



NOTICE OF CHANGES TO THE STANDARD OPERATING PROCEDURES

Pursuant to section 54 of the Blackman/Jones Consent Decree, the Office of the State Superintendent of Education (OSSE) is hereby providing notice of changes to the Standard Operating Procedures Manual (SOP). OSSE has provided notice of these changes to Class Counsel and Class Counsel has not objected to the changes.

EFFECTIVE DATE

The changes to the provisions below will take effect for all due process complaints filed on or after January 22, 2010.

CHANGES

§ 400.1 Resolution period and Scheduling the Hearing

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

Deleted: parents

Deleted: must

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

Deleted: and a hearing decision rendered within 45 calendar days of the expiration of the resolution period subject to the exceptions in Paragraph C.

Deleted: or

1. A final hearing decision shall be issued by the hearing officer; and
2. A copy of the decision shall be mailed to all parties or alternatively may be transmitted electronically or by facsimile if all parties to the due process complaint consent.

Deleted: faxed when possible or

Deleted: and

Deleted: otherwise¶

Deleted: is

Deleted: mailed to each of the parties

C. Adjustments to 30-day resolution period;

Deleted: Exceptions

1. Waiver of the 30-day resolution period. The parties may jointly waive the resolution meeting. The timeline for issuing the final Hearing Officer's Determination begins the day after both parties agree in writing to waive the resolution meeting. Counsel for the LEA shall immediately notify the assigned Hearing Officer who shall schedule the case for hearing.

Deleted: session

Deleted: R

Deleted: Session

2. ~~Settlement discussions are not productive. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties may agree in writing that no agreement is possible. The 45-day timeline for a due process hearing starts the day after the parties agree in writing that no agreement is possible. The LEA's counsel, is obligated to immediately notify the assigned Hearing Officer, who shall schedule the case for hearing.~~

Deleted: OGC determination that s

Deleted: If the resolution session was unsuccessful, as soon as the OGC determines that further settlement discussions would not be productive,

Deleted: s

Deleted: the OGC

Deleted: SHO to

3. ~~Both parties may agree in writing to continue the mediation at the end of the 30-day resolution period. If later, the parent or LEA withdraws from the mediation process, the 45-day timeline for due process hearings starts the day after the parent or LEA withdraws from the mediation process.~~

D. Except where the parties have jointly agreed to waive the resolution process or to use mediation, when a parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that a hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent documented using the procedures in 34 C.F.R. § 300.322(d). A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.

- E. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable measures have been made and documented (using the procedures in the IDEA regulation 34 CFR 300.322 (d)), the LEA may request, at the conclusion of the 30 day period, that the Hearing Officer dismiss the parent's due process complaint. Any such request must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.
- F. If the LEA fails to hold the resolution meeting within 15 calendar days of receiving notice of the parent's due process complaint or fails to participate in the resolution meeting, the parent may request that the assigned Hearing Officer begin the 45 day due process hearing timeline before the expiration of the 30 day resolution period.

§ 402 CONTINUANCES

B. Procedures for Requesting a Continuance:

* * *

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

a. **Continuance granted.** The Hearing Officer shall issue an Order confirming that the continuance was granted and provide the parties with notice of the new hearing date. The order shall identify (1) the good cause grounds for granting the extension of time, and (2) the new date for the hearing. The extension of time for issuance of the final hearing determination will only be for the number of days covered by the extension.

* * *

Deleted: No open ended continuance requests will be granted or allowed unless good cause is shown or the parties agree.

13. **Expedited Hearings.** No continuance shall be granted for the occurrence of the hearing and the issuance of the Hearing Officer's Determination for expedited hearings pursuant to the IDEA, 34 C.F.R. § 300.532(a), beyond the timeline set forth in 34 C.F.R. § 300.532(c)(2).

Deleted: on any case set for an expedited hearing unless the party was not consulted regarding the date or the parties agree. Where parties have no counsel a hearing officer must determine if the parent's assent is knowing and willing.

§ 1003 THE HEARING OFFICER'S DETERMINATION

* * *

The final decision must be signed, dated, and issued within the timeline set forth in 34 C.F.R. § 300.515 and 34 C.F.R. § 300.510(c) (see also SOP §§ 400.1 and 402). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based solely on the evidence presented at the hearing. * * *

Deleted: Except as provided in this Standard Operating Procedures Manual or in the *Blackman/Jones* Consent Decree,

Deleted: t

Deleted: 10 days following the hearing and no more than seventy-five (75) days following the request for hearing (subject to any extensions requested by a party and granted by the Hearing Officer)

§ 1008 EXPEDITED DUE PROCESS HEARING

* * *

A. Discipline:

(1.) An expedited hearing pursuant to the IDEA, 34 C.F.R. §300.532, must occur within twenty (20) school days after the hearing is requested. A decision must be issued within ten (10) school days after the hearing.

(2.) Resolution Meeting. Unless the parent and LEA agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting must occur within seven (7) days of the date the hearing is requested. The hearing must proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of receiving notice of the due process complaint.

Deleted: A resolution meeting concerning a disciplinary matter can be waived. If not waived

Deleted: ten (10)

Deleted: the receipt of the request for an expedited hearing

* * *

(4.) When a hearing involving a disciplinary matter is expedited, no continuances will be granted for the occurrence of the hearing and issuance of the Hearing Officer's Determination beyond the timeline set forth in the IDEA, 34 C.F.R. § 300.532(c)(2).

Deleted: unless the party requesting the continuance was not consulted regarding the date of the hearing or the parties agree. Where the parent lacks counsel, a hearing officer must determine if the parent's assent to the continuance is knowing and willing.

(5.) Sufficiency challenges are not available in an expedited due process hearing.