

# HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**2024-2025 Edition**



NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

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Title IX of the Education Amendments of 1972 (Title IX) - sex  
Section 504 of the Rehabilitation Act of 1973 (Section 504) - disability  
The Americans with Disabilities Act of 1990 (ADA) - disability  
NH Law against discrimination (RSA 354-A)

The following individual has been designated to handle inquiries regarding the nondiscrimination policies and laws above except Section 504:

Angela Kane  
ADA/Title IX Coordinator  
NH Department of Education  
25 Hall Street  
Concord, NH 03301-3860  
(603) 271-3743

Inquiries regarding Section 504 should be directed to:

(Vacant)  
Section 504 Coordinator  
NH Department of Education  
25 Hall Street  
Concord, NH 03301-3860  
(603) 271-3737

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**

The New Hampshire State Department of Education's Governance Unit has been tasked with oversight of a variety of adjudicative processes. This guide has been developed to acquaint Hearing Officers with the general overview and format of the Department's administrative 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 any way 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 to Administrative Process the Department of Education has also published a Users' Guide to Administrative Processes, a copy of which has been provided to you and which is available on the Department's website.

Although the information in the Hearing Officers' Guide to Administrative Process is not meant to be exhaustive, this guide, along with the Users' Guide to Administrative Processes, should answer most of the questions that arise during the course of your contract.

To ensure that our process is the most effective the Department has looked at what other states do in these areas and altered or amended, where appropriate, to include new ideas and processes. We'd like to acknowledge the work of the states of Alaska, Delaware, New Jersey, and New York whose guides assisted in helping us to focus and improve our process.

Please always feel free to contact the Governance Unit should you have any questions.



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**A. Location of Administrative Proceedings**

Administrative proceedings are conducted in one of three ways:

1. Electronically (ex.: Zoom, Microsoft Teams, or telephonically)
2. At location agreed to and arranged by parties

**B. In-Person Hearing**

When an in-person hearing or mediation is held off-site 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.

**C. Invoices**

Except for the initial amount payable upon assignment to a case, invoices unaccompanied by an order, decision, settlement agreement or mediated agreement, will **not** be processed. Governance Unit expectation is Hearing Officers will bill once a month. Invoices submitted in excess of a year from case assignment date will not be paid. The Governance Unit will forward Hearing Officer invoices to the Bureau of Business Management for payment. The normal turnaround time for invoices, as set by state policy, is 30 days.

**D. Hearing Officer Invoice for Travel**

When submitting an invoice for travel, Hearing Officers are required to supplement the invoice with a mileage breakdown. To meet such requirement Hearing Officers may use MapQuest and print off the mileage breakdown.

**E. Payment by Parents/School Districts for Hearing Officer Travel**

It is not appropriate for Hearing Officers to accept payment from parents/school districts for travel.

**F. Hearing Officer "Shopping"**

When you are assigned as a Hearing Officer in a case it is not appropriate for you to act as a mediator in that case, even if requested by the parties. Advise the parties that in order for mediation to take place they will need to file the paperwork as outlined in the Users' Guide to Administrative Process.

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**G. State Identification Badge**

All visitors to the Department of Education must be issued a visitor badge. As contracted employees of the Department, Hearing Officers are issued state identification badges. Please ensure you are wearing your state identification badges whenever you visit. If you lose your badge or do not have one, please contact the Administrator, Dispute Resolution and Constituent Complaints immediately to report its loss or to request one.

**H. State E-mail Account**

As contracted employees of the Department of Education all Hearing Officers are issued a dedicated affiliate state e-mail account for use in all Hearing Officer related activities. Usage of private e-mail for Hearing Officer related activities is strictly prohibited.

**I. E-mail with Parties**

Please also be mindful that any contact with parties by e-mail becomes part of the permanent record.

Although the parties can contact the Governance Unit, the Department does not have authority to authorize a postponement of a proceeding. Therefore it is important for Hearing Officers to remind parties that unless the Hearing Officer has granted a request to a motion by a party for a change in date, all participants should expect to show up at the scheduled proceeding.

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

In order to ensure a student's personally identifiable information is not compromised when utilizing e-mail, the student's name, 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/Chesterfield School District
Case Number:	IDPH-FY-08-01-000

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 electronic scheduling notice the parent(s)' address has also been left blank.

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**K. 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 Governance Unit 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 Governance Unit 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 Governance Unit 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 Governance Unit.

Accommodations can be made for a variety of reasons.

**L. Weekly Status Report**

The primary purposes of the weekly status report are to keep the Hearing Officer continually reminded of the cases that are pending and to give the Governance Unit immediate information on developing backlogs. The weekly status report should reflect all assigned cases in which the hearing has been conducted, at least in part, but a final decision has not yet been delivered to the Governance Unit. Examples include cases which have been continued for further testimony. A further example is a case which may have been heard in part, but the Hearing Officer is awaiting receipt of documents from one of the parties with the intention of reopening the hearing. Yet another example would be a case in which the hearing was postponed, and the Hearing Officer has retained the file awaiting reset. An undecided case should not simply be reported on the first weekly status report following the hearing; it should be reported on each succeeding weekly status report until the decision is delivered to the Governance Unit.

**M. Participant Evaluation and Department Annual Review of Hearing Officers**

At the conclusion of proceedings, the Governance Unit will provide an evaluation to each party. Input from parties to an administrative hearing or alternative dispute resolution proceeding is very important in assisting the

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Department to identify areas that are effective and those that might need to be strengthened. The Department will provide Hearing Officers with an annual review of Hearing Officer Performance. If performance results in a breach of the hearing officer's contract duties and/or hearing officer's performance is below expectations, the Hearing Officer may be suspended, duties reduced, or the Hearing Officer contract terminated.

**N. Terminology in Orders**

In order for the Department of Education to accurately capture data in its data base, we rely on Hearing Officers to use terms which accurately convey the actions taken. There is a difference between mediated agreements, settlement agreements and agreements based on resolution. Please use the appropriate term. The data we enter from Hearing Officer reports is used to report to the federal government, so accuracy is important. Please also note that if an agreement concludes a matter, such agreement should not be defined by the Hearing Officer as a withdrawal or dismissal.

In order to assist with terminology, the following definitions will apply when determining whether an agreement occurred as a result of a mediation, neutral evaluation, resolution agreement, or settlement agreement.

Mediated Agreement:

A mediated agreement is an agreement that is made as a result of Mediation wherein the parties affirm their understanding, in writing, of a verbal agreement. A mediated agreement does not involve a Hearing Officer or Neutral Evaluator.

Neutral Evaluation Agreement:

A Neutral Evaluation is the result of a Neutral Conference wherein the parties agree to the Neutral Evaluator's oral opinion and it is placed in a binding agreement which shall be termed neutral evaluation agreement. A neutral evaluation does not involve a Mediator or Hearing Officer.

Resolution Agreement:

A resolution agreement is made as a result of a local level resolution meeting wherein the parties affirm their understanding, in writing, of a verbal agreement. A resolution agreement does not involve a Mediator, Hearing Officer, or Neutral Evaluator.

Settlement Agreement:

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A settlement agreement is a document that spells out the terms of an out-of-hearing compromise. A settlement agreement may involve a Hearing Officer but does not involve a Mediator or a Neutral Evaluator.

**O. Change in Scheduled Proceedings**

It is the duty of Hearing Officers to keep Hearing/Mediation participants apprised of changes in schedules or inability to attend a scheduled proceeding.

**P. Documentation of Case Closure**

Every time a case is closed, whether mediated, settled, withdrawn, dismissed, or resolved, or a decision rendered, the Hearing Officer must send documentation of case closure to the Office of Legislation.

**Q. 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. The Hearing Officer should have access to a telephone and number to call for any needed assistance.

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.

**R. Request by Party for Security**

If the hearing is in-person and 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 Governance Unit of the determination of need and the rationale for the

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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 Governance Unit will contact the appropriate law enforcement agency and make appropriate arrangements for the necessary security. The Governance Unit 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 Governance Unit is aware of the change.

**S. Quarterly Hearing Officer Meeting/Training Sessions**

The Office of Legislation/Hearings holds mandatory quarterly Hearing Officer Meeting/Training Sessions to discuss the latest issues, training and up-dates.

**U. Training Requests**

Whenever a training opportunity arises that a Hearing Officers believes he or she can benefit from, they are invited to email information regarding the training to the Governance Unit so a determination of available funding can be made.

**V. Research Materials**

The Department's Bureau of Special Education publishes memorandums (also known as Advisories) on a variety of special education topics that may or may not be assistive to you. Hearing Officers can find the memorandums under the Special Education section of the Department of Education's website at:

<https://www.education.nh.gov/who-we-are/division-of-learner-support/bureau-of-sstudent-support/special-education/memorandums>

**W. Federal District Court Website**

If you want to know whether a case of yours has been appealed, you can do a search on the Federal District Court website by going to: [www.nhd.uscourts.gov](http://www.nhd.uscourts.gov) . In presenting a query type in the word "Special Education."

**X. On-line Resources**

RSA 541-A:30-a through 38. Statutory provisions that apply to all adjudicative proceedings by state agencies:

[New Hampshire Statutes - Table of Contents \(state.nh.us\)](http://www.state.nh.us/statutes)

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Ed 200. The Department's rules governing adjudicative proceedings before the New Hampshire State Board of Education:

[Ed 200 \(state.nh.us\)](http://state.nh.us)

Ed 1100. The Department's rules governing adjudicative proceedings relative to special education:

[Ed 1100-1124 \(state.nh.us\)](http://state.nh.us)

DOJ 800. The Attorney-General's model rules for adjudicative proceedings:

[Jus 800 \(state.nh.us\)](http://state.nh.us)

**Y. Hearing Officers Personal Notes**

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

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ALTERNATIVE DISPUTE RESOLUTION**

**MEDIATION**

**A. Mediator Appointment**

1. After receiving notice of appointment in a case, the Mediator will disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or likely to prevent the process from proceeding as scheduled;
2. If the Mediator withdraws, has a conflict of interest, or is otherwise unavailable, a replacement Mediator will be appointed by the Governance Unit to hear the issue.

**B. Mediator's Role**

The role of the Mediator shall be:

1. To facilitate communication between the parties;
2. To define the issues and explore possible resolutions to the dispute;
3. To remain neutral;
4. To ensure that parties openly, freely, and candidly discuss the strengths and weaknesses of their positions with the mediator;
5. To ensure the parties have authority to carry out the terms of the settlement;
6. To keep information provided to the mediator in private discussion confidential and not divulge to the opposing side unless specifically authorized.

The mediator shall not:

1. Have personal knowledge of any of the parties.
2. Have the authority to render a decision or impose a settlement on the parties.
3. Sign mediated agreements.
4. Act as a legal advisor to the parties.

**C. Mediator Attitude, Demeanor, and Behavior.** The Mediator's demeanor sets the tone for the mediation. The Mediator should focus on the proceeding and listen attentively. The Mediator should, if possible, arrange the Mediator's schedule to avoid interrupting the mediation for personal business. The Mediator should treat all participants with respect. The Mediator should not carry on any conversation not related to the mediation with a party to the mediation. Each participant should be



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addressed formally, for example, Mr. Jones or Ms. Smith, never by first names or nicknames. As innocent as these acts may appear subjectively, experience has shown that they can give an erroneous and harmful impression. The outsider will frequently claim that the "friendliness" between the Mediator and participant, gave an impression of favoritism or that the Mediator was biased against the party.

The Mediator should not argue with participants. New Hampshire administrative proceedings are intended to be informal and non-threatening to the participants. A Mediator should rely on calm authority and impartiality to take command of a proceeding, rather than undue formality.

**D. Commitment of Resources**

The Commitment of Resources form is signed by School Districts prior to a mediation session. It is important for the Mediator to remind participants of the importance of committing to the agreement.

**E. Post Mediation**

1. Within 30 days of the initial mediation session, the Mediator will file a report with the Governance Unit advising that the case has been settled, that mediation is ongoing, or that mediation failed to resolve the dispute.
2. If mediation is ongoing, the Mediator shall file a final report within 3 days of the final mediation session.

**F. Mediated Agreements**

Mediators do not sign mediated agreements.

The Department of Education is not responsible for enforcement of agreements. Agreements are enforceable in a court of competent jurisdiction.

Parties can bind themselves but cannot bind a third-party or require a third-party to take or not take any action.

**G. Party Non-Compliance to Mediated Agreement**

Enforcement of settlement agreements is done through a court of competent jurisdiction. The Mediator does not act as an enforcer of mediated agreements.

## NEUTRAL CONFERENCE

### A. Neutral Appointment

1. After receiving notice of appointment in a case, the Neutral Evaluator will disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or likely to prevent the process from proceeding as scheduled;
2. If the neutral withdraws, has a conflict of interest, or is otherwise unavailable, a replacement Neutral Evaluator will be appointed by the Governance Unit to hear the issue.

### B. Neutral's Role

The Neutral Evaluator shall:

1. Prior to the neutral conference review the summary of the significant aspects of case submitted by parties as well as copies of documents on which parties will rely.
2. Assure the parties present have authority to authorize settlement.

The Neutral Evaluator may:

1. Request additional written information prior to the evaluation from either party if the Neutral Evaluator determines such information is necessary to render evaluation.

At neutral conference the Neutral Evaluator may:

1. Address questions to the parties and allow each party no more than 30 minutes to complement their written summaries with a brief oral statement. The evaluation will be limited to not more than 2 hours.

The Neutral Evaluator shall not:

1. Have personal knowledge of any of the parties.
2. Act as a legal advisor or legal representative
3. Communicate with parties concerning their case outside of the neutral evaluation

- C. Neutral Evaluator Attitude, Demeanor, and Behavior.** The Neutral Evaluator's demeanor sets the tone for the neutral conference. The Neutral Evaluator should focus on the proceeding and listen attentively. The Neutral Evaluator should, if possible, arrange their schedule to avoid

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interrupting the neutral conference for personal business. The Neutral Evaluator should treat all participants with respect. The Neutral Evaluator should not carry on any conversation not related to the neutral conference with a party to the proceeding. Each participant should be addressed formally, for example, Mr. Jones or Ms. Smith, never by first names or nicknames. As innocent as these acts may appear subjectively, experience has shown that they can give an erroneous and harmful impression. The outsider will frequently claim that the "friendliness" between the Neutral Evaluator and participant, gave an impression of favoritism or that the Neutral Evaluator was biased against the party.

The Neutral Evaluator should not argue with participants. New Hampshire administrative proceedings are intended to be informal and non-threatening to the participants. A Neutral Evaluator should rely on calm authority and impartial decision-making to take command of a proceeding, rather than undue formality.

**D. Neutral Evaluation**

The Neutral Evaluator will issue an oral opinion following the conference with a written report mailed to the parties within 48 hours of the conference excluding Saturday, Sunday, or a holiday. The report will contain a suggested settlement or disposition as well as the reasoning that led to the suggested settlement or disposition.

**E. Neutral Evaluator's Report to the Office of Legislation and Hearings**

At the conclusion of a scheduled neutral evaluation the Neutral Evaluator will advise the Governance Unit as follows:

1. If the neutral evaluation results in agreement, the conclusions will be incorporated into a written binding agreement signed by each party with a copy to the Governance Unit; or
2. If the neutral evaluation does not result in agreement, the Neutral Evaluator will report only the date and the participants at the meeting.

**F. Enforcement of Neutral Agreements**

The Department of Education is not responsible for enforcement of agreements that result from a neutral evaluation. Agreements are enforceable in a court of competent jurisdiction.

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**A. 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 proposed or final (in appropriate circumstances) 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.

The following information applies to all administrative adjudication proceedings regardless of whether or not it is a special education impartial due process hearing; vocational rehabilitation fair hearing; or appeals of individuals from final decisions of the local school board or the State Department of Education.

The terms Hearing Officer and Hearing are used interchangeably throughout. For Vocational Rehabilitation Fair Hearing customers, replace the term "Hearing Officer" with "Fair Hearing Officer" and "Hearing" with "Fair Hearing." For participants in State Board Hearings, replace the term "Decision" with "Report and Recommendation to the State Board."

**B. 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. During the proceeding the Hearing Officer should periodically check that the

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recording light is illuminated and that the numeric indicator is advancing to assure that the proceeding is being recorded. To ensure the record is complete, the Hearing Officer should announce when the reporting is interrupted, 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.

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

In all in-person 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 Governance Unit 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 which a qualified interpreter would appear. The parties will be notified as soon as such qualified interpreter has been arranged.

**D. 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:

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"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 Governance Unit 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.

**E. Continuances**

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

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 Governance Unit as well as contemporaneously forward to the

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Governance Unit 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.

**F. Acceptance of Correspondence**

Hearing Officers must ensure that any correspondence sent to them has also been sent simultaneously and expeditiously to the opposing party. Any pleading that is filed with the Hearing Officer must be copied to the opposing party at the same time.

**G. 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.

**H. 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
- Advocate
- Supported Decision Maker
- Security official

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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.

**I. 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 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, if a proceeding is held in-person, 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. Additionally, in non-Special Education Impartial Due Process Hearing cases, such as State Board of Education hearings, the Hearing Officer should avoid ex parte communications even after the proposed decision is made, based on the possibility of a remand from the State Board of Education or a reviewing court.

Ex parte communications do not automatically void an agency 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;
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



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Hearing Officer should be diligent to ensure that each communication received has been copied to opposing parties.

**J. 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.

**K. 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 Governance Unit. 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.

**L. 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 Department receives a Public Records Act request.

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.

**M. 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 G.

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**N. 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. In special education cases, 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. Determine the manner and date by which subpoenas must be requested;
16. 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;
  - 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.

**O. 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.

**P. 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.

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**Q. 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 thirty (30) days.

**R. Requests for Hearing Officer Recusal**

1. Conflicts of Interest, General:

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.

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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 Governance Unit will assign another Hearing Officer to the case and will try to utilize the dates already scheduled for the proceedings. Once the Governance Unit has assigned another Hearing Officer, the case will continue to its conclusion.

**S. 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.

**T. Subpoenas**

Hearing Officers have authority to issue a subpoena in Special Education Impartial Due Process hearings pursuant to RSA 186-C:16-a and in accordance with RSA 516:1. Hearing Officers do not have authority to issue subpoenas for any other administrative proceeding.

**U. 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 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.

**V. Hearing Hours**

Hearings are generally scheduled in between 9:00 a.m. to 4:00 p.m. five days a week with one-hour lunch. At the agreement of the parties, Hearing Officers may adjust the times and include weekends. Hearings should be scheduled evenings or weekends only in extraordinary circumstances. The Hearing Officer may extend or shorten the regularly scheduled sessions if appropriate. 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.

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**W. 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.

**X. Hearing**

Hearing Officers have the duty and power to:

- 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;

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- j. In a special education proceeding, 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 additional evaluations at public expense under appropriate circumstances;
- n. 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;
- o. Reconvene the hearing for any purpose at any time prior to the issuance of a decision or pursuant to a post-hearing motion;
- p. 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 – IDPH Number]*
- 2. 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
    - 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\* (or Voc Rehab)
    - II. Parents (or Client)
  - b. Presentation of Written Evidence and Testimony
    - I. Written evidence (exhibits)
      - (a) LEA\* (or Voc Rehab)

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- (b) Parents (or Client)
- (c) LEA (rebuttal) (or Voc Rehab)
- c. Closing Arguments (when presented orally)
  - I. LEA\* (or Voc Rehab)
  - II. Parents (or Client)
- 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 (or Client) go(es) first*

**Y. 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 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.

**Z. Evidence at Hearing**

General –

In accordance with RSA 541-A:33,II, administrative hearings are not bound by the New Hampshire Rules of Evidence or the Federal Rules of Evidence. Although the Hearing Officer is not bound by the rules of evidence applicable to courts, he or she does observe the rules of privilege recognized by law. Evidence can only be admitted if it is the kind of evidence that reasonable persons are accustomed to relying on in the

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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.

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



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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 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."

**AA. 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

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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.

**BB. 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.

**CC. 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 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

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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.

**DD. 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 a person involved in the administrative proceedings. Grounds for contempt include: disregarding a lawful order, refusal to respond to a subpoena, witness refusal to take oath or affirmation, witness refusal to be give testimony, and misconduct which obstructs the hearing. See *Section BB*.

**EE. 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.

**FF. 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.

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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 KK.*

**GG. Official Record – Audio Recording**

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.

**HH. 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.

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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.

## **II. 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.

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

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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.

**JJ. 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.

**KK. 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 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 (In State Board cases up to 30 days after the close of the hearing) unless otherwise provided by law. Such memoranda will be limited to argument on the evidence presented. In State Board cases separate requests for findings of fact and conclusions of law which the parties wish the Hearing Officer to rule upon shall not exceed 50 pages in length. In all other cases, 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

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closed, and the Hearing Officer will proceed to decision (or proposed 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.

**LL. 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, but not limited to, ordering an educational placement for the child or defaulting the absent party.

**MM. 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 audio recording is the official record of the hearing. Parties may request a copy of the audio recording(s) at no cost. A copy of the electronic verbatim record will be provided within 10 days upon written request to the Governance Unit.
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 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, or slightly longer depending upon size, of the 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;

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- b. To open the hearing to the public; otherwise the hearing shall not be open to the public.

**NN. 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.

**OO. 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.

**PP. 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.

**QQ. 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.



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3. The Hearing Officer will issue an order dismissing the matter and will indicate whether the matter has been dismissed with or without prejudice.

**RR. 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.

**SS. Final Decision of Hearing Officer**

In accordance with federal law, the Governance Unit must make redacted Hearing Officer Decisions available to the public. To accomplish this all Hearing Officer Decisions, including Findings of Fact and Rulings of Law when submitted by parties and incorporated in a Hearing Officer Decision or Report and Recommendation to the State Board, are available on the Department's website and are provided upon request. In providing such decisions to the public it is imperative that all personally identifiable information that would identify the student is removed. In order to accomplish this, Hearing Officers are required to ensure there is no personally identifiable information in Hearing Officer Decisions and Findings of Fact and Rulings of Law submitted by parties.

**TT. Electronic Decision to Office of Legislation/Hearings**

The electronic Hearing Officer Decisions housed on the NH Department of Education website are an important source of information for school districts and parents. Your cooperation is required to ensure that all Hearing Officer Decisions are posted.

Please, ensure that Hearing Officer Decisions, Findings of Fact and Rulings of Law submitted by parties, are redacted and electronically forwarded to the Administrator, Dispute Resolution and Constituent Complaints.

**UU. 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 Department of Education.

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**VV. 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.

**WW. 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 Department of Education's Office of Legislation/Hearings 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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**SPECIAL EDUCATION**  
**IMPARTIAL DUE PROCESS HEARINGS**

While the information contained under **Administrative Hearings** is true for all administrative hearings, the following information applies specifically to special education impartial due process hearings which are governed by RSA 186-C and Ed 1123. Please ensure you review not only the information contained in this section but also information contained under the section **Administrative Hearings** as well as the Users' Guide to Administrative Process.

**A. Continuances**

Hearings must be held within the 45 day timelines unless the Hearing Officer grants specific extensions of time. 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 and must be rigidly held unless further extension to a date certain are granted.

Although it is not required, it is preferable that both parties agree to a continuance in order for a hearing to be continued. When granting a continuance Hearing Officers must document:

1. Who requested the continuance;
2. The reason for the continuance;
3. The date the matter was continued to;
4. The new end date; and,
5. Whether the Hearing Officer agreed to the continuance.

If the continuance will affect the end date, the parties will be requested to work together with the Hearing Officer in establish a new end date. After the new end date is established, the Hearing Officer will then file a Timeline Extension Confirmation form with the Office of Legislation and Hearings. (Attachment H)

**B. Sufficiency Determinations**

1. If the non-complaining party wishes to challenge the sufficiency of the complaint, they have to file a response to the Hearing Officer within 15 days of receiving the complaint.
2. Within 5 days of receipt of the challenge to sufficiency, the Hearing Officer shall make a determination on the face of the notice of whether the complaint notice meets the requirements and shall immediately notify the parties in writing of such determination.

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**C. Amended Complaint Notice**

1. A party may amend its due process complaint notice only if:
  - a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or,
  - b. The Hearing Officer grants permission, except that the Hearing Officer may only grant such permission at any time no later than 5 days before a hearing occurs.
2. The applicable timeline for a hearing shall recommence at the time the party files an amended notice, including the resolution session.

**D. Decision and Implementation of Decision.**

The decision of the Hearing Officer is final and is not subject to further Department of Education review. Although a party may request reconsideration (Attachment V) only the Hearing Officer has the authority to reconsider or to reopen a special education appeal.

**E. Compliance with Decision.**

A party contending that a decision of the Hearing Officer is not being implemented may file a motion requesting the Hearing Officer order compliance with the decision. The motion must set out the specific areas of alleged non-compliance. The Hearing Officer may convene a hearing at which the scope of inquiry will be limited to facts bearing on the issue of compliance, facts of such a nature to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief and refer the matter to the Department of Education for enforcement.

**F. Subpoenas.**

In order to ensure pro se parents have equal access to administrative proceedings, Hearing Officers are reminded to assist pro se parents to avoid confusion regarding subpoenas. Hearing Officers are encouraged to take the time to explain the subpoena process to pro se parents and the extent of their obligations as hearing participants as well as those of the Hearing Officer toward the pro se parent. Hearing Officers should also be particularly sensitive to any language difficulty problems.

As part of their explanation of the Hearings process the Hearing Officer should also take time to put in plain words the nature of the hearing and burdens of proof and that he/she has the right to seek subpoenas to

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compel the testimony of witnesses, call witnesses and question witnesses on cross-examination.

Although the Hearing Officer, in order to maintain impartiality, should not appear to advocate on behalf of a pro se party and is not required to develop extensive lines of testimony, you should be aware of questions pro-se parents may have regarding subpoenas.

For example, but not limited to:

1. How do I serve a subpoena?
2. Will the Hearing Officer assist me in serving a subpoena form (RSA 516:1 form)?
3. What authority do Hearing Officers have to ensure the school district provides addresses to a parent so that they can file a subpoena for a school district employee to attend a hearing? If the school district does not provide addresses, what is the recourse for the parent? Can the Hearing Officer sanction the school district for failure to provide addresses? Can the Hearing Officer assist the parent in obtaining addresses through means other than the school district? Can the district assist the parent in getting subpoenas to witnesses?
4. What do I as a parent do when a school district has a witness on their list that I also have on my list but am not sure that the witness may be called by the district? As a parent should I subpoena that individual anyway?
5. Are the parents obligated to prepare their own subpoenas and serve their own subpoenas as well as be responsible for the witness fees?
6. Who serves d subpoena? Parents? Hearing Officer? District? Paid process server?
7. Can you rely on a district if they say they will call someone that is also on the parent's list?
8. What if the district changes their mind and does not call the person on both lists?
9. What are the sanction options?

**G. Documentation of LEA Resolution Session**

In order to ensure LEA compliance in cases where the complainant is a parent, Hearing Officers must determine whether the LEA has convened a resolution session within the statutory 15 day timeline. Once a

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determination has been made on LEA compliance, in addition to filling out the resolution form, Hearing Officers are required to document LEA resolution session results in their pre-hearing report, noting non-compliance when appropriate.

**H. Reset of Timelines in Sufficiency Challenges**

According to 20 U.S.C. § 1415 (c) (2) (E) (ii):

(ii) The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

And in accordance with 34 CFR § 300.508(d) (4):

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

New Hampshire rules, at present, are silent on the resetting of timelines after the party files an amended notice.

In reviewing this matter, Hearing Officers are to use the following formula to reset the timelines. This includes pre-hearing and hearing. This is the same formula used by the Governance Unit when initially scheduling cases. After resetting the dates, the Hearing Officer must send out the scheduling order to the parties, including the Governance Unit.

The parties will need to contact the mediator to reschedule the mediation.

*NOTE: Even when there are objections to only part of the complaint, if any part of the complaint is found to be insufficient, the timelines get reset for the whole complaint – i.e. for purposes of resetting the timelines, the parts of the complaint are deemed as a whole.*

The resetting of timelines must also allow for the statutory 30 day window for local resolution. The law also provides that the parties may elect mediation instead of a local resolution. Since the federal law doesn't specify a resolution session has to occur when a local education agency requests a hearing, the timeframes for the scheduling of LEA requested hearings and parent requested hearings are done differently.

The date of reset is the date that the parties amended due process complaint is deemed sufficient filed with the Hearing Officer.

If the parties have already held a resolution session and the complaint is now deemed sufficient, for resetting the timeline purposes, the LEA request for hearing timeline will be used.

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LEA Amended Request for Hearing

The following formula is used in determining hearing dates when an amended request for hearing has been submitted by the LEA:

<b>Days after reset</b>	<b>Proceeding/Action</b>
11 <sup>th</sup> or 12 <sup>th</sup> day	Mediation
14 <sup>th</sup> or 15 <sup>th</sup> day	Pre-hearing conference
27 <sup>th</sup> – 29 <sup>th</sup> days	Two day hearing
42 <sup>nd</sup> or 43 <sup>rd</sup> day	Receipt of Decision by Governance Unit.

Parental Amended Request for Hearing

The following formula is used in determining hearing dates when an amended request for hearing has been submitted by the parent:

<b>Days after reset</b>	<b>Proceeding/Action</b>
Prior to day 16	Resolution Session (local process)
16 <sup>th</sup> or 17 <sup>th</sup> day	Mediation
31 <sup>st</sup> or 32 <sup>nd</sup> day	Pre-hearing conference
44 <sup>th</sup> to 47 <sup>th</sup> days	Two day hearing
72 <sup>nd</sup> or 73 <sup>rd</sup> day	Receipt of Decision by the Governance Unit.

Please note these timelines may be amended if parties submit mutually agreeable dates that are also workable in terms of timelines.

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**STATE BOARD HEARINGS**

While the information contained under **Administrative Hearings** is true for all administrative hearings, the following information applies specifically to State Board hearings governed by RSA 541-A and Ed 200. Please ensure you review not only the information contained in this section but also the information contained under the section **Administrative Hearings**.

**A. Intervention**

Intervention may be allowed if the facts and the legal issues are comparable to those in dispute.

1. Petitions for intervention must be filed at least 3 days before the commencement of a proceeding or at any time if the Hearing Officer determines that such intervention would not impair the orderly and prompt conduct of the proceeding.
2. Petitions for intervention must clearly state:
  - a. The petitioner's interest in the subject matter of the proceeding;
  - b. The petitioner's point of view regarding the subject matter of the hearing;
  - c. Why the interests of the parties and the orderly and prompt conduct of the proceedings would not be impaired; and
  - d. Any other reasons why the petitioner should be permitted to intervene.
3. Petitions for intervention will be granted and will include any conditions and limitations specific to the circumstances unique to the case. Orders granting intervention will be modified at any time as necessary to prevent or rectify prejudice to a party.
4. An intervener is subject to the same time limitations which would have been applicable if he or she had been a party from the commencement of the proceedings. An intervener will participate in the remaining aspects of the proceeding from the time of intervention, and no phase or portion of the proceeding shall be repeated for the benefit of the intervener.

**B. Report and Recommendation by Hearing Officer**

*The responsibility of the Hearing Officer in State Board cases is to manage the flow of evidence and to ensure that each party can adequately and fairly participate in the process. At the conclusion of the hearing proceedings, the Hearing Officer's Report and Recommendation must follow the law and be based on facts as revealed in clear and compelling evidence and testimony and not opinions. A Hearing Officer recommendation that does not comport to these requirements can leave the Board in an*



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*untenable position. Please remember: the State Board cannot act on opinions, no matter how well reasoned.*

1. Unless otherwise provided by law, the Hearing Officer must prepare a written proposed decision within 45 days of the conclusion of the hearing containing, at a minimum, the following information:
  - a. Name of the case;
  - b. The date of the Hearing Officer's decision;
  - c. Jurisdictional basis for the decision;
  - d. A listing of parties and interveners to the proceeding;
  - e. Names of those participating in the hearing;
  - f. Introduction briefly summarizing the subject matter and the issues being resolved;
  - g. A discussion of the issues, including an identification of any additional testimony which was requested by any of the parties;
  - h. Evidentiary rulings or other procedural matters which may impact findings of fact or conclusions of law;
  - i. Findings of fact;
  - j. Conclusions of law;
  - k. The decision of the Hearing Officer;
  - l. An explanation of how the decision can be appealed to the State Board of Education; and
  - m. A statement explaining how to request a nonpublic appeal in accordance with RSA 91-A.
  
2. Proposed decisions must be served on the parties with notice that within 15 days from the date that the proposed decision was served, they may file exceptions and supporting memoranda of law to be reviewed by the board. If the parties wish to present oral argument to the board, they are required to file a separate request for oral argument at the same time.
  - a. If no exceptions are filed to a proposed decision, the State Board of Education shall consider the proposed decision and issue the final order based on the record.
  - b. The matter shall be placed on the agenda for consideration by the board at its next regularly scheduled meeting.

**C. Report and Recommendation on State Board Agenda**

In order for a Report and Recommendation to be put on an upcoming State Board of Education Agenda, the Governance Unit must receive the Report and Recommendation at least 20 days before the upcoming State Board meeting. The Governance Unit will email or mail the Report and Recommendation to the parties by certified mail with a cover letter to the

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parties which indicates the date when the Hearing Officer's Report and Recommendation will be on the State Board's agenda.

**D. Settlements**

1. Upon agreement by all parties to an offer of settlement, the Hearing Officer informs the Administrator, Dispute Resolution and Constituent Complaint Section that the matter has been settled.
2. By signing the document all parties waive their right to an adjudicative proceeding and the matter and related matters and issues will be deemed concluded and the settlement binding on the parties. Unless otherwise provided by law, neither the state board nor the department shall enforce the terms and conditions of a settlement agreement.

**E. Submission of Written Record to State Board of Education**

It is the Board's expectation that case records will be provided to the State Board in the manner prescribed by the Coordinator for the State Board – currently Angela Adams. Currently through Microsoft Teams. If there are questions regarding proper procedure, please contact the Coordinator for the State Board for direction.

## VOCATIONAL REHABILITATION FAIR HEARINGS

### VOCATIONAL REHABILITATION IMPARTIAL FAIR HEARINGS

While the information contained under **Administrative Hearings** is true for all administrative hearings, the following information applies specifically to vocational rehabilitation fair hearings governed by RSA 541-A: 31 and Ed 1004.04. Please ensure you review not only the information contained in this section but also the information contained under the section **Administrative Hearings**.

#### **A. Decision and Implementation of Decision.**

The decision of the Fair Hearing Officer is final and is not subject to further Department of Education review. Although a party may request reconsideration only the Fair Hearing Officer has the authority to reconsider or to reopen a Vocational Rehabilitation Appeal.

#### **B. Compliance with Decision.**

A party contending that a decision of the Fair Hearing Officer is not being implemented may file a motion requesting the Fair Hearing Officer Order compliance with the decision. The motion must set out the specific areas of alleged non-compliance. The Fair Hearing Officer may convene a hearing at which the scope of inquiry will be limited to facts bearing on the issue of compliance, facts of such a nature to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Fair Hearing Officer may fashion appropriate relief and refer the matter to the Department of Education for enforcement.

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**ATTACHMENTS**

NOTE: Although the attached forms are geared toward Special Education Impartial Due Process Hearing proceedings, most may be modified for any hearing

Templates for use by Hearing Officers:

Attachment A	Letter Confirming Results of Pre-hearing Conference (Form HO-A)
Attachment B	Hearing Agenda (Form HO-B) <i>[Mailed by Hearing Officers with Letter Confirming Results of Pre-hearing Conference]</i>
Attachment C	Settlement Notice (Form HO-D)
Attachment D	Successful Mediation Notice (Form HO-E)
Attachment E	Timeline Extension Form (Form HO-F)
Attachment F	Sufficiency Complaint Determination Form (Form HO-G)
Attachment H	Cover Page for Hearing Decisions (Form HO-I)
Attachment I	Cover Page for HO Report and Recommendation (Form HO-J)
Attachment J	Cover Page for Summary Judgments (Form HO-K)
Attachment K	Hearing Officer Response to Waiver of Resolution Period (Form HO-L)
Attachment L	Administrative File Checklist
Attachment M	Pre-hearing Checklist

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**ATTACHMENT A**

**CONFIRMING RESULTS OF PRE-HEARING CONFERENCE**

, NH

, NH

RE: Student / -- IDPH FY - -

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. Subpoenas. Requests for subpoenas must be submitted to me at least \_\_\_\_\_ business days prior to the hearing and be written in the format shown in RSA 516:1. Subpoenas are issued by Hearing Officers in accordance with RSA 186-C:16-a. I will contact the party requesting subpoenas when the subpoenas are ready. Please note that service of the subpoenas is the responsibility of the party requesting the witness' attendance. If any person fails to comply with a properly issued subpoena, the party requesting the issuance of the subpoena may petition the Superior Court for an order requiring compliance with the subpoena's terms.
8. 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,

\_\_\_\_\_  
Amy Davidson

\_\_\_\_\_  
Date

cc: Office of Legislation and Hearings, NH DOE

(Form HO-A)

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**ATTACHMENT B**

**HEARING AGENDA**

Student -- IDPH FY

**I. Formal Call to Order**

- A. , , at
- B. We are here in the matter of Student / -- IDPH FY

**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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HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT C**

**SETTLEMENT NOTICE**

, NH

, NH

RE: Student / -- IDPH FY - - -

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,

---

John LeBrun

cc: Office of Legislation and Hearings, NH DOE  
Mediator

(Form HO-D)



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**ATTACHMENT D**

**SUCCESSFUL MEDIATION NOTICE**

, NH

, NH

RE: Student /            -- IDPH FY   - - -

Dear            and            :

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

I will take no further action on this matter.

Sincerely,

---

John LeBrun

cc: Office of Legislation and Hearings, NH DOE  
Hearing Officer

(Form HO-E)

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**ATTACHMENT E**

DUE PROCESS HEARING

TIMELINE EXTENSION CONFIRMATION

RE: Student /        -- IDPH FY   - - -

SCHOOL DISTRICT:

PARENT/GUARDIANS' NAME:

STUDENT'S NAME:

DATE ORIGINAL 45-DAY TIME-LINE EXPIRES:

DATE EXTENSION EXPIRES:

PARTY REQUESTING EXTENSION:

REASON(S) FOR REQUEST:

HEARING OFFICER DECISION:

\_\_\_\_\_  
John LeBrun

Date

Copy sent to:

Office of Legislation and Hearings, NH DOE

(Form HO-F)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT F**

SUFFICIENCY COMPLAINT DETERMINATION

RE: Student /            -- IDPH FY   - -

On            , petitioner filed a due process complaint with the NH Department of Education, Office of Legislation/Hearings. On            , respondent filed a notice asserting that the complaint is insufficient for the following reasons:            . 20 U.S.C. 1415(c)(2)(A); 34 C.F.R. 300.508(d)).

In order to obtain a hearing on a due process complaint or to engage in a resolution session based upon a due process complaint, the petitioner's due process complaint must provide information on the following: the name of the child; the address of the residence of the child, or, if homeless, available contact information for the child; the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change; the facts relating to the problem; and a proposed resolution to the problem, i.e., relief sought, to the extent known and available to the party at the time. 20 U.S.C. 1415(b)(7)(A); 34 C.F.R. 300.508(b)(c)).

Having reviewed the filed complaint, I find and conclude that it includes all of the required information and is therefore sufficient. Therefore, I ORDER that the case be transferred to the Hearing Officer assigned to this case for hearing and that the parties proceed with the resolution session or mediation.

**Or**

Having reviewed the filed complaint, I find and conclude that it includes all of the required information and is therefore sufficient. Therefore, both parties having waived, in writing, the resolution session, I ORDER this case move forward to the pre-hearing and hearing as noted in the department's scheduling notice.

*[If insufficient:]*

Having reviewed the filed complaint, I find and conclude that it does not include all of the required information and is therefore insufficient. Therefore, I ORDER this case dismissed.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT G**

NH DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING  
HEARING DECISION AND ORDER

In the Matter of )  
 )  
Student IDPH FY - - )  
 )  
 )  
 )  
 )  
& )  
 )  
, )  
 )  
 )  
 )  
 )  
 )  
 )

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.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

INDEX OF NAMES

*[Student's first name last initial/LEA – IDPH Number]*

Special Education Director	<i>[insert name]</i>
Special Education Teacher	<i>[insert name]</i>
School Psychologist	<i>[insert name]</i>
Regular Education Teacher	<i>[insert name]</i>
Principal	<i>[insert name]</i>
District Representative	<i>[insert name]</i>
Speech/Language Pathologist	<i>[insert name]</i>
Occupational Therapist	<i>[insert name]</i>
Physical Therapist	<i>[insert name]</i>
Private Therapist	<i>[insert name]</i>

(Form HO-I)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT H**

NH DEPARTMENT OF EDUCATION  
HEARING OFFICER REPORT AND RECOMMENDATION

In the Matter of )  
 )  
Student SB FY Number )  
 )  
 )  
 )  
 )  
 )  
 )  
& )  
 )  
[Name of School Board], )  
 )  
 )  
 )  
 )  
 )

Hearing held on:

Parent/guardian: *[insert name and address of parent/guardian]*

Counsel for Parent/guardian: *[insert name and address of parent/guardian's counsel]*

School District: *[insert name and address of school district and officials]*

Counsel for School District: *[insert name and address of school district's counsel]*

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.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**INDEX OF NAMES**

Student/[LEA] – SB FY [ Number]

[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]
[insert title]	[insert name]

(Form HO-J)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT I**

**[COVER PAGE FOR SUMMARY JUDGMENTS]**

NH DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

In the Matter of )  
 )  
Student IDPH FY - - ) 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.



NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

INDEX OF NAMES

Student / IDPH FY- - -

Special Education Director	
Special Education Teacher	
School Psychologist	
Regular Education Teacher	
Principal	
District Representative	
Speech/Language Pathologist	
Occupational Therapist	
Physical Therapist	
Private Therapist	

(Form HO-K)

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HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT J**

NH DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

**HEARING OFFICER RESPONSE TO WAIVER OF RESOLUTION PERIOD**

, NH

, NH

RE: Student/ - IDPH FY - -

Dear and :

On , I received a copy of the parties written agreement dated in which the parties agreed to waive the resolution session and 30-day resolution period. As a result of that agreement, my decision must be rendered prior to the expiration of the statutory 45 day time period which falls on: . Consequently, the pre-hearing conference and hearing must be rescheduled.

The pre-hearing is rescheduled to:

The 2-Day hearing is rescheduled to:

Sincerely,

---

Amy Davidson

cc: Office of Legislation/Hearings, NH DOE  
Mediator

(Form HO-L)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION  
HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT K**

**Administrative File Checklist (for SPED cases only)**

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

Document	Check when completed
<b>Prior to Pre-hearing</b>	
Due Process Hearing Request	<input type="checkbox"/>
Due Process Hearing Notice	<input type="checkbox"/>
Resolution Notice Completed	<input type="checkbox"/>
Sufficiency Challenge 1	<input type="checkbox"/>
Amendment of Complaint 1	<input type="checkbox"/>
Sufficiency Determination 1	<input type="checkbox"/>
Sufficiency Challenge 2	<input type="checkbox"/>
Sufficiency Determination 2	<input type="checkbox"/>
<b>Prior to Hearing</b>	
Petitioner's "5-day" Disclosure	<input type="checkbox"/>
Respondent's "5-day" Disclosure	<input type="checkbox"/>
Subpoenas	<input type="checkbox"/>
Pre-hearing Checklist	<input type="checkbox"/>
Pre-hearing Attendance Sheet	<input type="checkbox"/>
Pre-hearing Order	<input type="checkbox"/>
Pre-hearing Conference Attendance Sheet	<input type="checkbox"/>
2 <sup>nd</sup> Pre-hearing Checklist	<input type="checkbox"/>
2 <sup>nd</sup> Pre-hearing Order	<input type="checkbox"/>
2 <sup>nd</sup> Pre-hearing Conference Attendance Sheet	<input type="checkbox"/>
2 <sup>nd</sup> Pre-hearing Attendance Sheet	<input type="checkbox"/>
<b>Hearing</b>	
Hearing Attendance Sheet	<input type="checkbox"/>
<b>Post-Hearing</b>	
Hearing Decision	<input type="checkbox"/>
Summary Judgment	<input type="checkbox"/>
Request for Reconsideration	<input type="checkbox"/>
Reconsideration Order	<input type="checkbox"/>
<b>Miscellaneous</b>	
Settlement Agreement	<input type="checkbox"/>
Mediation Agreement	<input type="checkbox"/>
Withdrawal	<input type="checkbox"/>
Motions/Written Communication to Hearing Officer	<input type="checkbox"/>
Hearing Officer response to Motions/Written Communication	<input type="checkbox"/>
Audio Recording/CD	<input type="checkbox"/>

Note: Not all fields apply to every matter.

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HEARING OFFICERS' GUIDE TO ADMINISTRATIVE PROCESS

**ATTACHMENT L**

**PRE-HEARING CHECKLIST**

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

<b>Hearing Officers are to discuss in detail at Pre-hearing Conference and memorialize in their Pre-hearing Order:</b>	<b>Check when completed</b>
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>	