



# **HEARING OFFICERS' GUIDE TO SECTION 504 IMPARTIAL HEARINGS**

**2013-2014 Edition**

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICER'S GUIDE TO SECTION 504 IMPARTIAL HEARINGS

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Title IV, VI, and VII of the Civil Rights Act of 1964 – race color, national origin  
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Title IX of the Education Amendments of 1972 (Title IX) - sex  
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The following individual has been designated to handle inquiries regarding the nondiscrimination policies and laws above except Section 504:

Sheila Miller  
ADA/Title IX Coordinator  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301-3860  
(603) 271-3743

Inquiries regarding Section 504 should be directed to:

Tina Greco  
Section 504 Coordinator  
NH Department of Education  
21 S. Fruit Street  
Concord, NH 03301-3860  
(603) 271-3993

Complaints regarding Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX, Section 504, and/or Title II of the ADA should be directed to:

Boston Office  
Office for Civil Rights  
U.S. Department of Education  
9 Post Office Square, Suite 900  
Boston, MA 02109-3921  
Telephone: 617-289-0111  
FAX: 617-289-0150; TDD: 877-521-2172

Inquiries concerning discrimination claims may also be directed to:

**NH Commission for Human Rights**  
2 Chenell Drive  
Concord, NH 03301-8501  
(603) 271-2767

**Equal Employment Opportunity Commission (EEOC)**  
1 Congress Street  
Room 100 10th Floor  
Boston, Mass 02114  
Tel. (617) 565-3200

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**INTRODUCTION**

**Purpose of Manual**

This guide has been developed to acquaint Hearing Officers with the general overview and format of the Section 504 Impartial Hearings process and to assist the Hearing Officers in resolving common procedural problems that can and sometimes do arise. The manual does not attempt to provide a thorough analysis of all the issues that might confront a hearing officer nor is it meant to supplement or in anyway replace, modify or advise Hearing Officers about federal and state law or regulations. Furthermore, this manual is not a formal opinion of the New Hampshire Attorney General. It does not have the force of law and does not establish any legal duty for any state agency. It is simply a presentation of some recommended procedures and sample forms. The Department of Education reserves the right to modify this guide, amend or terminate any description of procedures described in this guide at any time.

In addition to the Hearing Officers' Guide the Department of Education has also published a Users' Guide to Section 504 Impartial Hearings, a copy of which is available on the Department's website.

Although the information in the Hearing Officers' Guide is not meant to be exhaustive, this guide, along with the Users' Guide to Section 504 Impartial Hearings, should answer most of the questions that arise during a hearing.

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**A. Hearing Site**

When a hearing is held please inspect the prospective hearing room before the hearing, if possible, for noise level, heating or air conditioning, lighting, furniture arrangement, seating facilities, and sound system. The witness chair should be arranged so that everyone in the room can see and hear the witnesses, and the recording device (or reporter) should be placed where it can accurately record the testimony of all witnesses and the comments of all participants. A nearby location where persons can confer in private is also helpful.

**B. Permission to parties to access Hearing Officer E-mail address**

The parties should be advised not to contact the Hearing Officer by e-mail unless the Hearing Officer grants such permission to the parties. As the Hearing Officer it is your choice whether you want to allow access, limit access or deny access to the parties by e-mail. If you do grant the parties such permission, you should make clear the limitations of contact by e-mail.

One drawback of not allowing the parties to contact you by e-mail may be that if a party encounters a last minute emergency they may not have time to contact you to request a postponement.

Please also be mindful that any contact with parties by e-mail becomes part of the permanent record. As such, you must print off a copy of the e-mail correspondence between you and the parties and place it in the correspondence file with appropriate notation on the Index.

**C. Personally Identifiable Information in Electronic E-mail**

The utilization of electronic mail (e-mail) to expedite hearing and mediation matters has generated concern regarding the potential for release of personally identifiable information. In order to ensure a student's personally identifiable information is not compromised when utilizing e-mail, the student's name and parents' information, whether in correspondence to parties in a proceeding or referring to the case to non-participants, shall **not be used for any reason.**

This means that cases will only be referred to by the generic word "Student" followed by the school district name and docket number.

Example: Student/Podunk School District  
Case Number:

In scheduling notices sent by e-mail, for example, only the generic word "Student" followed by the school district's name and docket number followed by the school district address and parents' attorney, if there is one, will be used. Please note further in the scheduling notice the

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parent(s)' address has also been left blank. The actual scheduling notice containing student's first name and last initial as well as parents' information, will be sent by regular mail to the parties, Hearing Officer and mediator.

**D. Requests for Accommodation**

If a hearing participant requires accommodation for some essential life skill that prevents them from adequately participating in a proceeding, they should notify the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests in writing of their accommodation request. At the time of filing for an administrative proceeding they should include copies of verifiable documentation about the accommodation needed. If the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests is able to verify the need for the requested accommodation and provide the requested accommodation, it will contact the Hearing Officer and inform the Hearing Officer that such accommodation has been made.

If, during a proceeding, the Hearing Officer is made aware by a party of the need for an accommodation for some essential life skill in order to permit the party to adequately participate in a proceeding, the Hearing Officer will contact the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests to make arrangements for the necessary accommodation. The party should provide the Hearing Officer any necessary documentation to verify the requested accommodation. In turn, the Hearing Officer should provide the necessary documentation to the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests.

Accommodations can be made for a variety of reasons.

**E. Safety/Security Issues**

Generally, most administrative hearings involve routine matters. There are certain subjects that involve very personal and/or highly emotional matters and may result in hostile or potentially aggressive behavior among hearing participants. The best advice to the Hearing Officer is to be prepared. In extreme circumstances, the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests, will provide appropriate law enforcement to provide security. At a minimum, the Hearing Officer should have access to a telephone and number to call for any needed assistance

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If the Hearing Officer anticipates problems, the Hearing Officer should announce some "ground rules" for the conduct of the participants. For example, the Hearing Officer can require that the participants address each other and the Hearing Officer with courtesy; that the participants remain seated during the hearing; and that participants keep silent, except when making appropriate objections during another participant's presentation. The Hearing Officer may exclude a non-participant who continues to be disruptive after being warned. If a person at a hearing appears to be getting out of control, or disrupting the proceeding, the Hearing Officer should call a recess and may seek assistance at that time.

**NOTE:** A Hearing Officer should never attempt to personally break up a physical encounter.

**F. Request by Party for Security**

If the Hearing Officer receives a request to provide security for a hearing because a party believes they may need security at a proceeding the Hearing Officer should review the motion and any response from the opposing party. If the Hearing Officer determines there is a need for security he/she will then inform the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests of the determination of need and the rationale for the request for security. The Hearing Officer will include in the request the hearing dates and times.

After receiving the request with the dates and times the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests will contact the appropriate law enforcement agency and make appropriate arrangements for the necessary security. The local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests will send an e-mail to the Hearing Officer to confirm that appropriate arrangements have been made. If the dates and times change the Hearing Officer will be responsible for ensuring that the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests is aware of the change.

**G. Hearing Officers Personal Notes**

Hearing Officers may shred any personal notes about the case that they may have made during the proceeding.

**H. Goals of the Administrative Process**

The administrative process has been designed to be more expeditious and less expensive for all parties than a judicial proceeding. Therefore, the hearing should be less formal, consistent with the fundamentals of fairness, impartiality, and thoroughness. To that end the Hearing Officer's goal should be to develop a fair, accurate, intelligible, and concise record that can easily be reviewed, and to prepare a final decision that is fair, accurate, intelligible, and concise, and supports the best interest of the child and is consistent with the law. It is also the Hearing Officer's responsibility to exercise such control as is necessary for the orderly, effective and reasonably expeditious progress of the hearing. To that end, the Hearing Officer must conduct the hearing in a manner to make clear that it is not a contest for advantage by the use of technicalities, but rather an informal and searching inquiry into the facts and law of the case.

While administrative proceedings are informal, they should be conducted with dignity and decorum. Informality should not be synonymous with chaos or a free-for-all. Informality is not inconsistent with orderliness and only means an absence of unnecessary and time-consuming technicalities. It provides flexibility, enabling adjustment to varied conditions and circumstances. The Hearing Officer should create a relaxed atmosphere which is conducive to the free flow of information.

**I. Record of Proceeding (Audio Cassette Tape); Malfunction of Tape Recorder**

All administrative hearings are tape recorded. Hearing Officers should arrive 10 to 15 minutes early to the pre-hearing/hearing to ensure the Hearings Office is set up properly (see Hearing Recesses and Promptness) and to ensure the tape recorder is functioning. If a tape recorder malfunctions, the Hearing Officer should try an alternative recorder. If there are no alternative recorders available, the Hearing Officer should call a recess and alert the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests of the situation. Under no circumstances should a Hearing Officer ask the parties to agree to forgo a recording of the proceeding.

**J. Recording Equipment**

In addition to reviewing the operator manual, it is strongly recommended that the Hearing Officer spend a few moments prior to a proceeding to test the system in order to ensure it is functioning correctly. Do not forget that the machine's circuitry may not allow you to record over any test



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recording that you make, so you may need to advance the tape beyond the point of the test before commencing to tape the proceeding. During the proceeding the Hearing Officer should periodically check that the recording light is illuminated and, if there is one, the numeric indicator is advancing to assure that the proceeding is being recorded. Please remember that you may not be able to record over a previously recorded portion of the tape. You may need to fast forward beyond the recorded portion of the tape to continue recording. Failure to do so may result in bells, whistles and blinking lights! To ensure the record is complete, the Hearing Officer should announce when the reporting is interrupted for a change in tape, or a recess, and should announce when the proceedings are resumed. If a person continues to speak after the recording stops, the Hearing Officer should catch the speaker's attention, and then ask the speaker to repeat the portion that was lost after the recording resumes. The Hearing Officer may frequently have to ask participants to speak louder. The Hearing Officer should always speak in a tone audible throughout the hearing room. If matters of substance happen to be discussed off-record, the Hearing Officer should memorialize those discussions on record.

**K. Use of Hearing and Sight Impairment Interpreters**

In all proceedings involving an interpreter, no testimony should be admitted as evidence until:

1. The interpreter is so situated as to assure effective communication between all persons having a substantial interest in the outcome of such proceedings,
2. The interpreter swears under oath, that he or she will provide a true and accurate interpretation of the proceedings to the best of his or her skill and judgment, and
3. The person conducting such proceedings determines, on the basis of testimony of the interpreter and the deaf or hearing-impaired person that such interpreter is able in that particular proceeding, to communicate accurately with and translate information to and from such deaf or hearing-impaired person involved.

If, at any time during the proceeding, it is determined that the interpreter is no longer able to provide effective communication between the parties, the Hearing Officer will suspend the proceeding and contact the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests to appoint another qualified interpreter. Prior to such suspension the parties and Hearing Officer should agree to subsequent hearing dates during which they would be available and for

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which a qualified interpreter would appear. The parties will be notified as soon as such qualified interpreter has been arranged.

**L. Use of Foreign Language Interpreters**

If the Department of Education has provided an accommodation for foreign language interpretive services the Hearing Officer, or reporter, if any, should administer an interpreter oath such as the following:

"Do you solemnly swear or affirm that you will truthfully and accurately translate all questions put and all answers given, to the best of your ability?"

Hearing Officers should give specific instructions to an interpreter, on the record, such as the following:

1. The interpreter is to give word-for-word translations of only that which is asked and that which is answered;
2. The interpreter is not to engage in discussions with the witness in order to clarify what the witness means or for any other reason; and
3. The interpreter should interrupt long passages in order to translate several shorter statements rather than one long one.

The parties should also be directed to ask their questions directly to the witness (e.g. "Did you go to the store?") rather than giving the interpreter directions as to what to ask (e.g. "Ask him if he went to the store.").

If, at any time during the proceeding, it is determined that the interpreter is no longer able to provide effective communication between the parties, the Hearing Officer will suspend the proceeding and contact the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests to appoint another qualified interpreter or an intermediary interpreter. Prior to such suspension the parties and Hearing Officer should agree to subsequent hearing dates during which they would be available and for which a qualified interpreter would appear. The parties will be notified as soon as such qualified interpreter has been arranged.

**M. Continuances**

All hearings must be held within the statutory timelines unless the Hearing Officer grants specific extensions of time.

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Hearing Officers are encouraged not to allow parties to automatically waive timelines. Continuances must be the exception not the rule. Extensions of time can only be granted on a case by case basis.

Except in extraordinary circumstances, parties seeking a continuance are requested to make such written request to the Hearing Officer at least five (5) business days before the scheduled hearing date. It is preferable, although not required, that both parties are requested to agree to a continuance in order for a hearing to be continued.

If the Hearing Officer allows the continuance, the Hearing Officer will issue a new hearing date by order to both parties with copy to the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests as well as contemporaneously forward to the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests with a completed continuance form which indicates: who requested the continuance; the reason for the continuance; the date the matter was continued to; the new end date; and, whether the Hearing Officer agreed to the continuance.

A continuance will not occur if the Hearing Officer does not issue an order allowing the continuance.

**N. Acceptance of E-Mail and Facsimile Requests**

In order to help facilitate the process, with prior agreement of the Hearing Officer and parties, e-mail and facsimile copies of hearing requests will be accepted as long as a signed and dated original request is mailed to the opposing party and a copy to the Department of Education. Hearing Officers must ensure that any e-mail and facsimile sent to them has also been sent simultaneously and expeditiously to the opposing party. Any pleading that is filed with the Hearing Officer has to be signed in ink and a copy mailed to the opposing party at the same time.

**O. Pro Se Complainants**

At the pre-hearing, the Hearing Officer may ask the pro se parent to determine the relevant legal issues to be addressed at hearing to enable both parents and districts to adequately prepare for hearing. Additionally, in order to facilitate the proceedings, the Hearing Officer may assist pro se complainants in understanding the correct method of questioning witnesses. The Hearing Officer may also facilitate the introduction of exhibits by asking questions about the relevance of proposed exhibits. The Hearing Officer may also explain the substantive legal standards and burdens of proof that apply to the case.

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**P. Persons Authorized to be Present**

At the hearing, the Hearings Officer should be sure that all necessary parties are present, and, because hearings are closed to the public, that unauthorized persons are excluded from the hearing room. Persons not on the agreed upon witness list, are excluded from attending the hearing unless agreed to by both parties before the proceeding.

Generally, the following persons are authorized to be present at hearings:

- The Hearing Officer
- The Complainant
- The Complainant's representative
- The Defendant (in the case of a school district this may be administrators, teachers, etc.)
- The Defendant's representative
- Approved assistants or technical advisors
- Interpreters and translators
- Security official
- Approved witness when testifying (accompanied by his/her attorney while testifying)

In addition, the Hearing Officer, with consent of the parties, may permit other persons to attend under appropriate circumstances.

**Q. Ex Parte Communication**

Parties to hearings must not engage in ex parte communication with the Hearing Officer. All contact with the Hearing Officer must be in writing with a copy to the other party. If a party wants to initiate a telephonic conversation with the Hearing Officer, they are requested to first write (fax or e-mail) to the Hearing Officer, with a copy to the other party, requesting an opportunity to speak with the Hearing Officer. The Hearing Officer shall not respond to ex parte communications except for emergency discussions regarding new dates.

The Hearing Officer should avoid being in the hearing room or having other contacts with only one party in order to avoid the appearance that the merits were discussed on that occasion.

Ex parte communications do not automatically void a decision but instead render the decision voidable. It is often possible to cure an ex parte communication. To cure an ex parte communication, the Hearing Officer should immediately

1. Make a record of what was communicated;
2. Disclose the communication to the other parties, giving them an opportunity to respond;

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3. Give the parties an opportunity to lodge a challenge against the Hearing Officer; and
4. Take the opportunity to remind the parties of the rule against ex parte communications.

A party represented by counsel who attempts to contact the Hearing Officer directly should be immediately advised to contact counsel and have the counsel make the contact. The Hearing Officer should also advise the party's counsel and the opposing parties' counsel of the attempted contact.

Pro se parties frequently forget the necessity to copy the opposing parties when sending communications to the Hearing Officer. Consequently, the Hearing Officer should be diligent to ensure that each communication received has been copied to opposing parties.

**R. Party Represented by Counsel contacting Hearing Officer**

Occasionally, a party represented by counsel will attempt to contact the Hearing Officer directly. When that happens, the party should be immediately advised that contacts may only be made through counsel. The Hearing Officer should advise the party's counsel of the client's attempted contact. If the communication is in writing, the Hearing Officer should copy all parties with the communication.

**S. Requests for Information from the Media and the Public**

Whether the hearing is open to the public or not all requests for information from the media and the public should be forwarded to the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests. The Hearing Officer should not speak with the media or other members of the public or supply information about the proceeding, documents or engage in any discussions of the merits of the matter.

**T. Requests by Party to Seal Record**

If a party or parties request the Hearing Officer to seal documents or portions of a record, the Hearing Officer should make an effort to ensure that confidential items are clearly marked, physically sealed, or kept in a separate file, so they can easily be separated from the documents that will be disclosed if the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests receives a Public Records Act request.

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Documents that should be kept confidential include the Hearing Officer's own notes on research, impressions of the case, ideas for incorporation into the proposed decision, and any draft decision before it is complete. Documents submitted by the parties under any claim of confidentiality (such as confidential business information, medical records, etc.) should be clearly marked for nondisclosure unless the Hearing Officer has disallowed the claim.

**U. Unexpected Circumstances**

In the event of an unexpected event such as death, hospitalization, sudden illness, severe weather conditions or natural disasters and unexpected business conflicts beyond a party's control that prevent that party's attendance, the Hearing Officer may grant a continuance. If the Hearing Officer allows the continuance, the Hearing Officer will also issue a new hearing date after receipt of an appropriate motion from the parties that include proposed alternate dates. In such instances, Hearing Officer must file a continuance as described under Section M.

**V. Purpose of the Pre-Hearing Conference**

At the pre-hearing conference the Hearing Officer may:

1. Advise the parties of Hearing Procedures;
2. Explain applicable burdens of proof;
3. Discuss and clarify the issues on which the hearing will be held;
4. Stipulate to facts not in dispute;
5. Explore settlement options;
6. Discuss the number of witnesses;
7. Submit the order of witnesses, showing the expected length of direct and cross examination for each witness;
8. Arrange for telephone testimony;
9. Make discovery requests;
10. Rule on outstanding motions;
11. Rule on the admissibility of exhibits;
12. Obtain stipulations of fact and stipulations as to the authenticity of documents;
13. Determine whether the parent has been provided the opportunity to inspect their child's educational records;
14. Determine the timing and manner by which evidentiary disclosures will be made;
15. Discuss other miscellaneous issues associated with the hearing, including:
  - a. In hearings involving a child whether the child will be present;
  - b. Whether witnesses should be sequestered;
  - c. Whether a participant requires special accommodations or assistive technology;

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- d. Whether closing submissions will be in oral or submitted in writing;
- e. Any other matters of importance the parties would like to bring to the Hearing Officer's attention.

**W. Failure to Appear at a Pre-Hearing Conference**

If a party fails to appear for a pre-hearing conference, a Hearing Officer may proceed with the conference and may also dismiss the case or rule by default for the opposing party.

**X. Telephone Conference**

At the discretion of a Hearing Officer, a pre-hearing conference may be conducted by telephone.

**Y. Hearing Officer Letter Confirming Results of Pre-Hearing Conference**

After the pre-hearing conference, the Hearing Officer will prepare a letter summarizing the matters discussed, agreed upon or otherwise decided during the conference. This letter will serve as a pre-hearing order, will control the balance of the proceedings and will become part of the administrative record.

**Z. Procedures that May Occur Before or During a Hearing**

1. OBJECTIONS/PROTECTIVE ORDERS:

Disputes regarding discovery shall be resolved whenever possible by conference calls. Hearing Officers may issue protective orders to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer. Orders of the Hearing Officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential information or documents.

2. FORMAL REQUESTS FOR INFORMATION AND SPECIFIC TYPES OF REQUESTS FOR INFORMATION:

Unless the Hearing Officer establishes a shorter or longer period of time, the party upon whom the request is delivered shall respond within ten (10) days.

**AA. Requests for Hearing Officer Recusal**

- 1. Conflicts of Interest, General:

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The Hearing Officer should recuse himself/herself from both real and perceived conflicts of interest. Generally this means that a Hearing Officer should not participate in a hearing where a party is a member of his/her household, a close relative, the employer of his/her spouse, parent or dependant child, someone with whom he/she has a business relationship, or a former employer (within the past year). If, however, the Hearing Officer determines that no reasonable person knowing all the facts would question his/her impartiality, the Hearing Officer may proceed with the hearing after disclosing the relationship and explaining the reasons why he/she does not believe there is a conflict. If a party disagrees, they may make note of their objection for the record and the hearing will continue to its conclusion.

2. Bias:

The Hearing Officer should not participate in any conduct during the hearing that presents the appearance of or demonstrates actual bias in favor of or against one of the parties. For example, it is improper for the Hearing Officer to eat lunch with a representative of one party during the course of the hearing. If a party or a witness accuses the Hearing Officer of bias during the course of the hearing, the Hearing Officer should document the allegations and the response on the record.

In the event that a Hearing Officer agrees with the request for recusal, upon request of a party and agreed to by the opposing party, the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests will assign another Hearing Officer to the case and will try to utilize the dates already scheduled for the proceedings. Once the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests has assigned another Hearing Officer, the case will continue to its conclusion.

**BB. Rulings on a Motion after Receipt of Written Objection**

Written Motions must be submitted to all parties and the Hearing Officer at the same time. Within ten (10) days after a written motion is filed with the Hearing Officer, the opposing party may file a written objection to the Motion. Ten (10) days after receiving the Motion and any objection thereto, the Hearing Officer will rule on the Motion.

**CC. Mechanics of Hearing**

There is no standard model for a formal administrative hearing. It should have dignity and order similar to a judicial proceeding, but should be



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conducted less formally. The organization and form of a hearing depends on the type of case, the relevant statutes and regulations, the issues, the number of witnesses, agency past practice, and the Hearing Officer's preference. The goal is to develop a fair, accurate, and concise record. The hearing should move as rapidly as possible, consistent with the fundamentals of fairness, impartiality, and thoroughness.

**DD. Hearing Hours**

Hearings are generally scheduled between 9:00 a.m. to 4:00 p.m. five days a week with a one hour lunch. At the agreement of the parties, Hearing Officers may adjust the times. Hearings should be scheduled evenings or weekends only in extraordinary circumstances. The Hearing Officer may extend or shorten the regularly scheduled sessions as convenience requires. For example, an afternoon session may be extended to permit an out-of-town witness to finish his or her testimony and return home. When it appears possible to complete the hearing in a single day, the Hearing Officer, after consultation with the parties, may begin the hearing earlier and shorten the lunch recess. The Hearing Officer also has the power to grant continuances for good cause.

**EE. Hearing Recesses and Promptness**

Short recesses should be taken whenever some time off the record will make the hearing progress more smoothly. It may also be helpful to have a minimum of one recess in the morning and one in the afternoon. The Hearing Officer should call a recess if a witness or counsel needs a break from the proceeding to regain composure and participate more effectively. The Hearing Officer should establish times for convening each session and enforce them. The Hearing Officer should also notify the parties that they are responsible for scheduling witnesses so that the allotted hearing time is fully utilized. The times fixed for recess or adjournment should be more flexible. For example, if a witness finishes his or her testimony five or ten minutes before the scheduled adjournment time for lunch, it might be convenient to recess; if counsel is in the midst of a complicated cross examination at the end of the day, adjournment may be postponed.

The Hearing Officer should commence proceedings promptly at the time fixed in the notice of the hearing. Failure to start on time causes unnecessary irritation to all concerned. It may prevent the hearing from being concluded in a single day, may cause delay in expediting the day's calendar, and may affect the full disposition of later scheduled cases.

**FF. Hearing**

Hearing Officers have the duty and power to:

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- a. Administer the oath or affirmation to anyone who will testify at the hearing;
- b. Assist all those present in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved and to determine the rights of the parties;
- c. Ensure that all parties have a full opportunity to present their claims orally, or in writing, and to get witnesses and evidence to establish their claims;
- d. Receive, rule on, deny, or limit evidence;
- e. Introduce into the record any regulations, statutes, memoranda, or other materials relevant to the issues at the hearing;
- f. Change the date, time or place of the hearing at the mutually agreeable request of the parties and continue the hearing to a subsequent date to permit either party to produce additional evidence, witnesses, and other information;
- g. Request a statement of the issues and define the issues;
- h. Regulate the presentation of the evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensible record of the proceedings;
- i. Regulate the presentation of the evidence based on disclosed issues. Parties should not present evidence on an undisclosed issue;
- j. Issue subpoenas upon request of any party to secure the presentation of evidence or testimony;
- k. Examine witnesses and ensure that relevant evidence is secured and introduced;
- l. Rule on any requests or motions that may be made during the course of the proceedings;
- m. Order written briefs to be submitted by the parties, establish the issues to be addressed by the briefs and set the deadline for their submission;
- n. Reconvene the hearing for any purpose at any time prior to the issuance of a decision or pursuant to a post-hearing motion;
- o. Ensure that all participants conduct themselves in an appropriate manner.

Hearings adhere to the following agenda, which may be modified at the Hearing Officer's discretion:

1. Formal Call to Order
  - a. Date, time and place
  - b. Statement such as: "We are here in the matter of *[Student's first name last initial/LEA – Case Number]*"
2. Introductory Statement by Hearing Officer
  - a. Introduction of Hearing Officer
  - b. Statement of open or closed hearing

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- c. For the recorded record I request that parties speak loud and clear and only one at a time
  - d. Introduction of participants for record  
- Request that parties spell their name for the record
  - e. Purpose of the hearing
  - f. Explanation of hearing procedures
3. Opening of Formal Testimony
- a. Opening Statement
    - I. LEA
    - II. Parents/Guardian
  - b. Presentation of Written Evidence and Testimony
    - I. Written evidence (exhibits)
      - (a) LEA
      - (b) Parents/Guardian
      - (c) LEA (rebuttal)
  - c. Closing Arguments (when presented orally)
    - I. LEA
    - II. Parents/Guardian
4. Closing Comments by Hearing Officer
- a. Filing of Closing Arguments (when presented in writing)
  - b. Decision Due Date
  - c. Procedures for "appeal"

*\* Unless parents/Guardian go(es) first*

**GG. Maintaining Order at the Hearing**

The Hearing Officer has the authority and obligation to ensure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner. If the conduct of a party or witness disrupts, detracts from or jeopardizes the integrity of the hearing, the Hearing Officer must take appropriate action to address the misconduct. This action should include warning the offending party to abstain from the conduct with notice of the sanction which will follow if the conduct continues. Where sanctions are appropriate, the Hearing Officer should consider the nature and severity of the misconduct. If the Hearing Officer imposes sanctions, the Hearing Officer must document the

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record by describing the misconduct in detail, the warnings given to the offending person, the sanction issued, and the Hearing Officer's reasons for issuing the sanction. In case of repeated or flagrant improper conduct by a party, the Hearing Officer may consider expulsion of the party or party's representative from the hearing and in the case of a party's representative suspension or disqualification of that representative from future hearings. See *Section LL. Sanctions*.

**HH. Evidence at Hearing**

General –

Evidence can only be admitted if it is the kind of evidence that reasonable persons are accustomed to rely on in the conduct of serious affairs. Evidence may include, but is not limited to, depositions, affidavits, official documents, and testimony of witnesses. To promote efficiency, the Hearing Officer may officially notice facts. When he or she officially notices a fact, it is so stated in the official record, and any party will, within 10 days, be given the opportunity to show the contrary.

1. Documents.

All relevant and material evidence is admissible. Repetitive, cumulative or irrelevant evidence is excluded. The parties may offer as evidence written documents that they have exchanged prior to the hearing. The Hearing Officer may permit or request the introduction of additional documentary evidence where no prejudice would result to either party.

2. Oral Testimony.

Oral Testimony is given under oath or affirmation, subject to the pains and penalties of perjury. Witnesses must be available for examination and cross-examination.

3. Regulations and Statutes.

Regulations and statutes may be put into evidence by reference to the citation or by submitting a copy of the pertinent regulation or statute.

4. Stipulations.

Stipulations of fact, or stipulations as to the testimony that would have been given by an absent witness, may be used as evidence at the hearing. The Hearing Officer may require in addition to the stipulations offered by the parties.

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5. Written Testimony

If the Hearing Officer determines that the subject matter of the proceeding is so complex, and that no party will be prejudiced by the testimony, the Hearing Officer will require that the direct testimony of specific witnesses be prepared in writing by the party offering that direct testimony.

Written testimony will be subscribed under oath or affirmation by the witness, and served upon all parties at least 15 days before the first formal evidentiary session of the proceeding. Such written testimony will not be in lieu of testimony under oath at hearing, so as to afford an opportunity for cross examination on oral and written testimony.

Written testimony offered in lieu of oral testimony at hearing will be permitted provided that there is no material prejudice to the other parties.

6. Administrative Notice. The Hearing Officer may take administrative notice of any fact of which judicial notice could be taken, and in addition may take administrative notice of statutes, regulations, and general, technical or scientific facts within the specialized knowledge of the Hearing Officer. Parties shall be so notified of the material so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts officially notified shall be included and indicated as such in the record.
7. Additional Evidence. The Hearing Officer may require any party to submit additional evidence on any relevant matter.

The following principles are useful in ruling on some common objections:

- a. Relevance or Materiality. Relevant evidence is evidence that has some tendency to prove or disprove an issue of fact in the case. A Hearing Officer may exclude irrelevant or immaterial evidence in order to make a clear record or to avoid weighing irrelevant evidence when deciding a case.
- b. Cumulative or Repetitive Evidence. The probative value of repetitive or cumulative evidence is minimal and it can cause undue delay or waste of time.
- c. Lack of Foundation. A lack of foundation objection may arise if the evidence offered has not been shown to be based upon personal knowledge or expertise. If the witness does not have personal knowledge or expertise regarding a

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factual question in the case, necessarily that witness cannot provide evidence on which "reasonable persons are accustomed to rely in the conduct of serious affairs."

**II. Bringing the Hearing to a Close**

1. Closing Argument. The Hearing Officer may permit or require oral argument on the merits of the entire case or on specific issues. Oral arguments may be heard at the close of the hearing or before or after the filing of any post-hearing briefs, as the Hearing Officer directs. In most instances, the Hearing Officer should set time limits for closing argument. The Hearing Officer should set a reasonable time limit, considering the complexity of the case and the amount of evidence and testimony presented.
2. Closing the Record. The record may be closed at the conclusion of the oral hearing. However, if additional evidence is to be submitted after the hearing, the Hearing Officer should announce (at the hearing, by letter or by other written communication) the date that the record will close.

**JJ. Preparation and Concentration**

The Hearing Officer must know the case. Before opening the hearing, the Hearing Officer should study the pleadings, the evidence that has been stipulated to by the parties, and any hearing briefs. The Hearing Officer should analyze any anticipated legal, policy, or procedural problems. The Hearing Officer should have handy copies of the pertinent statutes, regulations, procedures, and precedents so that quick consultation can be made during the course of the hearing. A current calendar should also be on hand, as well as calendars for relevant preceding years, in order to accurately pinpoint dates that are involved in the hearing. If a Hearing Officer must make any lengthy statement during the course of the proceedings, a detailed outline should usually be written out in advance. Such a presentation is less likely to contain errors and will be easier to understand.

**KK. Techniques of Presiding**

Controlling the Hearing. The Hearing Officer must control the hearing. The Hearing Officer has the responsibility to conduct a trial-like adjudication in a fair manner and to make decisions needed to expedite the adjudication, including regulating the conduct of discovery and ruling on the admission and exclusion of evidence. The Hearing Officer may place reasonable time limits on the presentation of evidence. As soon as the subject under inquiry is exhausted or fully developed, the Hearing Officer should stop the party or the witness and direct him or her to go to other matters. If the question or answer is

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irrelevant or improper, the Hearing Officer should strike it without waiting for an objection. Prompt rulings on motions and objections are essential.

A Hearing Officer can take a brief recess to make a decision, if necessary. If the Hearing Officer believes that an earlier ruling was unsound, the Hearing Officer should correct the ruling.

Sometimes one party or a group with the same interests will have multiple counsels in attendance. The Hearing Officer should insist that only one attorney examine each witness at one time and that the Hearing Officer's permission be obtained before co-counsel takes over the examination.

If an altercation threatens to disrupt the hearing, the Hearing Officer should call a recess, go off the record, and restore order to the proceeding. If a participant in the hearing becomes unruly or offensive in remarks or manner, the Hearing Officer should express disapproval of the conduct and warn against a repetition. The Hearing Officer should require all participants to address each other, and the witnesses, respectfully. The Hearing Officer sets the tone of the hearing through use of calm authority. The Hearing Officer should not engage in arguments with the parties or witness, but should listen to objections made, decide, and then move on.

**LL. Sanctions**

The Hearing Officer does not have authority to impose monetary or contempt sanctions upon a party to a proceeding, but instead provides for jurisdiction of the superior court to consider civil contempt charges against a person involved in the administrative proceedings. Grounds for contempt include: disregarding a lawful order, witness refusal to take oath or affirmation, witness refusal to be give testimony, and misconduct which obstructs the hearing.

**MM. Taking Notes**

The extent to which the Hearing Officer should take notes depends on his or her own temperament, ability, and work habits. Some Hearing Officers take no notes, feeling that it distracts them from the immediate task of controlling the hearing. Others prepare a simple topical index, and still others take detailed notes of the testimony of each witness, which might later be typed possibly with transcript references. The Hearing Officer's notes are not part of the record.

**NN. Actions by the Hearing Officer to Develop the Record**

The Hearing Officer should take action to develop an accurate and complete record of the proceedings. The Hearing Officer may call attention to gaps in the evidence and ask whether they will be filled. The Hearing Officer should direct the parties to discuss, in oral argument or by brief, any points the Hearing Officer thinks germane, and may direct them at any time to research a question of law or policy. The Hearing Officer may assist when the witness and counsel are at cross purposes, when the record may not reflect with clarity what the witness intends to convey, or when, for some other reason, assistance is needed to assure orderly development of the record. The Hearing officer may question the witness to clarify any confusing or ambiguous testimony or to develop additional facts that the Hearing Officer considers are necessary to decide the case. A Hearing Officer may go so far as to request that particular evidence, including testimony from particular witnesses, be provided. When making such a request, the Hearing Officer should note the necessity for the evidence on the record. If evidence is not produced after being requested, an adverse inference may be drawn in some circumstances.

Pro se parties may not understand the specifics involved in presenting direct evidence. One technique that may assist in the development of the record by a pro se party is to allow the presentation of a narrative, guided by occasional questions from the Hearing Officer. A Hearing Officer may also find it necessary to ask questions to develop testimony on a particular issue or clarify conclusory statements or opinions. It may also be appropriate to intervene with clarifying questions when testimony is ambiguous or unclear. A pro se party also should be discouraged from asking leading questions. The Hearing Officer may need to assist in rephrasing questions so that they elicit independent and reliable responses. On the other hand, the Hearing Officer should not become the advocate for any party. The party should be expected to meet whatever burden on proof is placed on the party. The Hearing Officer should avoid any appearance of non-neutrality. *For additional guidance on evidence see Section PP.*

**OO. Official Record – Audio Cassette Tape**

Off-the-Record Discussions

The Hearing Officer should go off the record when necessary to prevent the record from becoming cluttered with unnecessary dialogue. Prior to going off the record the Hearing Officer should make note of that fact to the parties that he/she will be going off the record. The hearing may go off the record to discuss scheduling, clarify issues, explain regulations or procedures, or initially caution the parties or their representatives with regard to their conduct. Such discussions should be immediately summarized once back on the record.



**PP. Examination of Witnesses**

All witness testimony is given under oath or affirmation and penalty of perjury. Either the Hearing Officer or an attorney representing a party must administer the oath to each witness and identify the witness before the witness begins testifying. A commonly used oath is:

Do you swear or affirm under penalty of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

The party calling the witness examines the witness first. When direct-examination is concluded, the opposing party may cross-examine. Generally, cross-examination should not be limited to areas addressed in direct-examination. Other views of the case, by the opposing party cannot be limited by direct-examination. The opposing party may go into areas of potential bias or motive to falsify testimony, or areas that opposing party deem relevant to prove their case. The relevance of cross-examination should be determined after opposing party has an opportunity to address items they think relevant.

The Hearing Officer may independently examine the witness and permit follow-up questions by the parties.

**QQ. Testimony**

General

In reaching a decision, the Hearing Officer will assess the weight, credibility, and probative value of the evidence admitted into the record. Hearing Officers may use their experience, technical competence, and specialized knowledge in evaluating the evidence. The Hearing Officer's decision will be based upon a preponderance of the evidence presented.

The testimony of witnesses should be relevant and material to the case. The testimony should be specific and reflect personal knowledge or recollection. Notes should be used only to refresh the memory of the witness. If notes are used, they must be shared with the other party. Hearsay testimony may be allowed if it is relevant, material, and not unduly repetitious, but the Hearing Officer may accord it diminished evidentiary weight.

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There may be circumstances when witnesses are not available to appear at the hearing. In those circumstances, the Hearing Officer may consider alternative methods of obtaining the testimony.

#### Expert Testimony

Relative to expert witnesses, alternative testimony requests should be brought up at the pre-hearing and first discussed with the other party (or counsel). If the parties seek to offer testimony or documents by experts, the experts must be qualified. This requires the Hearing Officer to determine whether the expert possesses the knowledge, skill, experience, training or education that permits the expert to offer opinion testimony. If the Hearing Officer can not determine whether the expert witness possesses the knowledge, skill, experience, training or education that permits the expert to offer opinion testimony, the Hearing Officer may ask the parties whether they can stipulate that the experts are qualified. This generally requires the party seeking to introduce expert testimony to provide a resume of the expert that adequately describes the expert's knowledge, skill, experience, training or education in the subject matter about which he/she is being called to testify. The expert's opinion as to facts or law may not be substituted for the Hearing Officer's ultimate conclusion of facts and law. Documents prepared by experts must be authenticated and treated like other documentary evidence.

If an expert does not testify in person at the hearing, the Hearing Officer should balance the relevance and probative value of documentary evidence prepared by an expert against a party's inability to cross examine the expert. In most cases, this determination will ultimately go to the weight the Hearing Officer should give the expert's evidence, rather than to its admissibility.

#### **RR. Objections.**

Generally, the Hearing Officer should sustain objections where the evidence is irrelevant, cumulative or unreliable. Prior to ruling on an objection, the Hearing Officer should permit the non-objecting party to respond to the objection. The Hearing Officer may take a recess or take the arguments under advisement and continue with the hearing. In ruling on objections, the Hearing Officer should remember that admission of evidence does not speak to the weight to be given the evidence once it is admitted.

#### **SS. Close of the Hearing.**

At the conclusion of all testimony, the Hearing Officer has the discretion to permit or require the parties to make oral or written closing arguments. The hearing is formally closed when any additional documents permitted by the Hearing Officer are added to the record, or when written closing

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arguments, if any, are received by the Hearing Officer, on or upon the date such documents or arguments are due, whichever comes first. A decision will be issued by the end date cited in the scheduling notice or subsequently mutually agreed to by the parties.

The Hearing Officer will accept closing legal memoranda and requests for findings of fact and rulings of law from all parties and interveners unless otherwise provided by law. Such memoranda will be limited to argument on the evidence presented. Separate requests for findings of fact and conclusions of law which the parties wish the Hearing Officer to rule upon should not exceed 50 pages in length.

Upon expiration of the time for filing closing legal memoranda and requests for finding of fact and rulings of law, the hearing record will be closed, and the Hearing Officer will proceed to decision. The Hearing Officer will reopen the record, at any time prior to a decision, upon appropriate notice to all parties if the Hearing Officer determines that there is new evidence that was not available at the time of the hearing and that is required to reach a fair and equitable decision.

**TT. Failure to Appear.**

If a party fails to appear at the scheduled hearing, the Hearing Officer may take evidence and issue such orders as may be necessary including defaulting the absent party.

**UU. Rights of All Parties.**

All parties have the right to:

1. To be accompanied and advised by legal counsel and advocates at the party's expense ;
2. To present evidence, to confront, cross-examine, and, in special education hearings only, subpoena witnesses;
3. To prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties at least five (5) days before the hearing;
4. The audiocassette tape is the official record of the hearing. Parties may request a copy of the audiocassette tape(s) at no cost. A copy of the electronic verbatim record will be provided within 10 days (depending upon number of audio cassette tapes) upon written request to the Office of Legislation and Hearings.
5. Except for in Special Education Impartial Due Process proceedings (for more information about transcripts in special education hearing proceedings, please see section: **Special Education Impartial Due Process Hearings**) the Department of Education does not provide a free copy of the transcript to the parties. Although the Department of Education can authorize and arrange for a

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transcript to be made on behalf of the school district or parent(s), the requesting party shall be responsible for payment of such transcript. The Department will provide a copy of the transcript to the requesting party within 30 calendar days of the petitioner's written request. If there are more than 20 tapes; however, the Department will provide the transcript within 60 calendar days of petitioner's written request.

6. The electronic verbatim record may only be used in a manner consistent with these regulations and otherwise shall be kept confidential except with the parent's consent.
7. To receive, upon request to the Commissioner of Education, a list of its impartial Hearing Officers with their qualifications.
8. Additionally, parents have the following rights:
  - a. To have the child, if he/she is the subject of the hearing, present at the hearing;
  - b. To open the hearing to the public; otherwise the hearing shall not be open to the public.

**QQ. Summary Judgments.**

A party may request a decision without a hearing, also known as a summary judgment; however, all parties and the Hearing Officer must agree to a decision based solely on written material. The decision will have the same force and effect as any other Special Education Appeals decision.

**RR. Dismissal With or Without Prejudice.**

There are two ways for a case to be dismissed – with prejudice or without.

1. Dismissal with prejudice means that the issues raised in the hearing request are closed and cannot be reopened in subsequent requests for hearing.
2. Dismissal without prejudice means that the same issues may be raised at a later date by the filing of a new request for hearing.

**SS. Request for Dismissal With or Without Prejudice by Parties.**

Any party may file a Motion or Request to Dismiss with Prejudice for failure:

1. To prosecute or proceed with the case by the other party;
2. To follow or comply with these rules or with any Hearing Officer Order;
3. To state a claim upon which relief can be granted;
4. To sustain its case after presentation of evidence. The Hearing Officer may allow a Motion or Request to Dismiss with or without prejudice.

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**TT. Request for Withdrawal**

A party who decides not to go forward with their request for hearing after a proceeding has been scheduled, must file a request for withdrawal with the Hearing Officer. The request must contain a reason for the withdrawal.

1. The form Written Request for Withdrawal of Hearing (Form AH-Y is available in the Users' Guide to Administrative Process) is available for use by the party requesting withdrawal of their scheduled proceeding.
2. When the party files a request for withdrawal (hereinafter referred to as "petition"), the party must file a petition with the Hearing Officer and, at the same time, must send a copy of the petition to the opposing party.
3. Upon receipt of the party's petition the Hearing Officer will forward a copy of the party's petition to the Commissioner along with a request (Form HO-C) that as a result of the party's petition the Hearing Officer requests the Commissioner close the matter based on the petition.
4. Upon receiving a petition from the Hearing Officer or from a party, the Commissioner will send out a letter to the Hearing Officer assigned to the case which indicates he/she has received the petition and as a result of the petition is dismissing the matter. The Commissioner's letter will indicate that the Hearing Officer can take the scheduled proceeding off their calendar and issue an order to the parties closing the case due to the dismissal and request the hearing officer clarify whether the matter is dismissed with or without prejudice.
5. Upon receipt of the Commissioner's dismissal of the matter, the Hearing Officer will issue an order dismissing the matter and will indicate whether the matter has been dismissed with or without prejudice.

**UU. Dismissal By Order of the Hearing Officer.**

The Hearing Officer has the authority to dismiss a case with or without prejudice when the party who requested the hearing fails to respond to notices or correspondence, file documents required by these policies, comply with orders, or otherwise indicates an intent not to proceed with the hearing request, the Hearing Officer may issue an order requiring that party to show cause why the appeal should not be dismissed or lack of prosecution or a failure to proceed. If that party fails to show such cause within thirty (30) days, the appeal may be dismissed with or without prejudice.

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**VV. Mailing of Final Decisions to Parties**

Hearing Officer Decisions are sent out certified mail to the parties by the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests.

**WW. Inactive Cases.**

A case that has not been rescheduled, withdrawn, settled, mediated, or requested to be scheduled by either party for a period of six months from the original request for hearing, may be dismissed with prejudice. A dismissal under this section shall be a final action of the LEA.

**XX. Consolidation of Cases.**

Whenever it shall appear to the Hearing Officer that 2 or more requests involve a substantially similar or substantially related issues the hearing officer shall have the authority to consolidate those proceedings for appeal decision, or both.

**YY. Hearing Files and Official Record of Hearing**

The Hearing Officer is responsible for returning the complete hearing files and official record of hearing to the local school district 504 coordinator or other individual assigned by the school district's chief administering officer to respond to section 504 impartial hearing requests as soon as possible after a Hearing Officer Decision has been rendered and the hearing process has been concluded but in no case more than one week after the conclusion of the matter.

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**ATTACHMENTS**

Templates for use by Hearing Officers:

Attachment A	Letter Confirming Results of Pre-hearing Conference (Form A)
Attachment B	Hearing Agenda (Form B) <i>[Mailed by Hearing Officers with Letter Confirming Results of Pre-hearing Conference]</i>
Attachment C	Settlement Notice (Form C)
Attachment D	Timeline Extension Form (Form D)
Attachment E	Hearing Officer Response to Requests for Reconsideration (Form E)
Attachment F	Cover Page for Hearing Decisions (Form F)
Attachment G	Cover Page for Summary Judgments (Form G)
Attachment H	Administrative File Checklist
Attachment I	Pre-hearing Checklist

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**ATTACHMENT A**

**CONFIRMING RESULTS OF PRE-HEARING CONFERENCE**

, NH

, NH

RE: Student / -- Case Number - -

Dear and :

A pre-hearing conference was conducted in this matter on . Participating were (1) , (2) and (3) .

The matters addressed and determined during the pre-hearing conference were as follows:

1. Legal issues for which hearing is requested:
2. Access to the Student's educational records:
3. Estimated number of witnesses and length of hearing: estimate they will present the testimony of witnesses and that their presentation of evidence would require hours/days. estimate the school district will present the testimony of \_\_\_ witnesses and that its presentation of evidence will require hours/days.
4. Hearing date(s): The hearing will begin on , at and will be continued on the following days and times: , and . The hearing will be held at and , .
5. Procedural Issues: The hearing will be conducted as follows:
  - a. Order of presentation of evidence. The school district has the burden of proof and of going forward. have elected to have the school district present its case first.
  - b. Representation of Parent/guardian/guardians. The parent/guardian/guardians have been advised of the availability of any free or low cost legal services that are available and have been advised of their right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the needs of children with disabilities. The parent/guardian/guardians will be represented by and accompanied by .



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- c. Open or closed hearing. Parent/guardian/guardians have elected to have the hearing be open.
  - d. Presence of child. Parent/guardian/guardians have indicated the child will be present during the hearing.
  - e. Pre-hearing memoranda. The parties will submit written memoranda to me on the following issues on or before : . Any memorandum should reference and include copies of, applicable legal authority (including statutes, regulations, case decisions or administrative opinion letters) and a copy should be provided to all other parties when the memorandum is sent to me.
6. Evidentiary Disclosures. A list of witnesses, and copies of the exhibits that are to be used at the hearing shall be delivered to each of the other parties no later than five (5) **business** days before the start of the hearing. The deadline is . Any evaluations and corresponding recommendations a party intends to use at the hearing must be disclosed to the other parties by the same date. Disclosures and documents must also be delivered to me by the date above. Please note that I may refuse to accept into evidence, or to consider, any documents or other submissions not submitted by .
7. Closing Submissions. Closing arguments, and proposed findings of fact and law, shall be submitted to me and the other party by . Closing submissions are due .

If you have any questions concerning any of the foregoing, please contact me in writing immediately so that any uncertainty or confusion may be promptly addressed. Please remember that any correspondence or other writing directed to me must be copied to all other parties and delivered contemporaneously to the other parties.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

cc:

(Form HO-A)

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**ATTACHMENT B**

**HEARING AGENDA**

Student – Case Number

**I. Formal Call to Order**

- A. , , at
- B. We are here in the matter of Student / -- Case Number

**II. Introductory Statement by Hearing Officer**

- A. Introduction of Hearing Officer
- B. Statement of open or closed hearing
- C. For the recorded record I request that parties speak loud and clear and only one at a time.
- D. Introduction of participants for record
- E. Purpose of the hearing
- F. Explanation of hearing procedures

**III. Opening of Formal Testimony**

- A. Opening Statement
  - i. LEA
  - ii. Parent/guardians
- B. Presentation of Written Evidence and Testimony
  - i. Written evidence (exhibits)
    - a. LEA
    - b. Parent/guardians
    - c. LEA (rebuttal)
- C. Closing Arguments (when presented orally)
  - i. LEA
  - ii. Parent/guardians

**IV. Closing Comments by Hearing Officer**

- A. Filing of Closing Arguments (when presented in writing)
- B. Decision Due Date
- C. Procedures for "appeal"

*\* Unless parent/guardians go first*

(Form HO-B)

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**ATTACHMENT C**

**SETTLEMENT NOTICE**

, NH

, NH

RE: Student /                      -- Case Number       -       -

Dear                      and                      :

This letter will confirm that the parties have settled their dispute and                      has withdrawn their request for a due process hearing. I received a copy of the signed settlement agreement on                      . The hearing currently scheduled for                      is cancelled.

I will take no further action on this matter.

Sincerely,

---

cc:

(Form HO-C)

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**ATTACHMENT D**

**TIMELINE EXTENSION CONFIRMATION**

RE: Student /                      -- Case Number     -     -

SCHOOL DISTRICT:

PARENT/GUARDIANS' NAME:

STUDENT'S NAME:

DATE ORIGINAL TIME-LINE EXPIRES:

DATE EXTENSION EXPIRES:

PARTY REQUESTING EXTENSION:

REASON(S) FOR REQUEST:

HEARING OFFICER DECISION:

\_\_\_\_\_

Date

Copy sent to:

(Form HO-D)

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**ATTACHMENT E**

**RESPONSE TO REQUEST FOR RECONSIDERATION**

,

,

RE: Student /            -- Case Number    - -

Dear            and            :

On            , petitioner filed a request for reconsideration of my            decision. The petitioner filed a request for reconsideration asserting that my decision            .

Having reviewed the petitioner's request for reconsideration, I find:

If you have any questions concerning any of the foregoing, please contact me in writing immediately so that any uncertainty or confusion may be promptly addressed. Please remember that any correspondence or other writing directed to me must be copied to all other parties and delivered contemporaneously to the other parties.

Sincerely,

\_\_\_\_\_

cc:

(Form HO-E)

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**ATTACHMENT F**

HEARING DECISION AND ORDER

In the Matter of )  
 )  
Student Case No. - - )  
 )  
 )  
 )  
 )  
& )  
 )  
, )  
 )  
 )  
 )  
 )  
 )  
 )

Hearing Dates:

Parent/guardian:

Counsel for Parent/guardian:

School District:

Counsel for School District:

The Decision and Order refers to the parties, witnesses and others generically, to protect personally identifiable information. An index of names is attached for the benefit of the parties. The index will permit the parties to identify specific witnesses and other persons and pertinent references. The index is designed to be detached before this Decision and Order is released as a public reference.

(Form HO-F)

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**ATTACHMENT G**

**[COVER PAGE FOR SUMMARY JUDGMENTS]**

In the Matter of )  
 )  
Student Case No. - - ) DECISION ON MOTION FOR SUMMARY JUDGMENT  
 )  
 )  
 )  
& )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

Parent/guardian:  
  
 , NH

Counsel for Parent/guardian:  
  
 , NH

School District:  
  
 , NH

Counsel for School District:  
  
 , NH

The Decision on Motion for Summary Judgment refers to the parties, witnesses and others generically, to protect personally identifiable information. An index of names is attached for the benefit of the parties. The index will permit the parties to identify specific persons and pertinent references. The index is designed to be detached before this Decision on Motion for Summary Judgment is released as a public reference.

(Form HO-G)

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**ATTACHMENT H**

**PRE-HEARING CHECKLIST**

**In re:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_

Hearing Officers are to discuss in detail at Pre-hearing Conference and memorialize in their Pre-hearing Order:	Check when completed
Documentation of district resolution session results, noting non-compliance when appropriate (for SPED cases only)	<input type="checkbox"/>
Identification of issues	<input type="checkbox"/>
Information on Witnesses: <ul style="list-style-type: none"> <li>○ Who will be called by agreement of parties               <ul style="list-style-type: none"> <li>▪ i.e. District will bring teacher x, y, z to hearing</li> </ul> </li> <li>○ Who will be called by subpoena               <ul style="list-style-type: none"> <li>▪ If witnesses need to be done by subpoena, Hearing Officer should describe subpoena process</li> </ul> </li> <li>○ Include witness information in pre-hearing order with enforcement provision:               <ul style="list-style-type: none"> <li>▪ If teacher x, y, z does not attend, hearing officer will order_____.</li> </ul> </li> </ul>	<input type="checkbox"/>
Whether or not witnesses will be sequestered	<input type="checkbox"/>
Decorum at hearing	<input type="checkbox"/>
Motions and timeframes (final witness list; discovery deadlines; evidentiary deadlines)	<input type="checkbox"/>
When possible, requests for additional day of hearing should be brought up and resolved at PHC, and should be memorialized in PH Order.	<input type="checkbox"/>
Postponements due to inclement weather: <ul style="list-style-type: none"> <li>○ Emergency contact information and how parties will know cancellation has occurred</li> </ul>	<input type="checkbox"/>
All items agreed to by parties	<input type="checkbox"/>
Any other issue that may arise	<input type="checkbox"/>
<b>NOTE: Not all fields reply to every matter</b>	



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