-day (30) period after the amended Due Process Complaint Notice is filed) unless extensions have been granted. For all other decisions, the decision should be written and mailed no later than forty-five (45) calendar days after the request for the hearing unless extensions have been granted.
- B. When a decision cannot be written and mailed within the required time period, it must be written and mailed within fifteen (15) calendar days of the close of the record

- C. If the Hearing Officer permits the parties to file written closing statements, the fifteen (15) day time frame will commence after the Hearing Officer has received the final transcript, the written closing statement, or the time frame for accepting written closing statements has passed. The record is then considered to be closed. The Hearing Officer determines the date that the record is closed.

1003. Distribution of the Hearing Officer Decision

- A. After the decision is written, one (1) copy is to be sent by certified mail, return receipt requested, to each party and to the legal representative of each party.
- B. In the alternative, the parties may elect to receive the decision as an email attachment. If the parties elect to receive the decision via email, a hard copy will not be sent to the parties by the Hearing Officer. The decision will be deemed to have been received by the parties, for purposes of calculating appeal timelines, as of the date the email was sent.
- C. If an unrepresented parent did not attend the hearing, in addition to sending the decision by certified mail, a copy of the decision must be sent to the parent by regular mail.

1004. Implementation of the Decision

- A. The Pennsylvania Department of Education, Bureau of Special Education, monitors the implementation of Hearing Officer decisions when the Hearing Officer has ordered the LEA to take some form of action in an IDEA case.
- B. At the end of the appeal period, the LEA will return a signed assurance form to ODR verifying that the Hearing Officer decision has been implemented. At that time the ODR Case Manager will contact the parent. If the parent disagrees with the assurance of the LEA, ODR will notify the Bureau of Special Education for informal follow-up to the LEA. Neither ODR nor the Hearing Officer makes a determination as to whether an LEA is in compliance with a hearing officer decision, nor does ODR or the Hearing Officer interpret such decisions.
- C. In addition to Bureau of Special Education notification by ODR, if the parent believes that a Hearing Officer decision has not been fully implemented, the parent may file a formal Complaint with the Bureau of Special Education. A Complaint Packet may be obtained by calling the Special Education ConsultLine at 800-879-2301 (Voice) or TTY Users: PA 711. A Due Process Complaint Notice should not be filed when the only issue is the alleged failure of the educational agency to implement a Hearing Officer decision. It is the Bureau of Special Education, and not a Hearing Officer, who has jurisdiction over this issue.
- C. The Hearing Officer and ODR do not participate in the process of assuring implementation of the decision.
- D. Oversight of gifted education and implementation of a hearing officer decision is with the Bureau of Teaching and Learning.

Chapter 11 - Appeals

1101. Appeal of Hearing Officer Decision

Either the parent or LEA who disagrees with the findings and decision of the Hearing Officer has the right to file an appeal. A party filing an appeal to state or federal court has ninety (90) calendar days from the date of the Hearing Officer decision in which to file such an appeal to state or federal court.

- A. **Student with a disability (school age); Eligible young child (early intervention/preschool); Protected handicapped student (Section 504/Chapter 15).**
When the issues in the due process hearing are regarding a student with a disability, within ninety (90) calendar days from the date of the Hearing Officer Decision, it may be appealed either to the Pennsylvania Commonwealth Court or the appropriate United States District Court. The party filing an appeal is encouraged to seek legal counsel to ascertain any filing requirements/procedures and to determine the appropriate court with which to file an appeal. Because providing such constitutes legal advice, this information cannot be provided by ODR. *In Re Educational Assignment of T. C., Spec. Educ. Op. 1385 (2003).*
- B. **Gifted Student.** When the issues in the due process are regarding a child's status and/or claims as a gifted student, within thirty (30) calendar days from the date of the Hearing Officer Decision, it may be appealed to Pennsylvania Commonwealth Court. An appeal to the United States District Court is not available when the sole issues in the appeal relate to giftedness. The party filing an appeal is encouraged to seek legal counsel to ascertain any appeal deadlines with which to file an appeal. Because providing such constitutes legal advice, this information cannot be provided by ODR

1102. Completion of Assurance Forms by LEA

The circumstances of the case dictate whether an assurance form must be completed by the LEA, and the timelines for doing so.

- A. **The Hearing Officer Decision Pertains to Early Intervention; School-Age; Section 504/Chapter 15 Issues**

A Hearing Officer Decision regarding early intervention issues may be appealed to state or federal court. Any appeal must be filed in state or federal court within ninety (90) calendar days of the Hearing Officer Decision.

Until the expiration of the ninety-day time frame, the LEA is not obligated to implement the Hearing Officer's Decision. At the expiration of the appeal period, if no appeal has been taken, the LEA is expected to comply with the Hearing Officer's Decision. The LEA Superintendent, or Charter School Chief Executive Officer, has sixty (60) calendar days after the expiration of the ninety-day appeal period in which to complete, sign, and return the assurance form to the ODR Case Manager.

If an appeal is taken from the Hearing Officer Decision, the LEA is not required to implement the Decision unless directed to do so by the judiciary.

- B. **The Hearing Officer Decision Pertains to Gifted Issues**

Questions regarding compliance by LEAs concerning gifted education should be addressed to The Department of Education's Bureau of Teaching and Learning Support or the Bureau of Special Education's Gifted Liaison, Pennsylvania Department of Education, 333 Market Street, Harrisburg, PA 17126-0333.

C. The Hearing Officer Decision Does Not Order the LEA to Take Action

If the LEA is not ordered to take any action, an assurance form does not need to be completed by the LEA.

D. Pendency

Except with regard to discipline cases (addressed in the Procedural Safeguards Notice), during the pendency of due process hearings and subsequent appeals, unless the State or LEA and the parents agree otherwise, the student must remain in his or her then-current educational placement, or, if applying for initial admission to a public school, must, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

Chapter 12 - Questions of Jurisdiction and Res Judicata

1201. Questions of Jurisdiction

The Hearing Officer, based on materials received from ODR prior to the hearing, discussions with the parties during a conference call, or after listening to opening statements, may raise the question of whether or not the issue(s) to be heard at the hearing are within his or her jurisdiction. Both parties, either before the start of the hearing or at the hearing may file motions to dismiss some or all of the issues based on questions of jurisdiction. Jurisdictional challenges may occur if the Hearing Officer is not empowered to address the issue being presented, or if the issue is subject to the doctrine of *res judicata*. Res judicata is a legal principle that denies the same parties the right to relitigate an issue on which a final decision has been rendered in a previous litigation. In other words, a party only has one opportunity to argue a case in any one court, unless an appeal is filed.

Examples of *res judicata*:

- A. The LEA prevailed at the prior hearing and all four of the following apply to the present hearing: the LEA's program and/or placement is the same; no new circumstances have arisen which might result in a reversal or modification of the earlier decision; there has been no change in law, regulation, or policy in the interim between the hearings which might require reversal or modification of the prior decision; and there is no manifest error on the record of the previous hearing. If the prior decision was appealed and no manifest error was found in the record by the Appeals Panel, the record is assumed to be free from manifest error and cannot be reviewed by a Hearing Officer; or
- B. The LEA did not prevail at the prior hearing and all five of the following apply to the present hearing: the LEA's program and/or placement is the same; the student's program is the same; no new material is introduced; there has been no change in law; and there is no manifest error.
- C. The passage of a significant period of time since the previous hearing may itself raise new issues. For example, a child of thirteen (13) might not have needed a transition program, but would as a fourteen (14) year old.

When questions of jurisdiction are raised, the Hearing Officer:

- A. Must hold a hearing to consider the question of jurisdiction. *In Re Educational Assignment of T.L., Spec. Educ. Op. 1167 (2001); In Re Educational Assignment of J.D., Spec. Educ. Op. 1176 (2001); In Re Educational Assignment of E.H., Spec. Educ. Op. 1291 (2002)*. Once the record has been opened, opening statements have been given in order to establish the specific issues that the hearing has been requested for, and any necessary factual evidence has been entered into the record, the Hearing Officer has the authority to determine how to proceed.
- B. Has the authority to accept oral argument or written briefs on the question of jurisdiction. The decision whether or not to allow oral argument and/or written briefs is at the sole discretion of the Hearing Officer.
- C. The Hearing Officer may then:
 1. Rule on the issue of jurisdiction at the hearing;

2. Postpone/adjourn the hearing until a specific date to allow time to receive briefs and render a decision on the question of jurisdiction or *res judicata*; or
 3. Continue with the hearing and rule on the question of jurisdiction or *res judicata* as part of his or her decision.
- D. When a Hearing Officer dismisses some or all of the issues because of a jurisdictional challenge or *res judicata*, the Hearing Officer must send to both parties and their representatives a written order dismissing the issues in question. That order may be appealed following the appeals procedures applicable to the specific type of hearing in question.

Chapter 13 - Hearing Procedures Related to the Disciplinary Exclusion of a Student with a Disability

1301. The Purpose of Expedited Due Process Hearings

An expedited due process hearing is held when:

- A. A parent requests a hearing to dispute an LEA's determination that a student's behavior was not a manifestation of the student's disability; or
- B. A parent requests a hearing to dispute a disciplinary exclusion that constitutes a change in educational placement. A change in educational placement has occurred if an exclusion is longer than ten (10) consecutive school days, or if the student is excluded for more than fifteen (15) school days in one school year. Any removal from school of a student who is identified as mentally retarded is by law a change in educational placement, except if a disciplinary event involved weapons, drugs, or bodily injury; or
- C. A parent requests a hearing to dispute an interim alternative educational placement of no more than forty-five (45) school days ordered by LEA personnel; or
- D. A LEA requests a hearing to establish that it is dangerous for a student to remain in the student's current educational placement.

1302. Timelines

- A. Within seven (7) days of the request for a hearing, a resolution session/meeting must occur, and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of receipt of the hearing request.
- B. All expedited due process hearings must occur within twenty (20) school days after the initial request for a hearing.
- C. A Hearing Officer must make a determination within ten (10) school days after the hearing.
- D. Placement continues in the interim alternative educational setting pending the Hearing Officer Decision or until the expiration of the time period of removal, which is no more than forty-five (45) school days.

1303. Disclosure of Evidence

In general, the disclosure of evidence requirements found in Chapter 9 of this Manual apply to expedited hearings, except that disclosure may occur up to two (2) business days prior to a hearing (rather than the standard five (5) business days). Business days are the days of the work week, i.e., Monday through Friday. Weekend days (Saturday and Sunday) and holidays listed on ODR's website are excluded from the calculation of business days.

1304. Limitation of Issues

Expedited hearings are limited to disagreements detailed in Section 1301. While there may be other issues that one or both parties wish to have addressed at a due process hearing, those issues cannot be addressed at the expedited hearing. If either party wishes to raise issues not covered in Section 1301, that party must request a separate due process hearing.

1305. Applicability of Mediation

If the student would otherwise be entitled to request for Mediation, this service is available to the extent that it does not prevent the completion of an expedited hearing within the required timelines.

Chapter 14 - Hearing Procedures for a Student who may be entitled to Extended School Year Services (ESY)

1401. Eligibility for Extended School Year Services (ESY)

A student with a disability is eligible for extended school year (ESY) services when those services are necessary for the provision of FAPE. In ESY disputes such as those listed below, any due process hearing requested must also be expedited.

1402. The Purpose of Expedited Due Process Hearings

An expedited due process hearing is held when:

- A. A parent requests a hearing to dispute a LEA's determination that a student with a disability is not eligible for extended school year services.
- B. A parent requests a hearing to dispute the specific types of extended school year services to be provided to a student with a disability.

1403. Timelines

All ESY expedited due process hearings must occur and a Hearing Officer decision must be issued within thirty (30) school days of the date the hearing is requested.

1404. Disclosure

In general, the disclosure of evidence requirements found in Chapter 9 of this Manual apply to expedited hearings, except that disclosure may occur up to two (2) business days prior to a hearing (rather than the standard five (5) business days). Business days are the days of the work week, i.e., Monday through Friday. Weekend days (Saturday and Sunday) and certain holidays listed on ODR's website are excluded from the calculation of business days.

1405. Limitation of Issues

Expedited hearings are limited to disagreements detailed in Section 1402 above. While there may be other issues that one or both parties wish to have addressed at a due process hearing, those issues cannot be addressed at the expedited hearing. If either party wishes to raise issues beyond extended school year, that party must request a separate due process hearing.

1406. Applicability of Mediation

If the student would otherwise be entitled to request for Mediation, this service is available to the extent that it does not prevent the completion of an expedited hearing within the required timelines.

Chapter 15 - Hearing Procedures for a Charter School Student

1501. Gifted Students

Charter schools are not responsible for the evaluation of or identification of gifted students, or for the provision of gifted education. Because of that, a due process hearing is not available to a charter school student unless that student is a student with a disability, a protected handicapped student, or a student who has been discriminated against because of a handicap and the issues raised at the hearing address those aspects of the student and are not related to the student being a gifted student.

Chapter 16 - Obtaining Information Regarding a Hearing for a Child Under the Age of Three in Need of Early Intervention

1601. Description

Pennsylvania's early intervention program was developed in order to provide services to young children with developmental needs and their families. The Pennsylvania Department of Public Welfare, Office of Child Development and Early Learning (DPW/OCDEL) provides statewide supervision and support to early intervention programs for children from birth until three (3) years old. For children who are at least three (3) years old, but who are less than the age of beginners (i.e., a child who enters a school district's lowest elementary school grade that is above kindergarten), see Chapter 1, Section 103 of this Manual. Locally, county mental health/mental retardation programs are responsible for coordinating early intervention services for children from birth until three (3) years old.

1602. Dispute Resolution

When a parent disagrees with the early intervention program that is being provided, the parent may request mediation or a due process hearing through DPW/OCDEL or the local county mental health/mental retardation program, or for further information with respect to requesting such a hearing contact ODR directly.

1603. Contact Information

- A. **Departments of Education and Public Welfare, Office of Child Development and Early Learning.** Information regarding mediation and due process hearings may be obtained from DPW/OCDEL at the following address, phone number, and website:

Pennsylvania Departments of Education and Public Welfare,
Office of Child Development and Early Learning
333 Market Street, 6th Floor
Harrisburg, PA 17126
Phone: 717-346-9320

Website: www.dpw.state.pa.us / www.pde.state.pa.us

- B. **County Mental Health/Mental Retardation Programs.** County mental health/mental retardation programs can also provide information regarding due process hearings. The address and telephone number for a county mental health/mental retardation program may be found in the local telephone book.
- C. **ODR.** Information may also be obtained from ODR.

ODR
6340 Flank Drive
Harrisburg, PA 17112-2764
Phone: 800-222-3353 or 717-541-4960
TTY Users: PA Relay 711
Fax: 717-657-5983
<http://odr.pattan.net>

Chapter 17 - Hearing Officers

1701. Responsibilities

- A. The Hearing Officer is solely responsible for hearing testimony, receiving documentary evidence, and guiding the hearing process so as to conform to applicable state and federal laws and regulations.
- B. The Hearing Officer is solely responsible for deciding the issues in the due process hearing and writing a decision.

1702. Qualifications

- A. Impartial Hearing Officers are proficient in special education and/or special education law. The qualifications of hearing officers are available on the ODR website or by calling ODR.
- B. At a minimum, a hearing officer must not be an employee of the SEA or LEA that is involved in the education or care of the child; or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.
- C. An employee of a public agency which is directly involved in the education or care of the student may not conduct a hearing, nor may any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a Hearing Officer.

1703. Disqualification

- A. A Hearing Officer shall disqualify (recuse) him or herself from presiding over a hearing if any of the following circumstances apply:
 - 1. The Hearing Officer has a financial interest in the present hearing, e.g., the Hearing Officer is the owner of or partner in an approved private school that may be considered for the child's educational placement; or
 - 2. The Hearing Officer has an evident conflict because of his or her prior involvement with the student, e.g., the Hearing Officer has previously evaluated the student; or
 - 3. The Hearing Officer has a personal or professional interest that would conflict with his or her objectivity in the hearing.
 - 4. A Hearing Officer may elect to recuse him or herself from a pending due process proceeding if, in his or her opinion, the litigants have improperly provided information to him or her outside the presence of the opposing party which goes beyond procedural matters and affects the substance of the case. This constitutes ex parte communication and ODR will, upon request from the Hearing Officer, reassign the matter to a new Hearing Officer.
- B. A Hearing Officer need not disqualify him or herself simply because of a pre-hearing relationship with one of the parties, their counsel, or a witness unless one of the conditions stated in Section 1801 (A) above exists. If a pre-hearing relationship exists, the Hearing Officer should state on the record:

1. The existence of such a relationship and that the relationship in itself does not constitute grounds for his or her disqualification; and
 2. That in his or her opinion, the relationship does not hinder his or her ability to be fair and impartial in the hearing and in rendering a decision.
- C. Either party may request that a Hearing Officer disqualify him or herself if that party believes that any of the circumstances presented in Section 1803 (A) above exist in accordance with the following:
1. A request for disqualification must be made to the Hearing Officer. When practical, that request should be made in writing prior to the hearing.
 2. Only the Hearing Officer may grant a request for disqualification.
 3. Neither ODR nor any other agency has the authority to disqualify a Hearing Officer.
 4. At the conclusion of the proceeding, the party who requested that the Hearing Officer recuse him or herself may appeal the Hearing Officer's refusal to do so.

1704. Ex Parte Communication

- A. The Hearing Officer should not discuss a case with one party without the presence of the other party before, during, or after the hearing.
- B. Such contact, which is known as ex parte communication, has been held to constitute a violation of due process.
- C. If the Hearing Officer receives any unsolicited written communication, report, evaluation, or similar document about the case that is not simultaneously provided to the other party, he or she may return it to the sender, noting that it is improper communication, discard it, or discuss the matter with both parties together. Parties should further be aware that where such documents are provided to the Hearing Officer in a manner not constituting ex parte communication, that doing so may violate other legal limitations outlined in various portions of this Manual, i.e., provided the Hearing Officer with evidence prior to the hearing.
- D. The Hearing Officer should not, without the knowledge and participation of the parties to the hearing, discuss the case off the record with any witness who testified at the hearing or with any person who may have information relevant to the hearing.
- E. A Hearing Officer may discuss a case with another Hearing Officer not involved in the case, or in a consultative manner with ODR, neither of which alters or shifts that Hearing Officer's jurisdiction over nor responsibility to conduct the hearing.

Chapter 18 - Requesting Documents from the Office for Dispute Resolution (ODR)

[Reserved]

Chapter 19 - Forms

1901. Department of Public Welfare Due Process Request Form

1902. Due Process Complaint Notice

1903. Mediation Request Form

1904. IEP Facilitation From

Office for Dispute Resolution

IEP FACILITATION REQUEST FORM

Must be completed and signed by Parent(s) and LEA (*Local Education Agency*)

Our last IEP team meeting was on (date) _____

An IEP meeting is currently scheduled for _____
(DATE) (TIME)

Concerns about the IEP (to be completed by the parent(s)):

Concerns about the IEP (to be completed by the district):

By requesting IEP Facilitation and signing this request form, I agree and understand that the Facilitator will not be called as a witness in future legal proceedings.

Please Print

LEA Name

Student's Name

LEA Contact Person

Student's Date of Birth Exceptionality

Address

Parent/Guardian Name(s)

City State Zip

Address

Phone () _____

City State Zip

Fax # () _____

Phone: Home () _____

Work () _____

Date _____

Date _____

LEA Administrator's Signature

Parent/Guardian's Signature

(Continued on next page)
IEP FACILITATION REQUEST FORM (continued)

The IEP Facilitation will be held at the following address:

Site Location: _____

Address: _____

City: _____ State: _____ Zip: _____

LEA Contact Person: _____

Phone: _____

**Please note that what takes place at this meeting (session) may not be confidential *unless* both parties agree in writing that it is, and you should contact a lawyer to ensure that under your particular circumstances such is enforceable as well as properly written to achieve the desired result, since ODR can not and does not provide legal advice of any nature.

Instructions

1. Fill out the information that pertains to you and sign the form.
2. Send this form to the other party to be completed and signed. When everyone has completed and signed the form, it can be submitted to ODR by fax or mail.
3. If parents and the school district fill out this form at the same time, the school district will forward the form to ODR.
4. Once IEP Facilitation is requested and mutually agreed upon, ODR will assign a trained Facilitator.
5. The school district remains responsible to give to the parents the proper invitation to the IEP meeting, including the purpose, time, location, and list of who has been invited.
6. For additional information, contact ODR at (800) 222-3353; fax at (717) 657-5983; or mail inquiries to:

**Office of Dispute Resolution
6340 Flank Drive
Harrisburg, PA 17112-2764**

Due Process Complaint Notice

Today's Date: _____

Requested by: Parent LEA

Name of Person Completing this Notice: _____

Relationship to Student: _____

Phone: _____

It is your responsibility to notify the opposing party of your request for due process by sending to them a copy of this Due Process Complaint Notice at the same time it is filed with the Office for Dispute Resolution.

Has the opposing party been provided a copy of this request? Yes No

If you require special accommodations to participate in the due process hearing, you must contact the LEA with your special needs.

Student Information

Last Name: _____ First Name: _____ Date of Birth: _____ Gender: M F

Exceptionality(ies) _____

LEA (Local Education Agency): _____ School Building Student Attends: _____

Parent(s) Residing with Student

Last Name: _____ First Name: _____ Relationship: Mother Father Guardian
Home Phone: _____ Cell Phone: _____ Work Phone: _____ Fax: _____ Email: _____

Preferred method of written correspondence: U.S. Mail Email Fax

Last Name: _____ First Name: _____ Relationship: Mother Father Guardian
Home Phone: _____ Cell Phone: _____ Work Phone: _____ Fax: _____ Email: _____

Preferred method of written correspondence: U.S. Mail Email Fax

Parent/Student Address: _____

Parent Attorney: _____ Attorney Phone: _____
Address: _____ Attorney Email: _____
Attorney Fax : _____

Parent Not Residing with Student

Last Name: _____ First Name: _____ Relationship: Mother Father
Home Phone: _____ Cell Phone: _____ Work Phone: _____ Fax: _____ Email: _____

Preferred method of written correspondence: U.S. Mail Email Fax

Address: _____
Parent Attorney: _____ Attorney Phone: _____
Address: _____ Attorney Email: _____
Attorney Fax : _____

Local Education Agency (LEA) Information

I. LEA Contact

Last Name: _____ First Name: _____ Position Title: _____

Cell Phone: _____ Work Phone: _____ Fax: _____ Email: _____

Address: _____

II. Superintendent/CEO

Last Name: _____ First Name: _____ Position Title: _____

Address: _____ Phone: _____

III. LEA Attorney

Address: _____ Attorney Phone: _____
Attorney Email: _____
Attorney Fax: _____

IV. The Due Process Hearing will be held at the following address:

(Building Name, Address and Room Number/Name – to be completed by the LEA)

Information About the Due Process Complaint Notice

A. Does your issue pertain to a Hearing Officer Decision which has not been implemented? Yes No
(If yes, the Bureau of Special Education will be notified, and will investigate the matter. Due Process is not available when the issue pertains to non-implementation of a Hearing Officer Decision.)

B. Is this a request for an expedited hearing? Yes No
If yes, please check one of the reasons below:
 Disciplinary (drugs/weapons) ESY (Extended School Year)
Check here if Student is in the ESY Target Group

C. The law states that a party may not have a due process hearing until a Due Process Complaint Notice is filed, which meets all of the legal requirements. An opposing party may challenge the sufficiency of the Due Process Complaint Notice if it is lacking sufficient information. You must describe the nature of the problem giving rise to this request for due process, including as many facts to support your position as possible. You must also provide a proposed resolution of the problem to the extent known and available to you. You may attach a separate sheet of paper if you need more space:

Nature of the problem:

Nature of the problem: *(continued)*

Proposed Resolution:

If you know the opposing side's position on this matter, you may provide it here, although it is not required by law:

- D.** Prior to a due process hearing taking place, the law requires the parties to participate in a Resolution Session, unless both sides agree in writing to waive this requirement. Please complete the following information:
1. A Resolution Meeting to discuss these issues is scheduled for: _____ (Date)
 2. A Resolution Meeting was held on: _____ (Date)
 3. Participation in the Resolution Meeting was waived by both parents and the LEA in writing on: _____(Date)
 4. In lieu of a Resolution Meeting, I am requesting mediation*.

* If #4 is checked, the ODR Mediation Case Manager will be in contact with the parties.

Please **MAIL** or **FAX** a copy of this form to the opposing side and to the Office for Dispute Resolution:

Office for Dispute Resolution
6340 Flank Drive
Harrisburg PA 17112-2764
Phones:
 717-541-4960
 800-222-3353 (PA only)
 PA Relay 711 (TTY users)

 717-657-5983 (Fax)

You will be contacted by a Case Manager from ODR upon receipt of this Due Process Complaint Notice.

Additional information about due process is available by accessing the website at **odr.pattan.net** and the **Special Education Dispute Resolution Manual**.

Parents may also contact the *Special Education ConsultLine*, a Parent Help Line, for information on procedural safeguards and due process: 800-879-2301.

Office for Dispute Resolution

MEDIATION REQUEST FORM

Mediation requested by: Parent School District (LEA) Date: _____

Student's Name: _____ Date of Birth: _____

Male Female Student's Exceptionality: _____

Student's School Building/Placement: _____

School District (LEA): _____

Superintendent: _____

School District Contact Person: _____

Title: _____ Phone No.: _____ Ext: _____

Cell No.: _____ Fax No.: _____ Email: _____

Address: _____

Mother: _____
(First name) (Last name)

Father: _____
(First name) (Last name)

Parent Address: _____

Home Phone: _____

Mother (work phone): _____ Father (work phone): _____

Mother (cell phone): _____ Father (cell phone): _____

Mother (email): _____ Father (email): _____

Mother Fax: _____ Father Fax: _____

Parent Name (if not living with student): _____

Parent Address (if not living with student): _____

INFORMATION ABOUT THIS MEDIATION:

Please provide a brief description of the dispute below in order to facilitate the scheduling of the mediation.

Parent Issues: _____

School District (LEA) Issues: _____

Has a Due Process Hearing also been requested for this student? NO YES

DEPARTMENT OF PUBLIC WELFARE
Early Intervention Program

Due Process Request

(Completed by County Office)

A Due Process Hearing Request Form is submitted to the ODR within 3 calendar days from the date of written request. Documentation such as a copy of the IFSP (draft accepted) or evaluation, etc. shall be attached to this form. Submit copies of request to parents(s) and OMR Regional Office. Maintain a file copy in MH/MR Office.

Date of Written Request: _____ Name of Child: _____

Date of Birth: _____ Exceptionality: _____

County MH/MR Office: _____

County MH/MR Contact Person: _____

Title: _____

Address: _____

Phone: _____ Cell Phone: _____ Fax: _____

County Legal Representative (if applicable): _____

Address: _____

Phone: _____ Cell Phone: _____ Fax: _____

Schedule Hearing with: County MH/MR Person or Legal Representative

Parent(s) Name(s): _____

Address: _____

Home Phone: _____ Cell Phone: _____ Work Phone: _____

Parents' representative: (Insert the name or "None") _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Schedule Hearing with: Parents or Representative

Reason for Hearing: _____

Time of Hearing Preferred: 9:00 a.m. – 12:00 p.m. 1:00 – 4:00 p.m. 5:00 - 7:00 p.m.

Type of Hearing: Open to the Public Closed (participants only)

Language Preferred by the parents: _____

Alternative Mode of Communication: _____

County MH/MR Office has provided a site for the hearing accessible for individuals with disabilities at the following address:

Please enclose a map and/or directions to the site of the hearing.

Form Completed by: _____ (Print name)

Phone: _____

Date: _____

Please submit this Form and documentation to:

Office for Dispute Resolution
6340 Flank Drive
Harrisburg PA 17112-2764
Phones:
717-541-4960
800-222-3353 (PA only)
PA Relay 711 (TTY Users)

717-657-5983 (Fax)