

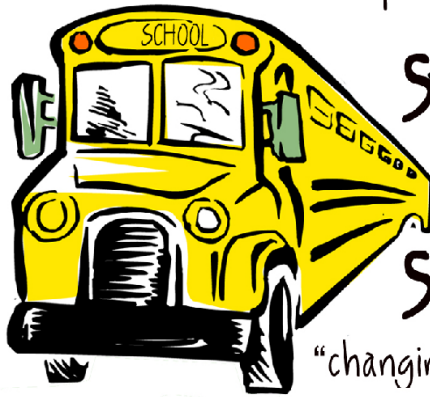
DUE PROCESS IN SPECIAL EDUCATION

GUIDELINES

FOR

PARENTS AND SCHOOL ADMINISTRATORS

oklahoma state department of education



special
education
services

"changing times in special education"

and

SPECIAL EDUCATION RESOLUTION CENTER
OKLAHOMA STATE UNIVERSITY

REVISED 2010

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**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SERVICES**

**DUE PROCESS IN SPECIAL EDUCATION
GUIDELINES
FOR
PARENTS AND SCHOOL ADMINISTRATORS
2010**

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by the
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I. DUE PROCESS HEARINGS.

A. What is a Due Process Complaint?

A Due Process Complaint is a form of alternative dispute resolution. It is an informal administrative hearing on a special education issue that is not agreed upon between a student's parent (or an adult student), and the school district. An impartial Hearing Officer is assigned to hear testimony, receive evidence and render a decision. Before filing a due process complaint notice, parties are encouraged to use less formal means of resolving their differences, such as parent conference or mediation, whenever possible.

1. Who may file a Due Process Complaint?

A due process complaint may be filed by the local educational agency (LEA) or the parent (or an adult student). 34 CFR § 300.307. A parent is defined to include a natural, adoptive, or foster parent, a guardian, an individual acting in the place of a natural or adoptive parent (including a grandparent, step parent, or other relative) with whom the child lives, an individual who is legally responsible for the child's welfare, or a surrogate parent. 34 CFR § 300.30. A student 18 years or older may file the request on their own. 34 CFR § 300.507, 34 CFR 300.520(a)(1)(ii)

2. What is the subject matter of a due process complaint?

A Due Process Complaint involves the proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability or the provision of a free and appropriate public education (FAPE) to the child. 34 CFR § 300.507(a)

The due process complaint must allege a violation that occurred not more than two (2) years before the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 34 CFR § 300.507(a)(2) The two-year timeline shall not apply to a parent if that parent was prevented from requesting the hearing due to (i) specific misrepresentations by the LEA that it had resolved the problem forming the basis of the complaint; or (ii) the LEA's withholding of information from the parent that was required under IDEA Part B to be provided to the parent. 34 CFR § 300.511(f)

3. What are the general time frames for a hearing?

When a party desires to request a due process hearing, the party must file a Due Process Complaint Notice. This Notice states all the issues that are to be discussed at the hearing and other information regarding the student. Upon receiving the Notice, the parties enter into a Resolution Session time period of 30 calendar days. If all matters are resolved in the Resolution Session, then the parties enter into a legally binding agreement and the matter does not proceed to hearing. If any issue remains at the end of the resolution time period, the due process hearing time frame begins to run and a decision on all remaining issues must be rendered within 45 calendar days or upon the proper extension of the time by the Hearing Officer.

The Resolution Session is mandatory unless both parties waive the time period in writing. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the

30-day period, request that the hearing officer dismiss the parent's or adult student's due process complaint. If the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's or adult student's due process complaint notice or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline. 34 CFR § 300.510(b)(4-5).

Expedited hearings have a different timeline. See question 4 below.. 34 CFR § 300.515

4. **Can the hearing be EXPEDITED?**

The timeframe of a hearing may be expedited on certain issues. The parent of a child with a disability who disagrees with any decision regarding placement in an alternative setting or the decision regarding a manifestation determination, or an LEA believes maintaining the current placement of the child is substantially likely to result in injury to the child or to another, may request an expedited hearing. An expedited hearing must be arranged and is subject to a resolution period. The LEA must schedule a resolution session within seven (7) calendar days of the receipt of the due process complaint notice. The due process timeline begins after 15 calendar days on all issues that have not been resolved by the parties. If issues remain after the resolution period, then a hearing must occur within 20 school days of the date the hearing. While the decision is pending, the student must remain in the alternative setting, unless the time limit for the placement expires. NO EXTENSION may be granted in an expedited request. 34 CFR § 300.532 (c)

Expedited hearings are subject to a resolution period unless the parents and the LEA agree in writing to waive the resolution meeting or agree to mediation. A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint and the due process hearing may proceed unless the matter is resolved within fifteen (15) days of the receipt of the due process complaint notice. 34 CFR § 300.532(c)(3)

5. **How can a due process complaint be filed?**

Oklahoma has procedures for a parent, adult student, or a school district to request a due process hearing. A school district may request a hearing to resolve a dispute by filing a *Due Process Complaint Notice – LEA* or an *EXPEDITED Due Process Complaint Notice – LEA*. Parents and adult students may request a hearing by filing a *Due Process Complaint Notice – Parent* or an *EXPEDITED Due Process Complaint Notice – Parent*. These forms are available on the Oklahoma State Department of Education Web site at <www.sde.state.ok.us>.

This form is sent to: Oklahoma State Department of Education
Attn: Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

6. **What information must be contained in a request for a due process hearing?**

The due process hearing request must contain the following:

- a. The name of the child, the address of the residence of the child (or available contact information in the case of a homeless child) and the name of the school the child is attending.

- b. In the case of a homeless child or youth [within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(2))], available contact information for the child and the name of the school the child is attending.
 - c. A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem.
 - d. A proposed resolution of the problem to the extent known and available to the party at the time. 34 CFR § 300.508(b)
7. **What are the timelines for actions related to a request for a due process hearing?**

- a. If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten (10) calendar days of receiving the due process complaint, send to the parent a response that must include:
 - 1) An explanation of why the agency proposed or refused to take the action raised in the due process complaint.
 - 2) A description of other options that 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 agency used as the basis for the proposed or refused action.
 - 4) A description of the other factors that are relevant to the agency's proposed or refused action.
- b. Except as provided above in paragraph (a), the non-complaining party must, within ten (10) calendar days of receiving the due process complaint notice, send to the other party a response that specifically addresses the issues raised in the request for a due process complaint.
- c. Within 15 calendar days of receiving the request for a due process hearing, the party receiving the request may notify the Hearing Officer and assert that the Due Process Request Notice is not sufficient (does not contain the information in question number 6, above). Within five (5) calendar days of receipt of the notification, the Hearing Officer must make a determination on the face of the notice of whether it meets the statutory requirements and must immediately notify the parties in writing of such determination. 34 CFR § 300.508

8. **Who is an impartial Hearing Officer?**

A Hearing Officer conducting a hearing must, **at a minimum:**

- a. Not be an employee of the SEA or the LEA 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.

- b. Possess knowledge of, and the ability to understand, the provisions of the Individuals with Disabilities Education Act (IDEA); federal and state regulations pertaining to IDEA; and legal interpretations of IDEA by federal and state courts.
- c. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.
- d. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. [20 U.S.C. §1415(f)(3)(A)]
34 CFR § 300.511(c)

9. **What issues can be raised during the hearing?**

Only issues raised in the Due Process Complaint can be addressed in the hearing unless the other party agrees otherwise. [20 U.S.C. § (f)(3)(B)] 34 CFR § 300.511(d)

10. **What about issues in dispute not mentioned in the due process complaint notice?**

If there are issues in dispute that are not mentioned in the due process complaint notice, then a party requesting the due process has three options:

- a. The party may ask the other party to agree in writing that the issues can be raised during the hearing.
- b. The party may seek to amend its request.
- c. The party may file another due process complaint to address the other issues.
34 CFR § 300.508(d)(3)

11. **How can a party amend the Due Process Request Notice?**

A party may amend its due process complaint notice only if:

- a. The other party consents in writing to such amendment. The other party must then be given the opportunity to resolve the complaint through another Resolution Session, or
- b. The Hearing Officer grants permission, except that the Hearing Officer may only grant such permission not later than five (5) calendar days before a due process hearing begins. 34 CFR § 300.508(d)(3)

If a party files an amended notice, the timelines for the due process hearing restarts at the time the party files the amended notice, including the timeline for the resolution session.

12. **Are there IDEA rules about the Hearing Officer's decision?**

Subject to 20 U.S.C. § 1415(f)(3)(E)(ii), a decision made by a Hearing Officer must be made on substantive grounds based on a determination of whether the child received FAPE.

In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive FAPE **only if** the procedural inadequacies:

- a. Impeded the child's right to a FAPE.
- b. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child.
- c. Caused a deprivation of educational benefits. 34 CFR § 300.513

Rule of construction – Nothing in this section shall be construed to preclude a Hearing Officer from ordering an LEA to comply with procedural requirements under 34 CFR § 300.536..

Rule of construction – Nothing in 20 U.S.C. § 1415(f)(3)(E) shall be construed to affect the right of a parent to file a complaint with the SEA.

13. **What are my rights during a hearing?**

- a. Any party to a hearing or appeal has the following rights:
 - 1) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
 - 2) To present evidence and confront, cross-examine, and compel the attendance of witnesses.
 - 3) To obtain a written or, at the option of the parent, electronic, verbatim record of the hearing.
 - 4) To obtain a written or, at the option of the parents, electronic, verbatim findings of fact and decisions.
 - 5) To prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five (5) business days before the commencement of the hearing. The Hearing Officer will determine the disclosure timeline for an expedited due process hearing.
 - 6) To ask for a Due Process Hearing Appeal review if you are in disagreement with the due process hearing decision or the expedited due process hearing decision.
 - 7) To know the role of the Hearing Officer, which includes the responsibility to hear both sides and render a decision in keeping with all appropriate state and federal regulations.
- b. Parents also have the following rights:
 - 1) To have the child who is the subject of the hearing present.
 - 2) To request an open hearing before the public, if desired. (Note: unless requested, the hearing will be a closed to preserve confidentiality.)

- 3) To have the record of the hearing and the findings of fact and hearing decision provided at no cost. 34 CFR § 300.512

14. **What if a party is not satisfied with the results of the hearing?**

Any party aggrieved by the findings and decision rendered in a due process hearing may appeal the findings and decision to the SEA within 30 calendar days of the date of the hearing decision. An impartial Appeal Officer will be assigned to review the case. The officer conducting such review must make an independent decision upon completion of such review. The reviewing officer must defer to the Hearing Officer's findings based on credibility judgments unless the nontestimonial evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion. [*O'Toole v. Olathe*, 144 F.3d 692, 699 (10th Cir. 1998)] 34 CFR § 300.514

A decision by the Appeal Officer shall be final unless the party brings a civil action in a court of competent jurisdiction. Any such civil action must be brought within 90 calendar days from the date of the hearing appeal decision. 34 CFR § 300.516

15. **What about attorneys' fees?**

Under the IDEA, attorneys' fees are never a proper subject of a due process hearing. There are circumstances where **parents and/or school districts** would be **responsible to pay the attorneys' fees for the other side**.

- a. **School District.** In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

- 1) To a prevailing party who is an LEA or an SEA **against the attorney of a parent** who files a request for a due process hearing or subsequent cause of action that is frivolous, unreasonable or without foundation, or against the attorney of a parent who continues to litigate after the litigation clearly became frivolous, unreasonable or without foundation, **or**
- 2) To a prevailing SEA or LEA **against the attorney of a parent, or against the parent**, if the parent's request for a due process hearing 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.

- b. **Parent.** In any action or proceeding brought under 20 U.S.C. §1415, the court, at its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability. 34 CFR § 300.517

16. **How are fee awards determined?**

Fees awarded are determined by a court of law of competent jurisdiction. A Hearing Officer may not award fees. Fees awarded shall be based on hourly rates prevailing in the community where the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection. 34 CFR § 300.517(c)

17. **Are there some services of an attorney for which fees cannot be awarded?**

- a. General. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. §1415 for services performed subsequent to the time of a written offer of settlement to a parent if:
 - 1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) calendar days before the proceeding begins.
 - 2) The offer is not accepted within ten (10) calendar days.
 - 3) The court finds that the relief finally obtained by the parent is not more favorable to the parent than the offer of settlement.

An award of attorneys' fees and related costs, however, may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

- b. IEP Team Meetings. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for mediation. Reimbursement of attorneys' fees shall not be permitted for services rendered regarding a mediation that is conducted prior to filing a due process hearing.
- c. Opportunity to Resolve Complaints (Resolution Sessions). A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action, or an administrative hearing or judicial action for purposes of attorneys' fee awards. 34 CFR § 300.517

18. Are there circumstances under which a Court could reduce the amount of attorneys' fees awarded to a party?

The court shall reduce, accordingly, the amount of the attorneys' fees awarded whenever the court finds that:

- a. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy.
- b. 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.
- c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
- d. The attorney representing the parent did not provide to the LEA the appropriate information in the notice of the due process complaint.

None of these reductions in attorneys' fees above applies to any action or proceeding if the court finds that the other party unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

34 CFR § 300.517

19. **Are there alternatives to filing a due process complaint?**

Besides a due process complaint, two other mechanisms for alternative dispute resolution are available. Rather than file a due process complaint, any party may file a formal complaint with the SEA (Oklahoma State Department of Education – Special Education Services) or may request mediation to resolve a dispute.

- a. Formal complaint. A formal complaint must be in writing and submitted to the SEA. A formal complaint is appropriate when a party is seeking systemic relief. A form for filing a formal complaint may be found at the Web site for the SEA, <www.sde.state.ok.us> Click on Special Education Services and then on Forms.
- b. Mediation. Mediation is an effective way to help individuals who disagree, discuss the problem and come to a mutually acceptable resolution. The mediator does not judge or decide, but instead helps the parties find their own common ground. Mediation is not a substitute for legal help. No legal advice will be given by the mediator. There is no charge to either party. Participants retain their rights to due process hearings, court action, or filing complaints with appropriate agencies. The mediation sessions may be held within two weeks after a request for mediation has been submitted. Mediation may not delay due process timelines.

A parent or a school district representative may call the local Early Settlement Center to ask that a mediation session be arranged. Call toll-free: **(800) 42-OASIS (800-426-2747)** or **(405) 271-6302** for the name and number of your local Early Settlement Center.

B. Filing a Due Process Complaint Notice.

1. If the parent, parent representative or adult student files a ***Due Process Complaint Notice – Parent*** or an ***EXPEDITED Due Process Complaint Notice – Parent***, a signed written request for a hearing must be sent to the local school administrator, with a copy forwarded to the SEA, stating all of the following:
 - a. The student’s name.
 - b. The student’s date of birth.
 - c. The address of the residence of the student and parent and the name of the school the child is attending. In the case of a homeless child, [within the meaning of 42 U.S.C. § 11434a(2)] available contact information for the child and the name of the school the child is attending.
 - d. A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problems.
 - e. A proposed resolution of the problem to the extent known and available to the party at the time.

Forms for this purpose are available from the SEA Web site to assist parties in filing a ***Due Process Complaint Notice – Parent***, or an ***EXPEDITED Due Process Complaint Notice –***

Parent. (See Appendix B, or <www.sde.state.ok.us>. Click on **Special Education Services** and then on **Forms**.)

At the same time, a copy of this Notice must be mailed to:

Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Boulevard, Room 412
Oklahoma City, Oklahoma 73105-4599

for assignment of an impartial Hearing Officer.

2. If the LEA requests a *Due Process Complaint Notice – LEA* or an *EXPEDITED Due Process Complaint Notice – LEA*, a signed written request for a hearing must be sent to the parent or adult student, and a copy forwarded to the SEA stating all of the following:
 - a. The student’s name.
 - b. The address of the residence of the student and parent and the name of the school the child is attending. In the case of a homeless child [within the meaning of 42 §11434a(2)] available contact information for the child and the name of the school the child is attending.
 - c. A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problems.
 - d. A proposed resolution of the problem to the extent known and available to the party at the time.

Forms for this purpose are available from the SEA Web site to assist parties in filing a *Due Process Complaint Notice – Parent*, or an *EXPEDITED Due Process Complaint Notice – Parent*. (See Appendix B, or <www.sde.state.ok.us> Click on **Special Education Services** and then on **Forms**.)

II. PREHEARING PROCEDURES.

A. Local educational Agency's (School) Responsibility.

1. Correspondence to Parent.

a. Rights.

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents upon receipt of the first due process complaint under 34 CFR § 300.507 *in a school year*. A detailed description of all rights and procedural safeguards is set forth in Appendix B.

b. Independent Evaluation.

Each public agency shall provide to parent, on request, information about how and where an Independent Educational Evaluation (IEE) may be obtained at public expense. The public agency must set criteria under which an IEE can be obtained at public expense, including the location of the evaluation and the qualifications of the examiner. That criterion must be the same as the criteria the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE.

Other than establishing these criteria, a public agency may not impose conditions or timelines related to a parent obtaining an IEE at public expense. When enforcing IEE criteria, the public agency must allow parent the opportunity to select a qualified evaluator that meets agency criteria even if that evaluator is not on a list of potential evaluators established by the public agency. The public agency must also allow parent the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet agency criteria.

If a parent elects to obtain an IEE by an evaluator not on the public agency's list of evaluators, the public agency may initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the public agency criteria applicable for IEEs or there is not justification for selecting an evaluator that does not meet agency criteria. If the public agency chooses not to initiate a due process hearing, it must ensure that the parent is reimbursed for the evaluation. (Letter to Parker – OSEP, Feb. 20, 2004)

c. Legal Counsel.

Any party to a hearing has the right to be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent files a due process complaint. There are agencies in some areas from which legal counsel may be obtained for those unable to pay. The Oklahoma Policies and Procedures Manual for Special Education, Parents' Rights in Special Education, contains a list of resources for parents and schools. See also the last page of these guidelines. Legal representation is not a requirement for a hearing.

d. Access to Records.

Parents or their representatives, upon request, shall have the right and shall be given the opportunity, at any reasonable time, to inspect and review all education records regarding the identification, evaluation, educational placement or the provision of FAPE of a child or youth with a disability. The LEA may charge a reasonable fee for copies of such records, if the fee does not effectively prevent the parent from exercising their right to inspect and review such records.

e. Evidence and Witnesses.

The parties shall have the opportunity to present evidence and confront, cross-examine, and compel the attendance of witnesses. The parent shall pay the expense of any witnesses asked to testify at the hearing by the parent who are not officers, employees or agents of the LEA or SEA.

f. Status of Child During Procedures.

During the pendency of any proceedings conducted pursuant to this section, unless the SEA or LEA and the parent otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parent, be placed in the public school program until all such proceedings have been completed.

34 CFR § 300.518

If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to continue services that the child has been receiving under Part C.

Exception: When an appeal under 20 U.S.C. §1415(k)(3) has been requested by either the parent or LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period set by the LEA, whichever occurs first, unless the parent and the SEA or LEA agree otherwise. 34 CFR § 300.532

g. Notification.

The parties to the hearing will be notified by the SEA at least ten (10) calendar days prior to the hearing of the identity of the Hearing Officer and of the date and time of the hearing.

h. Timelines.

A decision by an appointed, qualified Hearing Officer shall be issued within 45 days from the end of the resolution period, or other event which acts to end the resolution period, unless this timeline is properly extended by the assigned Hearing Officer. (See Extensions, Section IV)

i. Communication with Hearing Officers.

Communication with the appointed Hearing Officer by either party without the presence of the other party is prohibited. If any communication is necessary to the hearing, such communication shall be reduced to writing and copies thereof shall be sent to all involved parties including the SEA. Communication should be limited to matters related to the hearing process. Both parties are prohibited from addressing substantive issues with the hearing officer which are properly reserved for the hearing.

2. **Mediation.**

It is recommended that, upon receipt of the initial due process complaint, the LEA contact the person filing the complaint and suggest mediation to resolve the disagreement.

3. **Extension of time.**

After the parties receive notification of a Hearing Officer's identity, any request for an extension of time must be directed to the Hearing Officer. (See Extensions, Section IV)

4. **Other LEA Requirements.**

- a. The LEA must exchange with the parent, or their representative, no later than five (5) business days before the commencement of the hearing, the following:
 - 1) Copies of all evidence with each exhibit numbered.
 - 2) A list identifying each numbered exhibit.
 - 3) A list of all witnesses who may be called to testify.
 - 4) All evaluations completed by that date, and recommendations based on the offering party's evaluation, that the party intends to use at the hearing.

No evidence, exhibit or witness may be used at the hearing unless provided to the other party within the time required in section (a) above, unless the other party agrees. 34 CFR § 300.512

- b. The LEA must provide a surrogate parent to represent a child when required. If the child is represented by a surrogate parent, such information concerning the surrogate parent shall be introduced into the record of the hearing by the LEA including information leading to the assignment and appointment of the child's particular surrogate parent. 34 CFR § 300.519
- c. The LEA must notify the SEA if an interpreter will be needed. The LEA must pay the costs for an interpreter.
- d. The LEA must provide for the appearance of appropriate LEA personnel for testimony at the hearing, as determined by the LEA or requested by the parent, at no cost to the parent.
- e. The LEA must assure that the hearing location is in readiness, accessible and that it is reasonably convenient to the parent and child involved, and that all parties and the Hearing Officer are timely notified regarding the location of the hearing.
- f. The LEA must arrange for a court reporter to transcribe the hearing. The LEA will pay the costs of transcription.
- g. The LEA must follow all proper timelines.

- h. If it is necessary to subpoena witnesses and/or records, the parties must request and/or submit subpoenas to the Hearing Officer as soon as possible, but no later than ten (10) days prior to the hearing. (See Appendix B)
- i. Upon appointment of the Hearing Officer by the SEA, the parties must make any challenges concerning the impartiality of the Hearing Officer in writing immediately to the SEA.
 - 1) If the SEA determines the challenge is valid, a new Hearing Officer will be appointed.
 - 2) If the SEA determines the challenge is not valid, no new Hearing Officer will be appointed.
 - 3) Once the hearing begins, the Hearing Officer cannot be removed; however, any objections may be entered into the hearing record.

B. Parent's/Representative's Responsibility.

1. Parents are encouraged to participate in the resolution session and/or mediation with the LEA. If resolution of the issue occurs at this time, a signed cancellation should be sent to the SEA. The person(s) filing the due process complaint, or that person's representative, must sign to cancel the complaint (See Appendix B), or otherwise request, in writing, that the complaint be withdrawn.
2. Parents must continue to send the child to school in compliance with any applicable compulsory attendance law. If the complaint involves an application for admission to public school, the child, with the consent of the parent, must be placed in the public school program until the completion of the proceedings.
3. Parent must exchange with the LEA, or its representative, no later than five (5) business days before the hearing begins the following:
 - a. Copies of all evidence with each exhibit numbered.
 - b. A list identifying each numbered exhibit.
 - c. A list of witnesses who may be called to testify. Parent must list all witnesses, including LEA personnel, whom they want to testify. Even if that witness appears on the other party's list, all witnesses for each party must be listed.
 - d. All evaluations completed by that date and recommendations based on the offering party's evaluation the party intends to use at the hearing.
4. Parent must notify the LEA if an interpreter (deaf or native language), or other disability accommodation, is needed at least ten (10) days prior to the commencement of the hearing.
5. Parent must decide if the hearing will be an open or closed hearing. Since a hearing will involve confidential information, only the parent(s) can make this decision. The parent must sign a written statement requesting an open hearing (See Appendix B). The parent

may decide whether the child in question attends the hearing. Without a signed consent, a hearing will be closed.

6. If it is necessary to subpoena witnesses and/or records, the parties must submit a request and/or submit subpoenas to the Hearing Officer as soon as possible, but no later than ten (10) calendar days prior to the commencement of the hearing (See Appendix B).
7. Upon appointment of the Hearing Officer by the SEA, make any challenges concerning the impartiality of the Hearing Officer in writing immediately to the SEA.
 - a. If the SEA finds that the reasons for the questioning of impartiality are valid, a new Hearing Officer will be appointed.
 - b. If the SEA determines the Hearing Officer is impartial, no new Hearing Officer will be appointed.
 - c. At the hearing, the Hearing Officer cannot be removed. However, any objections may be entered into the hearing record.

C. State Educational Agency's Responsibility.

1. Upon the receipt of a written request for a due process hearing that meets all submission requirements, the SEA will notify both parties of:
 - a. A date and time for the hearing.
 - b. The SEA will identify the Hearing Officer at least ten (10) calendar days prior to the commencement of the hearing. The SEA will ask the Hearing Officer, before assignment, if any reason exists which would affect the Hearing Officer's ability to serve as an impartial officer.
2. The SEA will provide, at public expense, appropriate SEA personnel for evidence and testimony as requested by the LEA or parent by subpoena.
3. The SEA will provide a list of interpreters for the deaf or interpreters fluent in the primary language spoken in the child's home, if requested.
4. Upon written request, the SEA will provide trained SEA personnel to act for consultation and/or technical assistance.

D. Hearing Officer Responsibility.

1. **Accept assignment of a hearing.** The Hearing Officer is assigned on a rotational basis from a list of impartial officers. Before assignment, the Hearing Officer considers whether or not there is a conflict which would prevent a fair and impartial review of the dispute. If there is no conflict of which the Hearing Officer is aware, then the Hearing Officer will accept the case. A vita showing the qualifications of the Hearing Officer and contact information shall be sent to each party to the Due Process Hearing.

2. **Conduct a Scheduling Conference with the parties.** Shortly after assignment is accepted, the Hearing Officer will contact the parties to the hearing and arrange for a scheduling conference. The purpose of this conference is to determine the date the Respondent will be responding to the Complaint Notice and providing prior written notice as required by law. The Hearing Officer will also identify the date on which the parties have set the Resolution Session. The Hearing Officer will set, in advance, the date for the prehearing conference (in case the matter is not resolved during the Resolution Session). The Hearing Officer will inquire if both parties have been made aware that mediation is available as an alternate form of dispute resolution.

During this conference, the hearing officer will remind the parties of important information, including, but not limited to:

- a. Ex parte communications with the Hearing Officer are not permitted.
- b. Best procedures for contacting the Hearing Officer.
- c. The SEA serves in the capacity of “court clerk.” Copies of all motions, correspondence between the parties and the Hearing Officer, etc., should be copied to the SEA.
- d. Timelines for requesting the issuance of any subpoena.
- e. Procedures for appropriately requesting an extension of time.
- f. Any other issue relevant to the matter.

At the end of the scheduling conference, the Hearing Officer will reduce the information discussed at the scheduling conference to writing and enter an Order for appropriate case management. Any variance from the Order must be approved by the Hearing Officer in writing.

3. **Receive appropriate notices, motions and requests.** The Hearing Officer will receive any Notice of Lack of Sufficiency to the Due Process Complaint Notice and will render a decision on sufficiency within five (5) calendar days of receiving the Notice. The Hearing Officer will rule on any other pertinent motions filed in connection with the hearing.
4. **Conduct a Prehearing Conference prior to the time of the hearing.** The Hearing Officer will set the date for the prehearing conference. The prehearing conference may be scheduled in person or over the telephone. The LEA will arrange for a court reporter to transcribe the discussion during the prehearing conference.
5. **Set the time and dates of hearing.**
 - a. **Regular working hours.** All hearings will be scheduled during the regular working hours in effect for the SEA (8:00 a.m. to 4:30 p.m., Monday through Friday). Requests for scheduling a hearing other than during these regular working hours should be in writing and be received by the assigned Hearing Officer at least five (5) calendar days prior to the commencement of the hearing. This written request must include justification why scheduling of the hearing during regular working hours is not possible for the requesting party and whether or not the other party agrees to the times proposed. The Hearing Officer may require additional and corroborating evidence, as deemed

necessary by the Hearing Officer, to substantiate the requesting party's justification. The Hearing Officer assigned will have final authority with respect to any adjustments in the scheduling of the hearing.

- b. Requests for extension of time must comply with notice requirements and show good cause.
 - c. Procedures for requesting an extension of time are found in Section IV.
6. **Issue subpoenas at the request of either party.** A Hearing Officer may issue a subpoena for witnesses or records. The request for the subpoena and/or the subpoena must be received by the Hearing Officer as soon as possible, but no later than ten (10) calendar days prior to the commencement of the hearing. The Hearing Officer may request additional information to determine if issuing the subpoena is appropriate.
7. **Correspond and receive correspondence with the parties for the orderly administration of the matter.** Once the Hearing Officer is assigned to a case, communications with the Hearing Officer should be in written form. Contact information is located on the Hearing Officer vita. Any additional information regarding contact with the Hearing Officer may be discussed during the scheduling conference. Any personal communication with the Hearing Officer regarding the hearing issues is forbidden. Personal communication with the Hearing Officer by one party without the presence of the other is known as *ex parte* communication and is prohibited.

The Hearing Officer may receive correspondence that is specifically addressed to the Hearing Officer for the orderly administration of the matter. Such correspondence might include a Request for Extension of Time, Notice of Lack of Sufficiency, Motions, etc. **Hearing Officers shall not be copied on correspondence between the parties.** Correspondence may occur between the parties which is not appropriate to send to the Hearing Officer.

All Hearing Officers have e-mail and fax contact information. Communication through mail, e-mail and/or by fax is permitted. A copy of all correspondence between a hearing officer and a party should be sent to the SEA.

III. **MEDIATION.** 34 CFR § 300.506

- A. The Oklahoma State Department of Education, Special Education Services (OSDE-SES) encourages resolution of disputes between parents and educators concerning the education of children and youth with disabilities through informal means, including mediation.
- B. Mediation is an important alternative system for resolution of disputes under the IDEA. In order for mediation to be effective, it must be an attractive alternative to both public agencies and parents. It must be an impartial system which brings the proper parties into a confidential discussion of the issues and allows for a legally binding agreement that resolves the dispute.
- C. The LEA must make mediation available whenever a due process hearing is requested. Mediation may be requested by either party but must be attended by both parties. The parties involved may or may not have a representative at the mediation; however, those persons attending should have the designated authority to make decisions that bind the party they represent.
- D. Mediation is a voluntary process of resolving disputes with the assistance of an outside third party. There is no cost to either party. The OSDE-SES has contracted to provide mediation at no costs to the parties. A qualified and impartial mediator assists the communication and problem solving of participants in arriving at resolutions, but does not render decisions their behalf. The mediators have received special training and are certified by the Director of the Administrative Office of the Courts. They are experienced in mediation and have received additional training in laws and regulations relating to the issues involved in the provision of special education and related services.
- E. Mediation is scheduled in a timely manner, usually within two weeks of the request. The location of the mediation will be convenient to the parties.
- F. If resolution is reached, then the parties to the mediation will execute a legally binding agreement. The agreement must:
 - 1. State the terms of the resolution.
 - 2. State that all discussion that occurred during the mediation process shall be *confidential* and *may not be used as evidence* in any subsequent due process hearing or civil proceeding.
 - 3. Be signed by both parents (or adult student) and a representative of the agency who has the authority to bind such agency.
 - 4. Be enforceable in any State Court of competent jurisdiction or in a Federal District Court of the United States.

Whether or not a resolution is reached, discussion that occurs during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. (What happens in mediation stays in mediation.)

- G. Participation in mediation is voluntary, either party may refuse to participate. Mediation may not be used by one party to delay or deny a parent's right to a due process hearing or any other right given the party under the IDEA.

IV. **REQUEST FOR EXTENSION OF TIME.** 34 CFR § 300.152(b)

Procedures for requesting an extension of time in a due process hearing are as follows:

- A. Requests for extensions of time should be made in writing and delivered to the Hearing Officer at least five (5) calendar days prior to the commencement of hearing.
- B. There are valid reasons for either party to request a specific extension of time. They include:
 1. Need for additional time to secure new evidence.
 2. Conflicting schedules of either or both parties.
 3. Additional time needed to secure resolution.
 4. Other justifiable circumstances approved by the Hearing Officer.
- C. If the parties disagree concerning the postponement, the assigned Hearing Officer will make the decision.
- D. If the notice requirements are met and specific good cause is shown, granting specific extensions of time rests in the discretion of the Hearing Officer. The Hearing Officer shall provide written notice to all parties of any specific extension of time so granted and state the reasons for extension. A request to extend time must:
 1. Be filed prior to the due date.
 2. Be mailed, faxed or e-mailed to the Hearing Officer and opposing counsel.
 3. Include the following information:
 - a. The date the applicant wishes to extend.
 - b. The specific reason why, with due diligence, it is impossible to meet the deadline or other basis for the request.
 - c. The amount of time requested, with the request limited to the minimum time necessary to overcome the cause for delay.
 - d. Whether there have been prior delays or extensions granted.
 - e. Whether the opposing party or counsel agrees or objects to the request for the extension.
- E. Whenever possible, requests for extensions of a scheduled hearing should be made in writing and delivered to the Hearing Officer at least five (5) calendar days prior to the commencement of the hearing. In an emergency situation, an oral request meeting the above requirements subsequently reduced to writing may be approved.
- F. If the time limits have been extended so that the Hearing or Appeal Officer's decision will be rendered beyond the time limits, the Hearing or Appeal Officer must render a final decision within 20 calendar days of final submission by the parties. The Hearing or Appeal Officer may

not extend the time for submission of a final decision in this circumstance without prior approval of the parties or granting an opportunity for the parties to object to the extension. Upon hearing any objection, the Hearing Officer will notify the parties and the SEA, in writing, of the decision regarding the extension, the reasons for the decision, and the date certain on which the final decision will be rendered.

- G. The Hearing Officer will not grant requests for an extension of the decision timeline in an expedited due process hearing. A written decision in an expedited due process hearing must be mailed to the parties within ten (10) school days after the completion of the hearing.

V. **NONAPPEARANCE GUIDELINES.**

In the event one of the parties is not present at the hearing, and as long as notification procedures have been adhered to, the hearing may proceed. Proof shall be entered into the record that the absent party had proper and required notice of the hearing. The Hearing Officer may decide to proceed with the hearing based upon the evidence presented or to reconvene the hearing.

VI. **QUALIFICATIONS OF HEARING AND APPEAL OFFICERS: SPECIAL EDUCATION DUE PROCESS HEARINGS.** 34 CFR § 300.511(c)

It is exceedingly difficult to specify the entire constellation of characteristics that must exist to ensure effective Hearing and Appeal Officers. The Oklahoma State Department of Education has specified the basic qualifications in terms of the skills and knowledge base that an individual must possess to function in this capacity. The following criteria shall be considered in selecting Hearing or Appeal Officers.

A Hearing or Appeal Officer must possess knowledge, and the ability to understand, the following areas:

A. Special Education.

1. Knowledge of the characteristics and needs of children and youth with disabilities.
2. A knowledge of special education terminology and concepts such as:
 - a. Free, appropriate, public education (FAPE).
 - b. Least restrictive environment (LRE).
 - c. Individualized Education Program (IEP).
 - d. Nondiscriminatory testing.
3. Knowledge of basic special education techniques and best practices regarding instruction and assessment.

B. Procedural Safeguards.

1. Possess knowledge of, and the ability to understand, the basic principles of due process, including the regulations which implement the *Individuals with Disabilities Education Act* and the *Guidelines for Parents and School Administrators: Due Process in Special Education*.
2. Possess knowledge and ability to conduct hearing in accordance with appropriate, standard legal practice, including, but not limited to: the Hearing and Appeal Officer's authority, role, and responsibilities in conducting the due process procedure.
3. Possess knowledge of, and ability to understand, the provisions of the IDEA; federal and state regulations pertaining to the IDEA; and legal interpretations of the IDEA by federal and state courts.

4. Possess knowledge and ability to render and write decisions in accordance with appropriate standard legal practice.

C. Personal Qualifications. 34 CFR § 300.511(c)

1. All Hearing and Appeal Officers assigned by the SEA are expected to have the ability and experience necessary to weigh evidence and testimony presented and to make decisions in keeping with the evidence and testimony.
2. All Hearing and Appeal Officers are expected to remain impartial in discharging their responsibilities at all times. If this is not possible, all Hearing and Appeal Officers have the responsibility to inform the SEA immediately.
3. All Hearing and Appeal Officers are expected to conduct hearings in a professional manner in accordance with established procedure, write decisions in a clear and concise manner based on law, and possess sufficient time to devote to these activities.
4. No individual who is an official or employee of a LEA will be assigned as a Hearing or Appeal Officer. No attorney who currently represents parents or school districts or who, within recent years, has represented parents or school districts, will be assigned as a Hearing Officer.
5. All Hearing and Appeal Officers will possess at least a law degree or a minimum of a Master's degree in education, special education, psychology, or any related field. There is a preference for law degrees. All Appeal Officers will have met the minimum training standards required of Hearing Officers and will have served in that capacity for at least two years in Oklahoma.

The following minimum training standards are currently in effect:

1. Formal Group Training: Participation in at least two formal group training sessions, conducted or approved by the SEA, is mandatory for all Hearing and Appeal Officers and trainees. Ad hoc group training sessions will be called as necessary. The SEA reserves the right to require any Hearing or Appeal Officer, or Hearing Officer trainee, to attend any additional training sessions as deemed necessary by the SEA. All formal mandatory training sessions conducted by the SEA will be presented by impartial consultants. Failure to follow established regulations and/or procedures shall result in corrective action or dismissal as determined by the SEA.
2. Observations: All Hearing Officer Trainees are expected to observe as many hearings as necessary to ensure familiarity with the due process procedures and the authority and role of the Hearing Officer. Hearing and Appeal Officers may also continue to observe hearings as deemed appropriate by the Oklahoma State Department of Education. Mock hearings or the use of training video tapes or DVDs may be used to meet this standard.
3. Personalized Individual Training: All Hearing and Appeal Officers and trainees will receive personalized training from the SEA consistent with their academic and professional backgrounds. Training and information updates will be disseminated to all Hearing and Appeal Officers and trainees as conditions warrant. Personalized training by the SEA is available to all Hearing and Appeal Officers and trainees on an ongoing basis and will be

provided as deemed necessary by the SEA. Work experience will be evaluated on an individual basis.

All inquiries regarding these standards should be forwarded to the Oklahoma State Department of Education, Special Education Services.

VII. **GUIDELINES FOR SETTING UP THE DUE PROCESS HEARING.** 34 CFR § 300.181

- A. The Hearing Officer's responsibility is to maintain a professional atmosphere and to ensure that the proceedings are not abused so that each party may present its evidence and testimony in a fair and impartial manner. The Hearing Officer has the authority for complete control of the hearing.
- B. Setting: The hearing shall provide both parties with the opportunity to be heard, to present their evidence and testimony, and to confront and cross-examine witnesses.
 - 1. The hearing room should be of an appropriate size to accommodate all members of both parties and be fully accessible. In the case of an open hearing, the room must be large enough to provide adequate seating for the public.
 - 2. An accessible second room must be available for sequestering the witnesses.
 - 3. In order to conduct the hearing in a productive atmosphere, consideration should be given to appropriate seating, table space to accommodate the Hearing Officer and both parties (three tables preferred), noise control, temperature, etc.
- C. Witnesses.
 - 1. All witnesses shall be sequestered in open and closed hearings at all times. After testimony, witnesses may be excused by the Hearing Officer, if both parties agree that no further testimony is needed.
 - 2. In certain instances, the parties or their representatives may wish to investigate a witness's background to obtain information regarding credentials, qualification and training. The Hearing Officer will determine whether or not background information is necessary to bring into the record. In most cases, determination that the teacher is certified to serve his/her position by the SEA is sufficient. The Hearing Officer will need to keep the focus on the appropriateness of education for the child and may curtail interrogation which is not designed toward that goal. The Hearing Officer has the authority to limit introduction of documents or questioning of witnesses determined to be unnecessary, redundant or irrelevant to issues contained in the due process hearing complaint.
 - 3. A hearing may be rescheduled at the request of any party upon a showing that a necessary witness is unable to attend at the scheduled time due to uncontrollable circumstances.
 - 4. Each party must submit to the other party a list of all witnesses that may give testimony during the hearing at least five (5) business days prior to the commencement of the hearing.
 - a. No witnesses will be allowed to testify who do not appear on the appropriate list, unless agreed to by both parties or unless the witness is providing only rebuttal testimony.
 - b. Each party must list their witnesses, even if the witness is listed on the other party's list. Neither party's list should solely contain the listing: All witnesses called by [the other side].

5. The LEA will make arrangements for LEA personnel to appear as witnesses (those persons on the LEA's and parent's lists).
6. Parent's witnesses, other than LEA personnel, will be notified or subpoenaed by the parent or their representative.
7. Witnesses from the SEA may appear by subpoena to testify in the matter.

D. Evidence. 34 CFR § 300.181

1. Each party must submit to the other party a list of all exhibits that may be used during the hearing at least five (5) business days prior to the commencement of the hearing date, along with copies of each exhibit attached and appropriately marked. No exhibit may be used which is not listed on the exhibit list, unless agreed to by the other party.
2. Exhibits (any document to be placed in evidence) should be marked essentially as follows:

School Exhibit 1 (SE 1) or
Parent Exhibit 2 (PE 2)

3. Prior to the hearing, four (4) complete sets of evidence must be prepared. One for each of the following:

The Hearing Officer
The witness
The other party
The party's own use

It is recommended that this documentary evidence be indexed in a notebook or other binding method for easy access. Copies for the Hearing Officer, the witness, and the party's own use should be brought to the hearing.

4. Copies of all written reports used as evidence must be submitted to the Hearing Officer and will become part of the record. Reports submitted by parent, not based on factual data but simply a statement of the child's behavior, can be accepted as evidence. Evidence given by parents, nonprofessionals, and others associated with the child may be considered.
5. If information obtained from a taped recording is to be submitted as evidence, it should be provided in the form of a typed transcript. Videotapes may also be submitted as evidence. Tape recordings with transcriptions and videotapes must be properly numbered as evidence and provided to the other party at least five business days prior to the commencement of the hearing.
6. Questions concerning evidence should pertain only to the document itself and its admissibility. Objections may be offered to its admissibility, after which the Hearing Officer will state whether or not the document is received into evidence and why.
7. Strict rules of evidence are not applicable to due process hearings. Any evidence deemed of probative value may be considered by the Hearing Officer during the course of the hearing.

8. Additional evidence may be admitted at the hearing (without five (5) business days notice), if the other party agrees.
9. The guidelines for preparing for an expedited due process hearing are the same as for the due process hearing.

E. Attendance at a Due Process Hearing or an Expedited Due Process Hearing. 34 CFR § 300.181

The Hearing Officer shall exclude all persons from a due process hearing or an expedited due process hearing other than the parties, appropriate representatives of the parties, SEA representatives, any identified expert witness, a testifying witness, Hearing Officer trainees, and the court reporter, unless the hearing is open to the public.

F. Conference: Prehearing for a Due Process Hearing or an Expedited Due Process Hearing.

1. The purpose of the prehearing conference is to prepare for the due process hearing.
2. The prehearing conference may take place in person or by teleconference. If the prehearing conference is conducted by teleconference, then Hearing Officer may request an official record be made of the teleconference by a court reporter.
3. At the prehearing conference, the Hearing Officer will meet with the parent, LEA designee, and/or the parties' representatives to:
 - a. Identify representatives.
 - b. Clarify the purpose of the hearing.
 - c. Determine if procedural safeguards have been followed.
 - d. Establish hearing protocol.
 - e. Query parties regarding preliminary problems, objections or questions.
 - f. Discuss possible submission of legal briefs.
 - g. Discuss other issues of special concern.
 - h. Discuss possibility of settlement.
4. The purpose of the prehearing conference for the expedited due process hearing is to schedule a date for the hearing, establish the disclosure timeline, inform parties that extension of the decision timeline is not permissible and any other issue listed above in number 3.

The prehearing conference may take place in person or by teleconference. If the prehearing conference is conducted by teleconference, then the Hearing Officer may request an official record be made of the teleconference by a court reporter.

VIII. FORMAL DUE PROCESS HEARING.

A. Due Process Hearings.

A due process hearing is an informal administrative hearing, not a court of law. Since a party may request a hearing without representation by an attorney, the process is meant to be less technical than a court of law. The strict rules of evidence do not apply.

Due process contains a set of procedures to ensure that the civil rights assured by the IDEA and Section 504 of the Rehabilitation Act of 1973 are not denied.

The purpose of the hearing is to obtain all appropriate information relative to the issue which created the impasse between the LEA and parent/adult student. These informal procedures are designed to try to reach a resolution before bringing the issue formally to a court of law.

The IDEA and Section 504 of the Rehabilitation Act of 1973 leave the development of administrative law and procedure for these hearings to the individual states. The development of procedures for implementing 20 U.S.C. § 1415 of the IDEA is left to the SEA under its rule making authority under state law.

The Hearing Officer's authority is provided for in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., Oklahoma Statute, *The Policies and Procedures for Special Education in Oklahoma, 2002*, the *Due Process Guidelines for Parents and School Administrators: Due Process in Special Education*.

The Hearing Officer has full authority and control of the hearing.

B. Procedures for the Due Process Hearing or Expedited Due Process Hearing.

1. The official record of the due process hearing or expedited due process hearing begins when the Hearing Officer officially convenes the hearing.

The opening statement by the Hearing Officer shall include:

- 1) Self-introduction, function, role and authority.
- 2) Establishing whether the hearing is opened or closed.
- 3) Introduction of persons representing each party (name, position, address).
- 4) Statement regarding the confidentiality of the proceedings.
- 5) Reason for hearing – clear statement of the issue(s).
- 6) Preliminary problems, objections or questions (as may have been determined at the prehearing conference).
- 7) Ground rules, including assurance by the Hearing Officer that both parties will have an opportunity to fully present their positions, documentary evidence and/or testimony which is relevant but not overly repetitive or redundant.

- 8) Questions concerning due process compliance, including the determination as to:
 - a) Whether all procedural safeguards have been complied with, and
 - b) Specific areas of noncompliance are read into the record.
 - 9) Establishing that both parties have exchanged the witness and exhibit lists and all exhibits at least five (5) business days before the hearing, or within the timeline specified by the Hearing Officer, for an expedited due process hearing.
 - 10) A determination that the hearing has been requested within two years of the date the parent or LEA knew or should have known about the action that forms the basis of the complaint:
 - (a) The two-year time period does not apply if the parent was prevented from requesting the hearing because of specific misrepresentations by the LEA that it had resolved the problem forming the basis of the complaint, or
 - (b) The LEA withheld information from the parent that was required to be provided to the parent.
 - 11) Establishing that both parties have exchanged all completed evaluations and recommendations based on the offering party's evaluations that the party intends to use at the hearing at least five (5) business days before the commencement of the hearing.
 - 12) A statement that the decision shall be made on substantive grounds based on whether the child received a free appropriate public education.
 - a) Objection to any evidence is accepted and ruled upon.
 - b) Submission of exhibits and list of exhibits by both parties.
2. **Opening Statements by the Parties for the Due Process Hearing or Expedited Due Process Hearing.**
- a. The complaining party requesting the hearing, or their representative, shall present its position in a brief oral statement.
 - b. The representative of the responding party shall present its position in a brief oral statement.
 - c. These statements are not considered to be evidence or testimony, but help the Hearing Officer to know what evidence will be presented as to the issues.
 - d. No objections may be made by either party during opening statements.
3. **Examination and Cross-examination for the Due Process Hearing or Expedited Due Process Hearing.** 34 CFR § 300.512
- a. The Hearing Officer will:

1. Request each witness to give their name, address, and relationship to the case.
 2. The Hearing Officer or Court Reporter will ask this question, “*Do you affirm that your statements are true to the best of your knowledge?*” This question is asked by the Hearing Officer or the Court Reporter before each witness testifies.
- b. The Petitioner (parent or LEA) shall present its case first, and the Respondent (parent or LEA) shall then present its case. Following direct examination (questioning), each witness may be cross-examined (questioned) by the other party. Questions on cross-examination shall be about the testimony the witness gave. The Hearing Officer shall reserve the right to limit questions that are determined by the Hearing Officer to be redundant or irrelevant to the issues.
 - c. After the Petitioner has presented all evidence in its case, the Respondent will be permitted to present evidence.
 - d. Following direct testimony and cross-examination, either party shall have the right to redirect and recross-examination on testimony given. Any questions on redirect and recross-examination are limited to prior testimony. The Hearing Officer may limit any questioning that is redundant or irrelevant to the issues.
 - e. If at any time during the proceeding, a party raises an issue not raised in the complaint, as determined by the Hearing Officer, the Hearing Officer shall interrupt the testimony and allow the opposing party to consent to the introduction of the issue. If the opposing party does not consent, the Hearing Officer shall instruct the party raising the issue to cease introduction of testimony on that issue.
 - f. The Hearing Officer shall have the right to question any witness after testimony and any cross-examination.
 - g. The Hearing Officer will ask both parties whether or not they wish to present further documentary evidence or testimony.
 - h. If the Hearing Officer determines that insufficient evaluation data and/or evidence is available to make a decision, then the Hearing Officer may order the child to be further evaluated at the expense of the LEA or request additional testimony on any issue.
4. **Closing Statements for the Due Process Hearing or Expedited Due Process Hearing.**
- a. The representative of the complaining party shall summarize its position in a brief oral statement.
 - b. The representative of the responding party shall summarize its position in a brief oral statement.
 - c. These statements should summarize the overall evidence. The parties may present reasons why the Hearing Officer should rule in their favor.
 - d. No objections may be made by either party during closing statements.
 - e. The Hearing Officer may limit the amount of time permitted for a closing statement.

5. Closure of the Due Process Hearing or the Expedited Due Process Hearing.

The Hearing Officer's closing statement will include the assurance that the Hearing Officer will:

- a. Obtain a copy of the record and ensure the parties will receive a copy of the record.
- b. Study evidence and testimony carefully.
- c. Render a decision based on evidence, testimony, state and federal law and regulations.
- d. Render the decision within the mandated timelines, unless an extension of time is properly granted.
- e. Send both parties a copy of the decision.
- f. State that this decision is binding upon the parents (or the child, if over the age of majority) and the LEA unless it is appealed.
- g. Explain the appeal process: If either party is aggrieved by this decision an appeal may be made, in writing, to the SEA for a review of the decision by an appointed Appeal Officer. This request must be received by the SEA within 30 calendar days from the date the hearing decision is received.
- h. State that the hearing is officially closed, giving date and time (this goes into the record).

6. After the hearing, the Hearing Officer shall:

- a. Obtain addresses from both parties where the decision will be sent, and email addresses if available.
- b. Instruct the reporter to send copies of the record to the parent/parent representative, the LEA and the Hearing Officer.
- c. Ensure that there are copies of all exhibits, as necessary.

7. Decision for the Due Process Hearing or Expedited Due Process Hearing.

The Hearing Officer has the duty and authority to render a decision, based solely upon evidence and testimony presented during the hearing process, within 45 calendar days after the resolution period ends, unless an extension of time has been granted. A decision in an expedited due process hearing must be rendered within ten (10) school days of completion of the hearing without extensions.

- a. Such decision shall be in writing and shall be mailed by certified mail, return receipt requested, to both parties, their representatives, and the SEA. A copy of the decision must be sent by electronic mail to the SEA. If requested, such decisions may be e-mailed to either party at the time the decision is sent to SEA.

- b. The decision of the Hearing Officer shall include findings of fact, conclusions of law, reasoning, and any relief provided. If the decision disapproves a proposed education program, it shall include actions to be taken by either party, as appropriate.
- c. The decision of the Hearing Officer shall state that the decision is binding upon the parent of the child/adult child and upon the LEA, subject to procedures for administrative or judicial appeal. (See the following Written Decision Format for statement to be made.)
- d. A decision made by a Hearing Officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
- e. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:
 - 1) Impeded the child's right to FAPE.
 - 2) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the parents' child, or
 - 3) Caused a deprivation of educational benefits.
- f. A Hearing Officer may order the LEA to comply with procedural requirements of the IDEA.

8. Written Decision Format.

- a. The cover page(s) of the hearing decision shall state the following:
 - 1) The Due Process Hearing Number.
 - 2) Name and address of the Petitioner and Respondent.
 - 3) Student's date of birth and home school.
 - 4) Name and address of counsel for the student and LEA.
 - 5) Date of hearing, time and location.
 - 6) Date of decision.
- b. The decision shall include the following:
 - 1) Background information, if necessary.
 - 2) Witnesses who testified at the hearing
 - (a) For the Petitioner
 - (b) For the Respondent
 - (c) For the Hearing Officer

- 3) Documentary Evidence admitted at the hearing.
 - (a) Petitioner's admitted exhibits, brief description
 - (b) Respondent's admitted exhibits, brief description
 - (c) Hearing Officer's admitted exhibits, brief description
- 4) Statement that Procedural Safeguards were met or statement of procedural safeguards not met.
- 5) Issues and Purpose of the Hearing.
- 6) Findings of Fact.
- 7) Conclusions of Law.
- 8) Rationale for the decision.
- 9) Decision.
 - (a) Hearing Officer finds...
 - (b) Hearing Officer orders...
 - (c) Statement of any related concerns, if appropriate
- 10) Concluding Statements: The statement that if either party is aggrieved by this decision an appeal may be made, in writing, to the SEA for a review of the decision by an appointed Appeal Officer. This request must be received by the SEA within 30 calendar days from the date the hearing decision is received.

IX. FORMAL DUE PROCESS HEARING.

A. Local Educational Agency (LEA).

1. Provide officers, employees, or agents of the LEA for testimony at the hearing.
2. Provide officers, employees, or agents of the LEA, at the request of the parent, without cost to the parent.
3. Cover cost of the LEA's representative and witnesses.
4. Determine and notify SEA if an interpreter or any other appropriate accommodations will be needed. Any cost involved will be paid by the LEA.
5. Pay for any independent educational evaluation requested by the Hearing Officer as part of the hearing.
6. Reimburse the Hearing Officer for all of his/her expenses relative to the hearing. This expense will be approved by the SEA and will include travel, food, lodging (if necessary) and cost of conducting the hearing and writing the decision.
7. Pay the cost of the court reporter, recording of the proceedings and subsequent transcript. Transcript must be provided to the parent at no cost.
8. Pay for any cost for facilities (i.e., meeting room).

B. Parents.

1. Parents may be charged a reasonable fee for copies of the child's records, if the fee does not effectively prevent parents from exercising their right to inspect and review such records in accordance with FERPA.
2. Parents must pay costs for their own legal counsel/representatives and witnesses. The LEA officers, employees, or agents and/or SEA personnel who appear as witnesses will be at no cost to parents.
3. Any travel expense of parents, their representative, and their witnesses must be paid by the parents.

C. State Educational Agency (SEA).

1. The SEA will pay for the cost of training for Hearing/Appeal Officers.
2. The SEA will pay for the cost of appointing the impartial Hearing/Appeal Officer (i.e., correspondence, telephone calls, etc.) with no cost to the LEA or parent.
3. The SEA personnel will serve as witnesses or present evidence and testimony at no cost to either party in a special education due process hearing, upon service of a subpoena with proper advance notification by either party to allow for necessary scheduling.

4. Cost associated with the due process Appeal, including the payment of the Appeal Officer, will be paid by the SEA.

D. Hearing Officer for the Due Process Hearing or Expedited Due Process Hearing.

Although the Hearing Officer has no financial responsibilities, he/she must complete the proper forms for all expenses. This will be sent to the SEA for approval. The SEA will forward the invoice to the LEA for payment.

X. **DUE PROCESS HEARING DECISION APPEAL.**

Oklahoma has adopted a two tier system in the due process procedure. To guarantee due process protection to children and their parents in regard to the identification, evaluation, placement, and appropriate education of the child, either party, who is not in agreement with the due process hearing decision or expedited due process hearing decision, may appeal the due process hearing decision to an Appeal Officer. 34 CFR § 300.514

A. **The procedures for making an appeal of a hearing decision are as follows:**

1. Within 30 calendar days of the receipt of the due process hearing decision, a written appeal request must be received by the SEA at the following address:

Oklahoma State Department of Education
Attn: Special Education Services
2500 North Lincoln Boulevard, Room 412
Oklahoma City, Oklahoma 73105-4599

2. The appeal request will be date-stamped and logged for the day it is received. The SEA will then send a memorandum to both parties acknowledging that an appeal request has been received.

B. **A qualified and impartial Appeal Officer will be selected to review the hearing procedures, the complete record and the decision.**

1. The qualified and impartial Appeal Officer for a specific case will be assigned on a rotational basis from an SEA approved list of individuals. Upon request to accept an assignment, the Appeal officer will consider whether or not there is any known reason why he/she could not perform this duty in an impartial manner. If no known reason exists, then the Appeal officer may accept the assignment.
2. The Appeal Officer shall conduct a preliminary review of all evidence of the due process hearing at the LEA level.
3. The Appeal Officer shall make preliminary findings, which state whether any additional evidence is needed or whether any new evidence will be received.
4. The Appeal Officer will have no direct correspondence with any of the parties in the case without making such correspondence available to all parties. Ex Parte communication is forbidden. All forms of communication are authorized as long as all parties participate or receive the same communication. Communications may consist of clarifying procedure, establishing the time and place for a formal review hearing, or other matters related to the orderly management of the Appeal, as determined necessary by the Appeal Officer. The Appeal Officer shall notify the parties whether or not more evidence is needed and whether or not a formal hearing will be convened. If new evidence is needed, the Appeal Officer will request additional evidence and establish a time for a hearing. During that hearing, new evidence will be received and parties will be allowed any appropriate examination and cross-examination. All parties will receive the same hearing rights as in the original hearing.

If any party feels that it has new evidence which could affect the original decision, said party shall send a copy of the evidence or an affidavit from a witness containing the proposed relevant testimony to the other party(s) and Appeal Officer. The Appeal Officer will determine if a formal hearing should be held as mentioned above. If there is intent to introduce new evidence, the Appeal Officer must receive that evidence, or the intent to introduce such evidence, no later than five (5) business days after the parties receive the Notice of Appeal. Any new evidence submitted must be made available to all parties by the party seeking to submit the new evidence.

Any objections to new evidence may be made and entered into the record. New evidence shall be entered into the record and a formal hearing will be held unless both parties agree, in writing, to submission of the new evidence and agree that a hearing to challenge said evidence is not necessary.

5. If a formal appeal hearing is determined necessary by the Appeal Officer, the Appeal Officer shall establish the time and date and notify the parties. The time and date may be subject to availability of the parties and may be extended by request of either party. Any request for delay should be submitted to the Appeal Officer at least five (5) calendar days prior to commencement of the formal appeal hearing.
6. Both parties will be notified of their right to submit written position statements or briefs if no formal hearing is to be held.
7. Both parties will be notified of all hearing rights if new evidence or oral arguments are requested by the Appeal Officer.

C. The following timelines will apply to the appeal process for the due process hearing or expedited due process hearing:

1. The appeal request must be received at the SEA within 30 calendar days of receipt of the initial hearing decision.
2. The Appeal Officer will examine the entire hearing record, ensure that procedures were consistent with the requirements of due process, seek additional evidence if necessary (If a hearing is held to receive additional evidence, the rights in *34 CFR § 300.512* apply), afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official, make an independent decision on completion of the review, and give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.
3. If a formal appeal hearing is held, parents have the right to determine if it will be open or closed. A form, signed by the parents, will be required and should be in the Appeal Officer's possession five (5) business days prior to the formal appeal hearing before a hearing will be made open to the public. (See Form 7, Appendix B)
4. If a formal appeal hearing is held, a witness and exhibit list of all new evidence or testimony must be exchanged by the parties at least five (5) business days prior to the hearing or within a time determined by the hearing officer in an appeal of an expedited hearing. No exhibit may be used in an appeal if not properly exchanged five (5) business days before the commencement of the appeal hearing, without the consent of both parties.

5. Appeal review decisions will be postmarked by the Appeal Officer within 30 calendar days of receipt of the appeal request, unless an extension of time is granted by the Appeal Officer.
6. The Appeal Officer may grant an extension of the 30-calander day timeline if:
 - a. Either party requests additional time to secure new evidence, subject to the Appeal Officer's decision that new or additional evidence is needed.
 - b. Either party requests an extension because of conflicting schedules or other valid cause for delay.
 - c. Other reasons presented by either party which are approved by the Appeal Officer.

Unless the appeal is expedited, the Appeal Officer can grant an extension.

- D. The decision made by the Appeal Officer is final, unless a party brings a civil action under the IDEA in a State or Federal Court of competent jurisdiction. 34 CFR § 300.516**

Appendix A

PARENT CHECKLIST FOR DUE PROCESS COMPLAINT

Steps	DP Forms	Timelines	Completed
I. Filing a Due Process Complaint A. Determine if request should be expedited. B. If a Parent Request, send a copy to SDE and LEA. C. Request LEA to provide any necessary records. D. Accept LEA response to issues of Complaint Notice and prior written notice.	Form 3 Forms 1 or 3 Letter	Prior to filing Immediately Immediately 10 calendar days from LEA receipt of complaint.	
II. Mediation A. Notify the LEA to request mediation. B. If the LEA agrees, then set a date mutually convenient to both parties. C. If mediation is scheduled, then a Resolution Session is not required. D. If the issue(s) are resolved through mediation, both parties must sign a Cancellation of Hearing and forward to SDE, or otherwise withdraw the Complaint.	Letter Letter Form 11	Immediately Immediately Upon resolution	
III. Resolution Session A. Respond to the LEA request to set a Resolution Session. B. If parents and LEA waive the resolution meeting both parties must sign waiver. C. No Resolution Session held where parties agree to mediation. D. If resolution session will be held: <ol style="list-style-type: none"> 1. Cooperate with LEA to determine when the session will be held. 2. Let the LEA know if an attorney will attend with you. 	Letter Form 8 Letter to H.O. Letter Letter	Upon Receipt Upon Agreement	
IV. Resolution Agreement A. If a resolution is reached on any issue, then the parties must execute a legally binding agreement. <ol style="list-style-type: none"> 1. Agreement signed by parent and LEA representative with authority to bind the LEA. 2. Agreement sets out all terms to which parties agree. B. Any issue not resolved becomes the subject of the due process hearing.	Form 12 Form 12 Form 12 Letter to H.O.	Upon resolution Upon signing Upon signing Immediately after Resolution Session.	
V. Preparing for the Hearing A. Hearing date and time and the name of the Hearing Officer will be provided by the SDE. B. Contact SDE if Officer impartiality is questioned. C. Provide the Open Hearing Request Form to LEA if the parent waives confidentiality and opens the hearing to the public. D. Exchange a Witness and Exhibit list, with copies of exhibits attached and numbered, with the LEA. E. Prepare additional copies of the exhibits: one for hearing officer and one for the witness.	Letter Letter Form 7	10 calendar days prior to hearing immediately prior to hearing. 5 business days prior 5 business days prior	

Steps	DP Forms	Timelines	Completed
<p>F. Request or submit subpoenas to Hearing Officer for witnesses or documents. (Subpoenas must be issued in plenty of time to permit serving before the five (5) business day deadline).</p> <p>G. Serve any necessary subpoenas upon witnesses. Witnesses that are employed by the LEA will be provided without a subpoena if they are listed on the submitted witness list.</p> <p>H. SDE personnel will appear at no cost to the parents upon issuance of a subpoena with arrangements for scheduling the appearance.</p>	<p>Form 9 or 10</p> <p>Form 10</p>	<p>No less than 10 calendar days prior</p> <p>No less than 5 calendar days prior</p> <p>No less than 5 calendar days prior.</p>	
<p>VI. Hearing Upon completion of the hearing, receive the transcript of the hearing.</p>			
<p>VII. Decision If either party is aggrieved by the decision, an Appeal Review Request must be made to the SDE.</p>	<p>Form 14</p>	<p>Within 30 calendar days of receipt of decision.</p>	

LEA - SCHOOL CHECKLIST FOR DUE PROCESS COMPLAINT

Steps	DP Forms	Timelines	Completed
I. Filing for a Due Process Complaint			
A. If Parent Request, send a copy to SDE.	Form 1 or 3	Immediately	
B. If LEA request, send copy to parent and SDE.	Form 2 or 4	Immediately	
C. Send parents copy of Parents Rights.	Form 5	Immediately	
D. Upon request, send a copy of the child's records to the parent/adult student or representative.		Immediately	
E. Within ten (10) calendar days of receiving the request, fully answer the complaint notice and send prior written notice to parent.	Letter	Immediately, but no later than ten (10) calendar days	
F. Determine if the request is for an Expedited Hearing (hearing set within 20 school days).	Form 4	Immediately	
II. Mediation			
A. Notify parent, with written documentation, of the right to mediation.	Letter	Immediately	
B. If the parents agree to mediation, then set a date mutually convenient for both parties.	Letter	Immediately	
C. If mediation is scheduled, then a resolution session is not required.			
D. If the issue is resolved through mediation, both parties must sign a Cancellation of Hearing and forward to SDE, or otherwise withdraw the complaint.	Form 11	Upon resolution	
III. Review Complaint for Sufficiency			
A. Upon receiving Complaint Notice, review Notice to insure it contains all information required.	Form 6	Immediately	
B. Notify the Hearing Officer and other party, in writing, that the Complaint lacks sufficiency.		Within 15 calendar days of receiving complaint.	
C. The Complaint is deemed sufficient if LEA fails to notify proper parties within timeframe.			
IV. Resolution Session			
A. Determine if a Resolution Session will be held.		Immediately	
B. If parents and LEA waive the Resolution Session, both parties must sign waiver.	Form 8		
C. No Resolution Session held where parties go to mediation	Letter to H.O.	Upon Agreement	
D. If Resolution Session will be held:			
1. Set the Resolution Session.	Letter	Immediately set date w/in 15 calendar days of receiving complaint	
2. Determine relevant members to attend.		Prior to meeting	
3. Determine LEA representative who has decision-making authority.		Prior to meeting	
4. Determine if school may have an attorney. (if parent is not accompanied by an attorney then LEA may not have an attorney).		Prior to meeting	
V. Resolution Agreement			
A. If a resolution is reached on any issue, then the parties <i>must</i> execute a legally binding agreement.	Form 12	Upon resolution	
1. Agreement signed by parent and LEA representative with authority to bind the LEA.	Form 12	Upon signing	

Steps	DP Forms	Timelines	Completed
2. Agreement sets out all terms to which both agreed.	Form 12	Upon signing	
3. Inform the parent that Agreement is legally binding and enforceable in any Federal or State Court of competent jurisdiction.	Form 12	Upon signing	
4. Inform parent that either party may void agreement within three (3) business days of signing.	Form 12	Upon signing	
B. Any issue not resolved becomes the subject of the due process hearing.	Letter to H.O.	Immediately following resolution meeting	
VI. Preparing for the Hearing			
A. Hearing date and time and name of the Hearing Officer will be provided by the SDE.		10 calendar days prior	
B. Contact SDE if Officer impartiality is questioned.	Letter	Immediately	
C. Select a hearing site convenient to parents and large enough to seat officer, parties/counsel, and court reporter.			
D. Arrange for an additional room to sequester witnesses.			
E. Obtain "Open Hearing" request form from parents if the hearing is to be open. Forward copies to SDE and Hearing Officer.	Form 7	Prior to Hearing	
F. Insure all information has been exchanged with parents.		5 business days prior	
G. Exchange a witness and exhibit list, including copies of exhibits attached and numbered, with the parent/adult student or representative.		5 business days prior	
H. Prepare additional copies of the exhibits: one for hearing officer and one for the witness.		5 business days prior	
I. Request or submit subpoenas to Hearing Officer for witnesses or documents. (Subpoenas must be issued in plenty of time to permit serving before the five (5) business day deadline.)	Form 9 or 10	No less than ten (10) calendar days prior	
J. Notify school witnesses, parent and Hearing Officer of hearing time and place.	Letter	5 business days prior	
K. Arrange for court reporter to transcribe the hearing.		Prior to Hearing	
VII. Hearing			
Upon completion of the hearing, receive the transcript of the hearing and forward copies to the Hearing Officer and parent.			
VIII. Decision			
If either party is aggrieved by the decision, an Appeal Review Request must be made to SDE.	Form 14	Within 30 calendar days of receipt of decision	
VIV. Hearing Expenses			
A. Upon receipt of Officer Expenses, obtain Board approval for reimbursement.	Form 13	Next Board meeting	
B. Upon receipt of transcription bill, obtain Board approval.		Next Board meeting	

Appendix B

DUE PROCESS COMPLAINT NOTICE – PARENT

To: _____
(SCHOOL SUPERINTENDENT)

(SCHOOL DISTRICT)

Address: _____

CHILD'S INFORMATION

Child's Name: _____
Address of Child's Residence: _____

School: _____
Current Grade/
Placement: _____
Date of Birth: _____
Disability: _____

DUE PROCESS REQUEST

NAME OF PARENT/GUARDIAN AND ANY ATTORNEY REPRESENTING THE CHILD

Name of Parent or Guardian: _____
Address: _____

Telephone: _____
Fax: _____
E-mail: _____

Name of Attorney: _____
Business Address: _____

Telephone: _____
Fax: _____
E-mail: _____

Describe the nature of the problem(s) of the child relating to the proposed initiation or change of identification, evaluation, placement, or appropriateness of the education of your child, including specific facts relating to such problem(s) which make this hearing necessary. (Attach additional pages if necessary.) _____

A proposed resolution of the problem(s) to the extent known and available to the party. _____

Parents have the right to request mediation to resolve the problem(s). Such participation is voluntary. Please contact the school or the Oklahoma State Department of Education at (405) 521-3351 for further information. The due process hearing timeline does not begin until the complaint notice, completed in accordance with all requirements, is received by both the school and the Oklahoma State Department of Education, Special Education Services. A copy of the notice must be mailed or faxed to:

Oklahoma State Department of Education
Attn: Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599
Fax: (405) 522-3503

Signature: _____

Date _____

DUE PROCESS COMPLAINT NOTICE – LEA

To: _____
(PARENT/GUARDIAN)

(SCHOOL DISTRICT)

Address: _____

CHILD'S INFORMATION

Child's Name: _____

School: _____

Address of Child's Residence: _____

Current Grade/
Placement: _____

Date of Birth: _____

Disability: _____

DUE PROCESS REQUEST

Local Educational Agency _____

Address: _____

Telephone: _____

Describe the nature of the problem(s) of the child relating to the proposed initiation or change of identification, evaluation, placement, or appropriateness of the education of the child, including specific facts relating to such problem(s) which make this hearing necessary. (Attach additional pages if necessary.) _____

How may the problem(s) be resolved? _____

Parents have the right to request mediation to resolve the problem(s). Such participation is voluntary. Please contact the school or the Oklahoma State Department of Education at (405) 521-3351 for further information. The due process hearing timeline does not begin until the complaint notice, completed in accordance with all requirements, is received by both the parent and the Oklahoma State Department of Education, Special Education Services. A copy of the notice must be mailed or faxed to:

Oklahoma State Department of Education
Attn: Special Education Services
2500 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105-4599
Fax: (405) 522-3503

Signature: _____

Date _____

EXPEDITED DUE PROCESS COMPLAINT NOTICE - PARENT

To: _____ Address: _____
(SCHOOL SUPERINTENDENT) _____

(SCHOOL DISTRICT) _____

CHILD'S INFORMATION

Child's Name: _____ School: _____
Address of Child's _____ Current Grade/
Residence: _____ Placement: _____

Date of Birth: _____
_____ Disability: _____

NAME OR PARENT/GUARDIAN AND ANY ATTORNEY REPRESENTING THE CHILD

Name of Parent _____ Name of Attorney _____
or Guardian: _____
Address: _____ Business Address: _____

Telephone: _____ Telephone: _____
Fax: _____ Fax: _____
E-mail: _____ E-mail: _____

Describe the nature of the problem(s) of the child relating to discipline matters including placement in an alternative setting or a manifestation determination, and facts relating to such problem(s). (Attach additional pages if necessary.)

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

Parents have the right to request mediation to resolve the problem(s). Such participation is voluntary. Please contact the school or the Oklahoma State Department of Education at (405) 521-3351 for further information. The due process hearing timeline does not begin until the complaint notice, completed in accordance with all requirements, is received by both the school and the Oklahoma State Department of Education, Special Education Services. A copy of the notice must be mailed or faxed to:

Oklahoma State Department of Education
Attn: Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599
Fax: (405) 522-3503

Signature: _____ Date: _____

Required information: This hearing must occur within 20 school days of the date the hearing is requested and shall result in a determination within ten (10) school days of the final submission of the parties.

EXPEDITED DUE PROCESS COMPLAINT NOTICE - LEA

To: _____ Address: _____
 (SCHOOL SUPERINTENDENT) _____

 (SCHOOL DISTRICT) _____

CHILD'S INFORMATION

Child's Name: _____ School: _____
 Address of Child's _____ Current Grade/
 Residence: _____ Placement: _____
 _____ Date of Birth: _____
 _____ Disability: _____

NAME OR PARENT/GUARDIAN AND ANY ATTORNEY REPRESENTING THE CHILD

Name of Parent _____ Name of Attorney _____
 or Guardian: _____
 Address: _____ Business Address: _____

 Telephone: _____ Telephone: _____
 Fax: _____ Fax: _____
 E-mail: _____ E-mail: _____

scribe the nature of the problem(s) maintaining the current placement of the child if substantially likely to result in injury to the child or to others, including specific facts relating to such problem(s) which make this hearing necessary. (Attach additional pages necessary.) _____

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

Parents have the right to request mediation to resolve the problem(s). Such participation is voluntary. Please contact the school or the Oklahoma State Department of Education at (405) 521-3351 for further information. The due process hearing timeline does not begin until the complaint notice, completed in accordance with all requirements, is received by both the parent and the Oklahoma State Department of Education, Special Education Services. A copy of the notice must be mailed or faxed to:

Oklahoma State Department of Education
Attn: Special Education Services
 2500 North Lincoln Boulevard, Suite 412
 Oklahoma City, Oklahoma 73105-4599
 Fax: (405) 522-3503

Signature: _____ Date: _____

Required information: This hearing must occur within 20 school days of the date the hearing is requested and shall result in a determination within ten (10) school days of the final submission of the parties.

DUE PROCESS RIGHTS OF PARENTS AND SCHOOLS

Any party to a hearing has the following rights:

1. The right to be accompanied and advised by legal counsel and/or by individuals with special knowledge or training with respect to the problems of children with disabilities.
2. The right to present evidence and confront, cross-examine, and compel attendance of witnesses.
3. The right to obtain written findings of fact and a decision.
4. The right to obtain a written or electronic record of the hearing upon written request.
5. The right to prohibit introduction of any evidence at the hearing that has not been disclosed to you at least five (5) business days before the hearing.
6. The right to ask for a Due Process Hearing Appeal review if you are in disagreement with the hearing decision by requesting an appeal in writing to the Oklahoma State Department of Education within 30 days of receipt of the hearing decision.
7. The right to know the role of the hearing officer includes the responsibility to hear both sides and render a decision in keeping with all appropriate state and federal regulations.

Parents also have the following rights:

1. The right to request certain LEA or State Department of Education personnel to be present.
2. The right to request an open hearing, if desired. (Note: Unless requested it will be a closed hearing to preserve confidentiality.)
3. The right to have your child present at the hearing.
4. The right to examine and reproduce school records at reasonable cost.
5. The right to request certain fees incurred by you during these proceedings be paid by the local educational agency should you “prevail” in these proceedings, subject to the provisions of the Individuals with Disabilities Act (IDEA).
6. The right to present findings from an independent evaluation.

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE)
_____))
(STUDENT NAME))
DUE PROCESS HEARING)

DPH. NO _____

NOTICE OF LACK OF SUFFICIENCY

_____ requests the Hearing Officer assigned in this matter

[PARTY REQUESTING REVIEW]

to review the sufficiency of the Due Process Complaint Notice, filed in this matter

on _____.

[DATE].

In support of its request, this Party states the following:

1. This Party received the Due Process Complaint Notice on _____.
[DATE]
2. This Party questions the sufficiency of the Due Process Complaint Notice for the following reasons:

[LIST ALL REASONS THIS PARTY QUESTIONS THE SUFFICIENCY OF THE NOTICE]

- a.
- b.
- c.

Signature of the Party/Party Representative

Mail copy to:

Hearing Officer, Other Party *and* Oklahoma State Department of Education,
Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE _____)
(STUDENT NAME))
DUE PROCESS HEARING) DPH. NO _____

OPEN HEARING REQUEST FORM

I, _____, on behalf of _____
(PARENT/GUARDIAN/SURROGATE PARENT) (STUDENT'S NAME)

request that this hearing be open to the public and hereby waive our rights concerning any and all

confidential information that may be discussed during the Due Process Hearing to be held

on _____ .
(DATE)

I understand that in order for the Hearing Officer to reach a decision, confidential information pertaining to our child may be discussed in the Due Process Hearing. I also understand that by having an open hearing, information brought out during the hearing cannot be guaranteed to be kept confidential.

Understanding all the above, I do hereby request that the Due Process Hearing be open to the public.

Signed _____ Date _____
(PARENT/PARENT REPRESENTATIVE)

Return to: Hearing Officer *and* Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE)
)

(STUDENT NAME))
DUE PROCESS HEARING)

DPH. NO _____

JOINT AGREEMENT TO WAIVE RESOLUTION SESSION

The issues in the above captioned Due Process Complaint have been thoroughly discussed by both parties. At this time, no resolution of the issues can be reached and both parties waive the Resolution Session.

By waiving the Resolution Session, both parties understand the Due Process timeline begins to run on the day after this agreement is signed by both parties.

(SIGNATURE OF PARENT/PARENT REPRESENTATIVE)

(DATE)

(SIGNATURE OF LOCAL EDUCATIONAL AGENCY
ADMINISTRATOR/REPRESENTATIVE)

(DATE)

Mail to: Hearing Officer *and* Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE _____)
(STUDENT NAME) _____) DPH. NO _____)
DUE PROCESS HEARING _____)

SUBPOENA DUCES TECUM

THE STATE OF OKLAHOMA TO: _____
(NAME OF THE PERSON/ ENTITY HOLDING RECORDS)

of _____
(ADDRESS)

You are commanded to appear at the request of _____
(THE PARENT/SCHOOL DISTRICT)

on _____, at _____ at the following location
(Date) (TIME A.M./P.M.)

_____, to produce the following records and
(ADDRESS OF LOCATION)

information in the possession of the _____ :
(NAME)

(LIST ALL DOCUMENTS OR TYPES OF DOCUMENTS YOU ARE REQUESTING).

IN WITNESS WHEREOF, I have set my hand this ____ day of _____ .
(MONTH, YEAR)

(NAME OF OFFICER), Hearing Officer

ISSUED AT THE REQUEST OF:
(NAME OF THE PARTY/
PARTY REPRESENTATIVE) _____
(ADDRESS) _____
(PHONE) _____

**STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA**

IN THE MATTER OF THE _____)
(*STUDENT NAME*) _____)
DUE PROCESS HEARING _____) **DPH. NO** _____

WITNESS SUBPOENA

THE STATE OF OKLAHOMA TO:

_____ (*NAME OF WITNESS*) _____ (*ADDRESS*) _____

You are commanded to appear at the request of _____
(*THE PARENT/SCHOOL DISTRICT*)

on _____, at _____ at the following location
(Date) (TIME A.M./P.M.)

_____, provide testimony in the above captioned matter.
(*ADDRESS OF LOCATION*)

IN WITNESS WHEREOF, I have set my hand this ____ day of _____ .
(Month, Year)

(*NAME OF OFFICER*), Hearing Officer

ISSUED AT THE REQUEST OF:
(*NAME OF THE PARTY*
/*PARTY REPRESENTATIVE*) _____

(*ADDRESS*) _____

(*PHONE*) _____

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE _____)
(STUDENT NAME)) DPH. NO _____
DUE PROCESS HEARING)

CANCELLATION OF DUE PROCESS HEARING

A request to the State Department of Education to conduct a Due Process Hearing has been made by _____ and/or _____
(LOCAL EDUCATIONAL AGENCY) (PARENT/GUARDIAN/ SURROGATE PARENT)
concerning _____ .
(STUDENT)

Through a resolution session, prehearing conference, mediation, or other settlement, the request is being cancelled by the undersigned. Both parties hereby agree that a Due Process Hearing is no longer necessary to settle the disagreement.

(SIGNATURE OF PARENT/ PARENT REPRESENTATIVE) (DATE)

(SIGNATURE OF LOCAL EDUCATIONAL AGENCY ADMINISTRATOR/REPRESENTATIVE) (DATE)

Mail to: Hearing Officer *and* Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

SAMPLE RESOLUTION AGREEMENT

This Settlement Agreement (the “Agreement”) is executed on the ___ day of (*MONTH, YEAR*), between (*NAME OF PARENT/GUARDIAN*), individually and as the guardian and next friend of (*STUDENT NAME*), referred to hereinafter as (“*LAST NAME OF PARENT/GUARDIAN*”), and (*NAME OF SCHOOL DISTRICT*).

RECITALS:

- A. On or about (*MONTH, DAY, YEAR*), (*LAST NAME OF PARENT/GUARDIAN*) submitted a due process hearing request against the School District through her attorney, alleging violations of the Individuals With Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (“DPH No. ____”).
- B. The parties met on (*MONTH, DAY, YEAR*) for a Resolution Meeting to discuss (*EXPLANATION*).

WHEREFORE, in consideration of the agreements, conditions and covenants hereinafter set forth, the parties agree as follows: (*LIST OF AGREEMENTS FOLLOW*)

Neither party may modify this Agreement without the written consent of the other party. The parties signing below represent that they are authorized to execute this Agreement, and by executing this agreement, bind their heirs, successors and assigns forever.

Pursuant to 20 USC §1415(f)(1)(B), this document is legally binding upon the parties and enforceable in any State court of competent jurisdiction or in a district court of the United States. Either party may void this Agreement within three (3) calendar days of the Agreement date.

(*SIGNATURE OF PARENT/GUARDIAN*) AND (*DATE*)

(*SIGNATURE OF LEA REPRESENTATIVE*)

By: _____

Date: _____

HEARING OFFICER EXPENSES

Name _____ Date: _____

Address _____ SSN: _____

Due Process Hearing No. _____ at _____ on _____
 (Location) (Date)

Item	Explanation	Amount
Travel (same as current rate for state employees)	Round Trip Miles to Hearing Site	
	Mileage Cost Per Mile: _____ ¢ \$	
	Turnpike Tolls (Receipt Attached)	
	Other (Explain)	
Lodging (Same as current rate for state employees)	(Receipts Attached)	
Per diem (Same as current rate for state employees)	Dates and time in travel status	
Compensation for Hearing (As approved by the OSDE, Special Education Services)	Pre-hearing	
	Hearing	
	Decision Preparation	
	Total	
Other Expenses	Secretarial Services	
	Copying	
	Postal (Receipt Attached)	
	Phone Calls (Explain)	
	Other (Explain)	
	Total	
	Total	

Comment: _____

These expenditures were necessary in conducting a Due Process Hearing or Expedited Due Process Hearing _____ on behalf of _____.

(Number)

(Student's Name)

An accurate description is hereby provided for each expenditure to be approved by the Oklahoma State Department of Education (OSDE, SES).

 (Hearing Officer)

 (Signature of Hearing Officer)

 (Address)

 (Date)

The local education agency will send the Hearing Officer a check in the amount of (_____) to the Hearing Officer's Address listed above to reimburse for the approved Due Process Hearing or Expedited Due Process Hearing expenses. These expenses have been approved by the undersigned.

 State Department of Education, Representative

 Date

Mail to:

Oklahoma State Department of Education
 Special Education Services
 2500 North Lincoln Boulevard, Suite 412
 Oklahoma City, Oklahoma 73105-4599

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE _____)
)
(STUDENT NAME) _____) DPH. NO _____)
DUE PROCESS HEARING _____)

REQUEST FOR DUE PROCESS APPEAL REVIEW

I request an Appeal Officer be assigned to review the record of Due Process Hearing _____
(NUMBER)
conducted at _____ on _____ concerning
(LOCATION) (DATE)
the following child _____ ; and to make an independent decision.
(NAME OF CHILD)

The specific reasons for this appeal request are as follows: _____

The procedures for conducting this appeal will be sent to all parties by the SEA, upon receipt of this request.

Signed: _____
(PARENT/GUARDIAN/SURROGATE PARENT/REPRESENTATIVE)

ADDRESS)

(HOME PHONE) (BUSINESS PHONE)

(LOCAL EDUCATIONAL AGENCY OFFICIAL/REPRESENTATIVE)

(ADDRESS)

(TELEPHONE)

Send a copy to the other party and send the original to the SEA at the address below:

Mail to: Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

IN THE MATTER OF THE)
_____))
(STUDENT NAME))
DUE PROCESS HEARING)

DPH. NO _____

OPEN HEARING REQUEST FORM FOR DUE PROCESS APPEAL

I, _____, on behalf of, _____ request that
(PARENT/GUARDIAN/SURROGATE PARENT) (STUDENT'S NAME)
this Appeal Review be open to the public and hereby waive our rights concerning any and all
confidential information that may be discussed during the Appeal Review Hearing to be held
on _____.
DATE

I understand that in order for the Appeal Officer to reach a decision, confidential information
pertaining to our child may be discussed in the Appeal Review Hearing. I also understand that
by having an open review, information brought out during the review cannot be guaranteed to
be kept confidential.

Understanding all of the above, I request that the Appeal Review Hearing be open to the
public.

Signed: _____ Date: _____
(PARENT/GUARDIAN/SURROGATE PARENT)

Return to: Appeal Officer *and* Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Boulevard, Suite 412
Oklahoma City, Oklahoma 73105-4599

APPEAL OFFICER EXPENSES

Name _____ Date: _____
 Address _____ SSN: _____

 Due Process Hearing No. _____ at _____ on _____
 _____ (Location) _____ (Date)

Item	Explanation	Amount
Travel (same as current rate for state employees)	Round Trip Miles to Hearing Site	
	Mileage Cost Per Mile: _____¢ \$	
	Turnpike Tolls (Receipt Attached)	
	Other (Explain)	
Lodging (Same as current rate for state employees)	(Receipts Attached)	
Per diem (Same as current rate for state employees)	Dates and time in travel status	
Compensation for Hearing (As approved by the OSDE, Special Education Services)	Pre-hearing	
	Hearing	
	Decision Preparation	
Other Expenses	Secretarial Services	
	Copying	
	Postal (Receipt Attached)	
	Phone Calls (Explain)	
	Other (Explain)	
		Total: _____

RESOURCES FOR PARENTS AND SCHOOLS

Oklahoma State Department of Education
Special Education Services
2500 North Lincoln Blvd, Suite 412
Oklahoma City, OK 73105-4599
(405) 522-3248 or (405) 521-4875 TTY

OASIS
Oklahoma Areawide Service Information System
1-800-426-2747

Oklahoma Parent Training and
Information Center
1-877-553-4332

Oklahoma Commission of Children and Youth
(OCCY)
(405) 606-4900

Alternative Dispute Resolution Program
(Mediation)
Administrative Office of the Courts
1-877-521-6677 or (405) 522-7876

OK Department of Rehabilitation Services (DRS)
Office of Handicapped Concerns
1-800-845-8476
(405) 951-3400 V/TDD

Oklahoma Disability Law Center (ODLC)
1-800-226-5883 V/TDD
Tulsa (918) 743-6220 V/TDD
Oklahoma City (405) 525-7755 V/TDD

Legal Aid of Western Oklahoma
(405) 521-1302

Legal Services of Eastern Oklahoma
(918) 584-3211
(918) 428-4357 (Hot Line)
(888) 534-5243 (Hot Line)

Oklahoma Indian Legal Services
1-800-658-1497 or (405) 943-6457

Oklahoma Department of Career and
Technology Education
(405) 377-2000
(405) 743-6816 TDD

Oklahoma Department of Health
(405) 271-5600

Oklahoma Department of Mental Health
and Substance Abuse Services
(ODMHSAS)
(405) 522-3908

Oklahoma Department of Human
Services (DHS)
(405) 521-2778

Oklahoma Office of Juvenile Affairs
(OJA)
Educational Services
(405) 962-6106

Oklahoma Department of Corrections
(405) 962-6139