USERS' GUIDE TO ADMINISTRATIVE PROCESS

2016-2017 Edition

New Hampshire
Department of Education
Serving New Hampshire's Education Community

Governor of New Hampshire

Margaret Wood Hassan

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Virginia M. Barry, Ph.D.

Deputy Commissioner of Education

Paul K. Leather

AN EQUAL OPPORTUNITY EMPLOYER

The New Hampshire Department of Education does not discriminate on the basis of race, color, religion, marital status, national/ethnic origin, age, sex, sexual orientation, or disability in its programs, activities and employment practices. This statement is a reflection of the Department of Education and refers to, but is not limited to, the provisions of the following laws:

Title IV, VI, and VII of the Civil Rights Act of 1964 – race color, national origin
The Age Discrimination in Employment Act of 1967
The Age Discrimination Act of 1975
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:

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

Inquiries regarding Section 504 should be directed to:

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

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

Boston Office
Office for Civil Rights
U.S. Department of Education
9 Post Office Square, Suite 900
Boston, MA 02109-3921
Telephone: 617-289-0111
FAX: 617-289-0150; TDD: 877-521-2172
Inquiries concerning discrimination claims may also be directed to:

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

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

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General Information

NOTE: The following guide was prepared by the Department of Education's Office of Legislation/Hearings to assist participants to the Department's administrative processes and is meant to supplement and not in any way replace, modify or advise participants about federal and state law or regulations. Furthermore, although the information in this guide has been carefully reviewed by various supervising authorities to ensure the accuracy of the information contained herein, the Department is unable to promise total accuracy of the information and recommends that all participants carefully review and familiarize themselves with relevant federal and state law and regulations prior to participating in administrative processes. 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. See www.education.nh.gov for federal and state laws and regulations.

FISCAL YEAR 2014-15
HEARING OFFICERS / ALTERNATIVE DISPUTE RESOLUTION OFFICERS

Note: The Department contracts with the following individuals as Hearing Officers for all of its administrative processes.

AMY DAVIDSON, ESQ.

Graduated from Boston University in 1974, Rhode Island College in 1979 and Franklin Pierce Law Center in 1982. Active in law since 1982. Worked at Southern Tier Legal Services; Disabilities Rights Center, Inc.; instructor in family law at College for Lifelong Learning, Rivier College. Amy is sole practitioner with an office in Pittsfield, New Hampshire.

PETER T. FOLEY, ESQ.

Graduated from Stonehill College in 1978 and from Georgetown University Law Center in 1981. Active in law since 1981. Worked in radio, as an Assistant Attorney General for the State of New Hampshire and as an adjunct professor. Memberships include the New Hampshire Workers' Compensation Appeals Board and the Common Cause of New Hampshire, State Steering Committee. Peter is a sole practitioner with an office in Concord, New Hampshire.

SCOTT F. JOHNSON, ESQ.

Graduated from the University of North Carolina at Charlotte with a Bachelor of Arts degree in Political Science and a Minor in American Studies in 1992 and from Franklin Pierce Law Center in May 1997. Frequent presenter on legal and educational issues at various forums including continuing education programs, the Education Law Association's Annual Conference, and the Education Law Institute's Annual Conference. He is also an arbitrator for the Better Business Bureau and on the Board of Directors of the Education Law and Policy Consortium as well as being on the Board of Directors and volunteer attorney for the New Hampshire Civil Liberties Union and Chair of Board of Directors for the Concord Area Chapter of the American Red Cross. He is also Founder of NH EdLaw, LLC, and Founder of the Education Law Resource Center, Concord, NH. Adjunct Professor/Visiting Professor at the Franklin Pierce Law Center.

JOHN LEBRUN, ESQ.

Graduated from Rhode Island College in 1975, the University of Rhode Island in 1976 and the Franklin Pierce Law Center in 1983. Worked in the areas of law and as an instructor since 1980. John is a partner in the Law Office of Goldman and LeBrun in Concord, New Hampshire.

A. Hearings Office

All administrative proceedings are held at the New Hampshire State Department of Education Hearings Office located at 21 S. Fruit Street.
Please note Individuals will only be able to gain admittance to this space upon arrival of the Hearing Officer.
The Hearings Office has a facsimile-copier, dedicated fax line and conference phone used for receiving and making out-going conference calls.

B. Directions to Hearings Office

New Hampshire Department of Education, Hearings Office 21 S. Fruit Street, Concord, NH 03301

Directions to Walker Building, (Reception desk is on second floor)

From the South

Take Route I-93 North to I-89 North
Take Exit 2
At end of exit ramp turn right onto Clinton Street
At the first set of lights, turn left onto Fruit Street
Take 4th right into parking lot in front of the Walker Building (it has large while columns)

Alternative is to use Exit 14 from I-93

Take I-93 North to Exit 14, and take a left at the end of the ramp onto Bridge Street
Go through 3 sets of lights and at 4th light take a left onto Main Street
At next light, turn right onto Pleasant Street
Go through 3 sets of lights and at fourth light (near Concord Farms gas station), turn left onto Fruit Street
Walker Building is on the left (it has large white columns)
Take second left to enter front parking lot

From the North
Take Route I-93 South to I-89 North and follow directions above OR
Take Route I-93 South to Exit 14
At the end of the ramp take a right onto Bridge Street
At second set of lights take a left onto Main Street
At next light, turn right onto Pleasant Street
Go through 3 sets of lights and at fourth light (near Concord Farms gas station), turn left onto Fruit Street
Walker Building is on the left (it has large white columns)
Take second left to enter front parking lot

From the West
Take I-89 South to Exit 2
At end of exit ramp turn right onto Clinton Street
At first set of lights turn left onto Fruit Street
Take 4th right into parking area in front of Walker Building (building has large white columns)

From the East
Come into Concord via I -93 and follow appropriate directions above

D. Request for Reasonable Accommodation

If a hearing participant requires an accommodation or accommodations for some essential life skill that prevents them from adequately participating in a proceeding, they should notify the Office of Legislation and Hearings 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 Office of Legislation and Hearings 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 Office of Legislation and Hearings 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 Office of Legislation and Hearings.
(See Forms Request for Reasonable Accommodation)

E. Participant Evaluation and Department Annual Review of Hearing Officers

At the conclusion of proceedings, the Office of Legislation and Hearings, will mail an evaluation to each party. As a party to an administrative hearing or alternative dispute resolution proceeding, your input is very important in assisting the Department to identify areas that are effective and those that might need to be strengthened. Please take a few minutes to fill out the evaluation form and return it to the Department of Education, Office of Legislation and Hearings.

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution may take the form of a neutral conference as described in RSA 186-C:23-b and Ed 215.02, and mediation as described in RSA 186-C:24 and Ed 215.03. For over 20 years the New Hampshire State Department of Education has actively promoted Alternative Dispute Resolution (ADR) as a timely, cost-effective and confidential method of helping people to resolve disputes before going to an administrative hearing. Even before the enactment of the RSA 186-C:23 in 1990, which established Neutral Conferences in New Hampshire, the Department of Education had ADR in place and was offering Mediation to parties. In recent years both parties and their advocates have increasingly chosen this alternative route toward resolving disputes.

In New Hampshire ADR involves an independent third person, called a "neutral evaluator" or "mediator," depending on the ADR process chosen, whose role is to assist the parties in either resolving the dispute or lessening the areas of conflict. By using ADR early in a dispute, parties are empowered to reduce potentially protracted and repetitive legal proceedings and make decisions that affect not only the issue(s) in dispute but also their future relationship.

Alternative Dispute Resolution (ADR) is available to any person aggrieved by a final decision at their school district prior to filing an appeal at the state level. ADR is not mandatory for any party nor does entering into ADR impair either party's right to an appeal. If an alternative dispute resolution option is selected by a party and resolution is not achieved, the individual selected as a neutral or mediator will not be the same individual who is subsequently appointed as a hearing officer to preside at an administrative due process hearing.

INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

In general, the Moderator, who is also an independent contracted Hearing Officer/Mediator, helps the participants to open dialogue, search for possible solutions and present possible scenarios to resolve the dispute. The Moderator's role is not to provide a decision; however, the opportunity for the parties to discuss a matter with a Moderator can give valuable insights into the how a Hearing Officer would view the matter and very likely lead to an acceptable solution.

Highlights of Informal Third Party Discussion Led by Moderator

1. Free service provided by the NH Department of Education;
2. A non-adversarial means to discuss parent/guardian/LEA disagreements on a variety of matters including, but not limited to, special education, residency, manifest educational hardship, bullying, cyber-bullying; etc.
3. Participation is optional and voluntary;
4. If agreed to by both parties, the school district makes the request to the NH Department of Education, on behalf of both parties;

5. Prior to requesting an informal third party discussion, both parties to the dispute are requested to pick 2 or 3 specific days which are mutually convenient and state what the issue(s) is/are to be discussed and each party's view of what they want;
6. Parties may attend with a lawyer and/or advocate;
7. The Moderator's role is not to provide a decision, but, after listening to each party's perspective of the dispute, to offer options to think about as a way to possibly settle the dispute;
8. The Moderator, who is also an independent contracted Hearing Officer/Mediator, can give valuable insights into the how a Hearing Officer would view the matter;
9. The Moderator can offer his/her opinion as to whether the remedy a party wants is allowed under the law;
10. In general, the Moderators help the participants to open dialogue, search for possible solutions and present possible scenarios to resolve their own solution(s);
11. Informal Third Party Discussions can be held in Concord or telephonically. Some issues can be done telephonically, but some issues may require in-person conversation. The advantage of having the informal third party discussion in person is that non-verbal communication is often a large part of communication problems.
12. Informal Third Party Discussions are generally held Monday-Friday (9 a.m. – 5 p.m.),
13. Length of sessions varies, however, at the on-set, the matter is limited to ½ hour divided between 15 minutes for each party to talk about their perceptions. Afterward, the matter can take anywhere from 5 minutes to several hours to explore possible solutions;
14. All participants should be prepared to take whatever time is necessary to discuss the matter;
15. Informal Third Party Discussion sessions are confidential;
16. If the discussion results in a settlement, the Moderator can assist the parties in producing a written agreement, developed by them with the assistance of the Moderator, resolving the issue(s) satisfactorily to both sides;
17. Settlement agreements are legally binding and enforceable in a court of competent jurisdiction;
18. As an informal third party discussion may result in a settlement, each party comes to the session with authority to commit any resources (time, effort, funds, staff, equipment, services, etc.) under their jurisdiction to whatever they may agree to as a result of the discussion (i.e. parents have authority over their child; the school district representative brings written authority to commit the district's resources);
19. If the informal third party discussion does not result in settlement, parties are free to request an alternative dispute resolution (mediation and for IDEA matters, Neutral Conference) or an administrative hearing (for IDEA matters, a special education impartial due process hearing.)

B. How to Request Informal Third Party Discussion Led by Moderator

A request for Informal Third Party Discussion Led by Moderator must be made in writing. If the request is made after a local board decision, the request must be accompanied by the final written decision from the local board. In order for an Informal Third Party Discussion Led by Moderator to take place, however, both parties must agree to do the Informal Third Party Discussion Led by Moderator. If both parties agree to attempt an Informal Third Party Discussion Led by Moderator, the school district must fill out and forward the necessary forms (Forms ADR-MOD A, ADR-MOD B, and ADR-MOD C) to the Office of Legislation and Hearings. The request must specify the issue or issues in dispute and the relief sought by the parties. The parties must also propose 4 mutually agreeable dates when they would be available for an Informal Third Party Discussion Led by Moderator.

C. Representation – Attorney or Advocate

1. The filing of a Third Party Discussion Led by Moderator Request on behalf of a party by an attorney shall mean that the attorney represents that party.
2. The filing of a Third Party Discussion Led by Moderator Request by an advocate on behalf of a party must be accompanied by a signed and dated authorization from the custodial parent(s).
3. The filing of a Third Party Discussion Led by Moderator Request by an advocate on behalf of a party that is not accompanied by a signed and dated authorization from the custodial parent(s) will not be acknowledged.
4. An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement that notice of the withdrawal has been provided to the client and all other parties.
5. Parties retain counsel at their own expense.
6. Requests for appointment of counsel will not be entertained.

D. Moderator

Upon receiving the filled-out forms from the school district the Office of Legislation and Hearings will appoint a moderator.

1. The moderator will not have personal knowledge of any of the parties.
2. After receiving notice of appointment in a case, the moderator will disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or any circumstances likely to prevent the process from proceeding as scheduled;

3. If the moderator withdraws, has a conflict of interest, or is otherwise unavailable, a replacement moderator will be appointed by the office of legislation and hearings to hear the issue; and
4. The moderator will not act as a legal advisor or legal representative.

E. Docketing and Service

After appointing a moderator, the Department will:

1. Schedule the Third Party Discussion Led by Moderator on one of the 4 dates provided by the parties, if possible;
2. Provide the parties with the moderator's name and address;
3. Provide the date and place of the Third Party Discussion Led by Moderator; and
4. Specify the date by which the parties must furnish the moderator with required information and documentation.

F. Third Party Discussion Led by Moderator Schedule

The Third Party Discussion Led by Moderator will be conducted within 30 calendar days after receipt of a written request in order to:

1. Determine issues;
2. Explore options; and
3. Suggest an equitable resolution to the dispute.

G. Moderator's Role

The role of the moderator shall be:

1. To facilitate communication;
2. To define the issues and explore possible resolutions to the dispute;
3. To remain neutral;
4. To insure that parties openly, freely, and candidly discuss the strengths and weaknesses of their positions with the moderator;

The mediator shall not:

1. Have the authority to render a decision or impose a settlement on the parties.
2. Sign agreements.

H. Third Party Discussion Led by Moderator Session

1. The Third Party Discussion Led by Moderator will consist of a session or sessions with the parties and their counsel, if retained, to facilitate a settlement acceptable to the parties.

2. At the Third Party Discussion Led by Moderator session, all parties and counsel, if retained, will have authority to enter into the agreement.

I. Post Third Party Discussion Led by Moderator

Within 30 days of the session, the moderator will file a report with the Office of Legislation and Hearings advising that the case has been settled or that Third Party Discussion Led by Moderator failed to resolve the dispute.

J. Enforcement of Third Party Discussion Led by Moderator Agreements

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

K. Tips for Participants to Third Party Discussion Led by Moderator

• COME PREPARED. You do not need to bring exhibits to Third Party Discussion Led by Moderator because it is not the role of the moderator to review documents.

• BE COOPERATIVE! Third Party Discussion Led by Moderator works best if both parties are willing to compromise. The whole point of attending Third Party Discussion Led by Moderator is to compromise. Be open to new ways of thinking about resolving the issue. Do not let personal feelings get in the way of resolving the issue.

• STAY FOCUSED ON THE ISSUE! It is important not to get lost in the emotions relating to the issue; focus only on the issue because it is why you are at Third Party Discussion Led by Moderator.

MEDIATION

A. Highlights of Mediation

1. Free service provided by the NH Department of Education;
2. A non-adversarial means to resolve parent disagreements;
3. Participation is optional and voluntary;
4. Mediation is available for disagreements/disputes for which any type of administrative adjudication proceeding has been requested;
5. In Special Education and State Board of Education appeals the school district makes the request to the NH Department of Education, on behalf of both parties;
6. Prior to requesting mediation, each party ("side") must have determined who the participants will be for their "side" and the two parties must have picked 4 specific days which are mutually convenient and must state what issue(s) is/are to be mediated;
7. Parties may attend with a lawyer and/or advocate;
8. Each party comes to the session with authority to commit any resources (time, effort, funds, staff, equipment, services, etc.) under their jurisdiction to whatever they may agree to as a result of the mediation (i.e. parents have authority over their child; the school district representative brings written authority to commit the district's resources;
9. Mediators do not solve the disagreement for the parties; mediators help the participants to find their own solution(s);
10. Mediation sessions are generally held Monday-Friday (9 a.m. – 5 p.m.), in Concord at the Department of Education's Hearing Office or at a place convenient to both parties, if so requested;
11. Length of mediation sessions varies considerably, from 2 to 8 hours;
12. All participants come prepared to stay for the entire session;
13. Mediation sessions are confidential;
14. When the mediation is successful, the outcome is a written agreement between the parties, developed by them with the assistance of mediators, resolving the issue(s) satisfactorily to both sides;
15. Each participant signs the written agreement at the mediation session;
16. A copy of the agreement is given to the parties and their representatives; in the case of a child, a copy is put in the child's permanent school records and a copy is kept by the mediation program.
17. The agreement is legally binding and enforceable at a court of competent jurisdiction.

B. How to Request Mediation

A request for mediation must be made by either party in writing. If the mediation request is made after a local board decision, the request must

be accompanied by the final written decision from the local board. In order for mediation to take place, however, both parties must agree to do mediation. If both parties agree to attempt mediation, the school district must fill out and forward the necessary forms (Forms ADR-M A, ADR-M B, and ADR-M C) to the Office of Legislation and Hearings. The mediation request must specify the issue or issues in dispute and the relief sought by the parties. The parties must also propose 4 mutually agreeable dates when they would be available for mediation.

C. Representation – Attorney or Advocate

1. The filing of a Mediation Request on behalf of a party by an attorney shall mean that the attorney represents that party.
2. The filing of a Mediation Request by an advocate on behalf of a party must be accompanied by a signed and dated authorization from the custodial parent(s).
3. The filing of a Mediation Request by an advocate on behalf of a party that is not accompanied by a signed and dated authorization from the custodial parent(s) will not be acknowledged.
4. An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement that notice of the withdrawal has been provided to the client and all other parties.
5. Parties retain counsel at their own expense.
6. Requests for appointment of counsel will not be entertained.

D. Mediator

Upon receiving the filled-out forms from the school district the Office of Legislation and Hearings will appoint a mediator.

1. The mediator will not have personal knowledge of any of the parties.
2. 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 any circumstances likely to prevent the process from proceeding as scheduled;
3. If the mediator withdraws, has a conflict of interest, or is otherwise unavailable, a replacement mediator will be appointed by the office of legislation and hearings to hear the issue; and
4. The mediator will not act as a legal advisor or legal representative.

E. Docketing and Service

After appointing a mediator, the Department will:

1. Schedule the mediation on one of the 4 dates provided by the parties, if possible;
2. Provide the parties with the mediator's name and address;
3. Provide the date and place of the mediation; and
4. Specify the date by which the parties must furnish the mediator with required information and documentation.

F. Mediation Schedule

The mediation conference will be conducted within 30 calendar days after receipt of a written request in order to:

1. Determine issues;
2. Explore options; and
3. Suggest an equitable resolution to the dispute.

G. Mediator's Role

The role of the mediator shall be:

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

The mediator shall not:

1. Have the authority to render a decision or impose a settlement on the parties.
2. Sign mediated agreements.

H. Activities Prior to Mediation
(NOTE: Applies only to Ed 200 State Board cases NOT Special Education cases)

1. Not later than 10 days prior to the session each party must submit to the mediator and all other parties a summary of the significant aspects of their case. Each party must attach copies of all documents on which they rely to the summary; such summaries will be not more than 4 pages.
2. Upon receipt of a party's submission, any party may send to the mediator and all other parties' additional information responding to that submission.

I. Mediation Session

1. The mediation conference will consist of a session or sessions with the parties and their counsel, if retained, to facilitate a settlement acceptable to the parties.
2. At the mediation session, all parties and counsel, if retained, will have authority to enter into the mediation agreement.
3. If resolution cannot be achieved on the date assigned, the mediator will, only if needed, continue the mediation process, either with further in-person mediation sessions or electronically.

J. Post Mediation

1. Within 30 days of the initial mediation session, the mediator will file a report with the Office of Legislation and Hearings 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.

K. Enforcement of Mediated Agreements

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

L. Tips for Participants to Mediations

• COME PREPARED. You do not need to bring exhibits to mediation because it is not the role of the mediator to review documents or to make a judgment; however, you may do so if you feel exhibit(s) are relevant or helpful to understand the issue. You are not there to convince the mediator; the mediator is only there to facilitate the proceedings. You will be the judge about whether or not you will agree to compromise with the other party.

• BE COOPERATIVE! Mediation works best if both parties are willing to compromise. The whole point of attending mediation is to compromise. Be open to new ways of thinking about resolving the issue. Do not let personal feelings get in the way of resolving the issue.

• STAY FOCUSED ON THE ISSUE! It is important not to get lost in the emotions relating to the issue; focus only on the issue because it is why you are at mediation.

NEUTRAL CONFERENCE

Neutral Conferences are a simplified version of a hearing involving no discovery and simplified rules of evidence. A neutral evaluation consists of an informal, abbreviated presentation of case facts and issues by the parties to a neutral evaluator appointed by the Office of Legislation and Hearings. The neutral evaluator is responsible for reviewing the strengths and weaknesses of the case and issuing a written report, a copy of which is given to all parties. The date, time and names of the participants are the only record kept by the Department to show that a neutral evaluation occurred; and evidence that would otherwise be acceptable in an appeal, a due process hearing or in a subsequent court hearing is not excluded as a result of its use in a neutral evaluation.

A. How to Request a Neutral Conference

If both parties agree to attempt to settle differences through neutral evaluation, the school district will fill out and forward the necessary forms to the Office of Legislation and Hearings. Upon receiving the forms the Department will schedule a neutral evaluator who will conduct the evaluation. (See Form ADR-NC A ADR-NC B and ADR-NC C)

B. Representation – Attorney or Advocate

1. The filing of a request for a Neutral Conference on behalf of a party by an attorney shall mean that the attorney represents that party.
2. The filing of a request for a Neutral Conference by an advocate on behalf of a party must be accompanied by a signed and dated authorization from the custodial parent(s).
3. The filing of a request for a Neutral Conference by an advocate on behalf of a party that is not accompanied by a signed and dated authorization from the custodial parent(s) will not be acknowledged.
4. An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement that notice of the withdrawal has been provided to the client and all other parties.
5. Parties retain counsel at their own expense.
6. Requests for appointment of counsel will not be entertained.

C. Neutral Evaluator

1. The neutral evaluator will not have personal knowledge of any of the parties.
2. 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 any circumstances likely to prevent the process from proceeding as scheduled;

3. If the neutral evaluator withdraws, has a conflict of interest, or is otherwise unavailable, a replacement neutral evaluator will be appointed by the Office of Legislation and Hearings to hear the issue; and
4. The neutral evaluator will not act as a legal advisor or legal representative.

D. Docketing and Service

After appointing a neutral evaluator, the Department will:

1. Schedule the neutral evaluation;
2. Provide the parties with the neutral evaluator's name and address;
3. Provide the time, date, and place of the neutral evaluation; and
4. Specify the date by which the parties must furnish the neutral evaluator with required information and documentation.

E. Summary to be Submitted Prior to Neutral Evaluation

Not less than 5 days prior to the neutral evaluation, the parties will submit to the neutral evaluator and exchange a summary of the significant aspects of their case. The parties will attach copies of all documents on which they rely to the summary. These summaries must be not more than 4 pages.

F. Communication with Neutral Evaluator

Parties must not communicate with the neutral evaluator concerning their case outside of the neutral evaluation.

G. Authority of Parties

At the neutral evaluation, the parties must be present and have authority to authorize settlement.

H. Additional Written Information

If the neutral evaluator determines it necessary, he or she may request additional written information prior to the evaluation from either party.

I. Neutral Evaluation Conference Proceeding

At the neutral evaluation, the neutral evaluator may address questions to the parties and will 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.

J. 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.

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

At the conclusion of a scheduled neutral evaluation the evaluator will advise the Office of Legislation and Hearings 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 Office of Legislation and Hearings; 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.

L. Enforcement of Agreements

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

ADMINISTRATIVE HEARINGS

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, appeal of individuals from disputes with school systems or the Department.
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."

ADMINISTRATIVE ADJUDICATION PROCEEDINGS

A. Notice of the Request for Hearing to the Opposing Party.

When filing a request for hearing, the person requesting the hearing must mail a copy of the signed and dated Hearing Request to the opposing party.

B. E-Mail and Facsimile Hearing Requests

It is expected when a document reaches the Hearing Officer it will simultaneously reach other parties. Therefore in order to help facilitate the process, with prior agreement of the Hearing Officer and parties, e-mail and facsimile copies of hearing requests will be accepted as long as a signed and dated original request is mailed to the opposing party and a copy to the Department of Education. Any e-mail and facsimile sent to the Hearing Officer must be sent simultaneously and expeditiously to the opposing party. Any pleading that is filed with the Hearing Officer has to be signed in ink and a copy mailed to the opposing party at the same time.

C. Representation – Attorney or Advocate

1. The filing of a Hearing Request on behalf of a party by an attorney shall mean that the attorney represents that party.
2. The filing of a Hearing Request by an advocate on behalf of a party must be accompanied by a signed and dated authorization from the custodial parent(s).
3. The filing of a hearing Request by an advocate on behalf of a party that is not accompanied by a signed and dated authorization from the custodial parent(s) will not be acknowledged.

4. An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement that notice of the withdrawal has been provided to the client and all other parties.
5. Parties retain counsel at their own expense.
6. Requests for appointment of counsel will not be entertained.

D. Pro Se Complainants

The Latin word "pro se" means to act without the aid of an attorney; representing yourself. There is no bar for pro se parents to represent themselves in a hearing. At the pre-hearing, the Hearing Officer may ask the pro se parent to determine the relevant legal issues to be addressed at the hearing to enable both parents and districts to adequately prepare for the hearing. Relevance is important because future rulings may ask for relevant issues to be further addressed and evidence can be excluded because it is not relevant to the issues at the hearing. Additionally, in order to gather relevant information, the Hearing Officer may exclude irrelevant testimony, establish guidelines for the correct method of questioning witnesses, and ask questions concerning the relevance of questions. 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.

E. Persons Authorized to be Present

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

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

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

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

F. Docketing and Service

1. The Office of Legislation and Hearings, which is part of the Deputy Commissioner's Office, assigns the appeal a docket number and serves the order of notice upon all parties to the proceeding by certified mail, personal service, or electronic submission with record of transmittal. The date of service is the date of personal delivery or receipt by the parties.
2. All subsequent communication by each party must include the docket number, be copied to all other parties by personal service, the United States mail, electronic or telephonic service.
3. Orders, notices, memoranda and all other material submitted in a docketed case are kept in a docket file and made available for public inspection in the Department.
4. Upon agreement of the parties, the hearing officer may amend the order of notice.

G. Order of Notice

Upon receipt of the appeal, and after assigning a docket number, the Office of Legislation and Hearings:

1. Assigns the case to a hearing officer

2. Includes the following in the order of notice sent to the parties:

    a. The date the appeal was received by the Office of Legislation and Hearings;
    b. The docket assigned to the appeal;
    c. Name, address, and telephone number of the Hearing Officer.

H. Ex Parte Communication

"Ex parte" is a term used in legal proceedings which means "from or on one side only, with the other side absent or unrepresented." The term is most commonly used to describe communications between a Hearing Officer and only one party to a proceeding.
Parties to hearings must not engage in ex parte communication with the Hearing Officer. Ex parte communication occurs when one party to the proceeding initiates discussions about a case with the Hearing Officer to the exclusion of the other party or parties. All contact with the Hearing Officer must be in writing with a copy to the other party. If you want to

initiate a telephonic conversation with the Hearing Officer, you are requested to first write (fax or e-mail) to the Hearing Officer, with a copy to the other party, requesting the opportunity to speak with the Hearing Officer. The Hearing Officer will not respond to ex parte communications except for emergency discussions on ex parte basis to discuss new dates (see "Unexpected Circumstances").

I. Unexpected Circumstances

In the event of an unexpected event such as death, hospitalization, sudden illness, severe weather conditions, natural disasters, or unexpected business conflicts beyond the party's control that prevent the party's attendance, the party should request a continuance from the Hearing Officer and the opposing party as soon as possible. The initial contact shall be followed up by a written request to the Hearing Officer and opposing party.

As soon as possible after the emergency, the requesting party must fax or e-mail the Hearing Officer, with a copy to the other party, an appropriate motion (Form AH-T) including proposed alternate dates. If the Hearing Officer allows the continuance, the Hearing Officer will also issue a new hearing date. Allowance of a request for a continuance is at the Hearing Officer's sole discretion.

J. Hearing Place

All hearings will be held at 21 S. Fruit St. in Concord, NH unless a request for accommodation has been granted or the Hearing Officer orders otherwise.

K. Security at Hearing Office

A party who believes they may need security at a proceeding shall request the Hearing Officer to provide security for the hearing. (See section "U" **Motions**) The hearing officer will 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 Office of Legislation/Hearings of the determination of need and the rationale for the request for security. The Hearing Officer will include in the request the hearing dates and times.

L. Requests for Continuance

1. The form, Written Request for Continuance (Form AH-T) is available for use by the parties in requesting a continuance of a scheduled proceeding.

2. When one party seeks a continuance, the party must file a written request with the Hearing Officer who may allow or deny the request. At the time of the request, a copy must be sent to the opposing party. The written request must contain a reason for the continuance as well as proposed alternate dates. If the Hearing Officer allows the continuance, the Hearing Officer must also issue a new hearing date. A continuance will not occur if the Hearing Officer does not issue an order agreeing to continuance.
3. Except in extraordinary circumstances, parties seeking a continuance must make such written request to the Hearing Officer at least five (5) business days before the scheduled hearing date. Failure to do so is grounds for denial of the request.
4. If the Hearing Officer allows the continuance, the Hearing Officer will issue a new hearing date by order to both parties with a copy to the Office of Legislation and Hearings.

M. Pre-Hearing Conference Overview

The Office of Legislation and Hearings will mail out a scheduling notice to the parties after receiving a request for a hearing. The scheduling notice will include a pre-hearing date. The parties are required to participate in the pre-hearing conference. If the scheduled date or time presents a conflict, the parties must notify the Hearing Officer immediately in writing. As with any papers sent to the Hearing Officer in the proceedings, a copy must be sent to all other parties. Correspondence may be faxed to the hearing officer.

N. Purpose of the Pre-Hearing Conference

A pre-hearing conference is the opportunity for the Hearing Officer to discuss and rule upon any outstanding matters that must be resolved prior to hearing. These matters may include the following if they have not already been addressed:

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 submitted in oral written form;
    e. Any other matters of importance the parties would like to bring to the Hearing Officer's attention.

O. Authority of Pre-Hearing Conference Participants.

Parties must appear at the Pre-Hearing Conference with full authority to settle a case or ability to access authorization to settle the case at the time of the Pre-Hearing Conference.

P. 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.

Q. Telephone Conference.

At the discretion of a Hearing Officer, a Pre-Hearing Conference may be conducted by telephone.

R. 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. Accordingly, it is important that the letter be reviewed carefully, and the Hearing Officer be advised of any corrections or supplementation necessary.

S. Procedures that May Occur Before or During a Hearing.

1. DISCOVERY:

The party upon whom a request for discovery is served may within ten (10) days of service of the request, file objections to the request with the Hearing Officer or move for a protective order. Disputes regarding discovery shall be resolved whenever possible by conference calls. Protective orders may be issued 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:

Formal requests for information may be made at any time after a request for hearing is filed. The party upon whom the request is delivered shall respond within thirty (30) days unless the Hearing Officer establishes a shorter or longer period of time.

3. REQUESTS FOR DOCUMENTS:

Any party may request any other party to produce or make available for inspection or copying any documents or tangible things, not privileged, not supplied previously, and which are in the possession, custody, or control of the party upon whom the request is made.

4. INTERROGATORIES:

A party must obtain permission from a Hearing Officer to serve written interrogatories on any other party for the purpose of discovering relevant, not privileged, information not supplied previously through a voluntary exchange of information. No party, without Hearing Officer approval, should serve more than twenty-five (25) interrogatories. For purposes of determining the number of interrogatories, subparts of a basic interrogatory which are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection must be stated in lieu of an answer.

5. DEPOSITIONS:

In order to take the testimony of any witness by deposition, a party must file a written motion seeking approval from the Hearing Officer.

a. Time & Content. There shall be at least ten days' notice to the parties of the motion to take a deposition. A motion requesting a deposition shall state the name and address of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and address of the person before whom the deposition is desired, and the reason why such deposition should be taken.
b. Authorization. The Hearing Officer shall allow the motion only upon a showing that the parties have agreed to submit the deposition in lieu of testimony by the witness or the witness to be deposed cannot appear before the Hearing Officer without substantial hardship, and that the testimony being sought is relevant, not privileged and not discoverable by an alternate means.
c. Scope and Conduct of the Deposition. Deposition shall be taken orally before a person having power to administer oaths. Every witness testifying upon deposition shall be duly sworn, and the adverse party/parties shall have the right to cross-examine. Objections to questions must set out the grounds relied upon. The testimony shall be reduced to writing and shall, unless waived, be signed by the witness, and certified by the officer before whom the deposition is taken. After the deposition has been subscribed and certified, it shall be forwarded to the Hearing Officer. Subject to appropriate rulings on objections, and the parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the proceeding.

T. Requests for Hearing Officer Recusal.

A request for recusal, in general, is based on an appraisal that a reasonable person with knowledge of the circumstances would be likely to question the impartiality of the Hearing Officer assigned to the matter.

Requests for Recusal can be broken down into two areas:

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.

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

U. Motions

A motion is a request that a Hearing Officer issue an order or take any action consistent with relevant statutes or regulations.

1. <u>Filing a Motion</u>**:**

   After a party files a hearing request, motions shall be filed in writing with the Hearing Officer. Each Motion shall set forth the reasons for the desired order or action.

2. <u>Notice of the Motion to the Other Party</u>**:**

Written Motions must be given to all parties and the Hearing Officer at the same time. Within ten (10) days after a written motion is file with the Hearing Officer, the opposing party may file written objections to the allowance of the Motion.

3. Rulings on a Motion:

Ten (10) days after receiving the Motion and any objection thereto, the Hearing Officer will respond to the Motion.

4. Evidence Relating to Motions**:**

A party may offer only evidence relevant to the particular motion. This evidence may consist of facts which are supported by affidavit (a sworn, written statement under oath), appear in records, files, depositions, or answers to interrogatories.

V. Burden of Proof

It is the duty of the moving party to prove a disputed fact by preponderance of the evidence. Burden of Proof will be related to the relevant issue(s) decided at the pre-hearing.

W. Standard of Proof

In all proceedings the party must prove his or her case by a preponderance of the evidence.

X. Order of Proof

The party bearing the burden of proof shall present its evidence first unless otherwise agreed to by the parties. All parties shall have the opportunity to present testimony, demonstrative and documentary evidence, cross-examine adverse witnesses and make opening and closing statements.

Y. Subpoenas.

A subpoena is a written command to appear at a certain time and place to give testimony in the case in dispute. A subpoena may also require the production of documents.

1. Issuing a Subpoena

Upon the request of a party, the Hearing Officer may issue subpoenas to require a person to appear and testify and to produce documents at the hearing. A request that the Hearing Officer issue a subpoena shall be made in writing and received by the Hearing Officer at least ten (10) days prior to the hearing; shall

specify the name and address of the person to be subpoenaed; and shall describe any documents to be produced. Subpoenas are issued by Hearing Officers in accordance with RSA 186-C:16-a.

2. Challenge to a Subpoena

Hearing Officers have no power to rule on challenges to subpoenas. Challenges of subpoenas must be filed with Superior Court.

3. Enforcement of a Subpoena

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.

Z. 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 cannot bring in relevant evidence to an undisclosed issue;
j. Issue subpoenas upon request of any party to secure the presentation of evidence or testimony;
k. Examine witnesses and ensure that relevant evidence is secured and introduced;

l. Rule on any requests or motions that may be made during the course of the proceedings;
m. Order 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.
q. Set reasonable time limits on the length of conferences and hearings.

Hearings proceed according 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 record I request that parties speak loudly and clearly 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)
            (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*

AA. 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 the 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. In the case of repeated or flagrant improper conduct by a party's representative, the Hearing Officer may consider suspension or disqualification of that representative from future hearings.

BB. Exhibit List

All exhibits must be sequentially identified and numbered for each party. The Office of Legislation/Hearings has created a blank exhibit list to assist the parties when filing documents (see Form AH N) The exhibit list has space for each document number, date filed and for a short description of the exhibit – example:

Document	# Date Filed	Description
Parent 1	Jul 1, 2007	Letter to John Doe dated April 1, 2006 requesting information, 2 pages

At the time the exhibit is marked for identification, the party offering the exhibit must provide an original, a copy for each party, and a copy for the department, if feasible. No reference will be made to an exhibit, other than to mark it for identification, before the Hearing Officer has accepted it into evidence.

CC. 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. As such, 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 may include, but is not limited to, depositions, affidavits, official documents, and testimony of witnesses. To promote efficiency, the Hearing Officer officially notices 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.

a. 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.

b. 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.

c. 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.

d. 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 additions to the stipulations offered by the parties.

e. Written Testimony.

If the Hearing Officer determines that the subject matter of the proceeding is so complex, and that no party will be prejudiced by the testimony, the Hearing Officer will require that the direct testimony of specific witnesses be prepared in writing by the party offering that direct testimony.
Written testimony will be subscribed under oath or affirmation by the witness, and served upon all parties at least 15 days before the first formal evidentiary session of the proceeding. Such written testimony will not be in lieu of testimony under oath at hearing, so as to afford an opportunity for cross examination on oral and written testimony.
If no other party will be prejudiced by the introduction of written testimony, a party may elect to submit such written testimony without an order, but this election will require no other party to do so. Written direct testimony so distributed will be marked as an exhibit, and will be received into evidence before the witness is cross-examined upon the contents of the exhibit.
Written testimony, offered in lieu of oral testimony at hearing, will be permitted provided that there is no material prejudice to the other parties.

f. 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.

g. Additional Evidence. The Hearing Officer may require any party to submit additional evidence on any relevant matter.

DD. Official Record – Audio Cassette Tape.

Off-the-Record Discussions

The Hearing Officer should go off the record when necessary to prevent the record from becoming cluttered with unnecessary dialogue, not substantively related to the proceeding at hand. 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 Officer may go off the record to, for example, discuss scheduling or initially caution the parties or their representatives with regard to their conduct. Such discussions should be immediately summarized once back on the record.

Examination of Witnesses

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

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

The party calling the witness examines the witness first. When direct-examination is concluded, the opposing party may cross-examine. Generally, cross-examination should 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 deem relevant.

When both parties request the same witness, the Hearing Officer shall determine whether the witness shall be called twice or whether the scope of cross-examination may exceed the scope of direct-examination. The Hearing Officer may independently examine the witness and permit follow-up questions by the parties.

EE. 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 since it is hearsay.

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. These alternatives may include testimony by telephone or by written transmissions.

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 cannot determine whether the expert witness possesses the knowledge, skill, experience, training or education that permits the expert to offer opinion testimony, the Hearing Officer may ask the parties whether they can stipulate that the experts are qualified. This generally requires the party seeking to introduce expert testimony to provide a resume of the expert that adequately describes the expert's knowledge, skill, experience, training or education in the subject matter about which he/she is being called to testify. The expert's opinion as to facts or law may not be substituted for the Hearing Officer's ultimate conclusion of facts and law. Documents prepared by experts must be authenticated and treated like other documentary evidence.
If an expert does not testify in person at the hearing, the Hearing Officer should balance the relevance and probative value of documentary evidence prepared by an expert against a party's inability to cross examine the expert. In most cases, this determination will ultimately go to the weight the Hearing Officer should give the expert's evidence, rather than to its admissibility.

FF. Objections.

If objections are made they should be made based on relevance, prejudice, or other grounds. 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.

GG. 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. Separate requests for findings of fact and conclusions of law which the parties wish the Hearing Officer to reach must not exceed 50 pages in length.

Upon expiration of the time for filing closing legal memoranda and requests for finding of fact and rulings of law, the hearing record will be closed, and the Hearing Officer will proceed to decision (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.

HH. 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.

II. Rights of All Parties.

1. All parties have the right:

   a. To receive, upon request to the Commissioner of Education, a list of its impartial Hearing Officers with their qualifications.
   b. To be accompanied and advised by legal counsel and advocates at the party's expense;
   c. To present evidence, to confront, cross-examine, and subpoena witnesses;
   d. 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;

2. The audiocassette tape is the official record of the hearing. Parties may request a copy of the audiocassette tape(s) at department cost. A copy of the electronic verbatim record will be provided within 10 days (depending upon number of audio cassette tapes) upon written request to the Office of Legislation and Hearings.

3. Except for 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 of the petitioner's written request. If there are more than 20 tapes; however, the Department will provide the transcript within 60 calendar days of petitioner's written request.

4. 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.

5. Additionally, parents have the following rights:

   a. To have the child, if he/she is the subject of the hearing, present at the hearing;
   b. To open the hearing to the public; otherwise the hearing shall not be open to the public.

JJ. 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.

KK. Dismissal With or Without Prejudice.

There are two ways for a case to be dismissed. One way is dismissal with prejudice; the other is dismissal without prejudice.

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

LL. Request for Dismissal With Prejudice by Parties.

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

a. To prosecute or proceed with the case by the other party;
b. To follow or comply with these rules or with any Hearing Officer Order;
c. To state a claim upon which relief can be granted;
d. To sustain its case after presentation of evidence.

The Hearing Officer may allow a Motion or Request to Dismiss with or without prejudice.

MM. 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 for use by the party requesting withdrawal of their scheduled proceeding.
2. When the party files a request for withdrawal (hereinafter referred to as "petition"), the party must file a petition with the Hearing Officer and, at the same time, must send a copy of the petition to the opposing party.

3. Upon receipt of the party's petition, the Hearing Officer will forward a copy of the party's petition to the Commissioner along with a request that as a result of the party's petition the Hearing Officer requests the Commissioner close the matter based on the petition.

4. Upon receiving a petition from the Hearing Officer or from a party, the Commissioner will send out a letter to the Hearing Officer assigned to the case which indicates he/she has received the petition and as a result of the petition is dismissing the matter. The Commissioner's letter will indicate that the Hearing Officer can take the scheduled proceeding off their calendar and issue an order to the parties closing the case due to the dismissal. The party may also request the Hearing Officer clarify whether the matter is dismissed with or without prejudice.

5. Upon receipt of the Commissioner's dismissal of the matter, the Hearing Officer will issue an order dismissing the matter and will indicate whether the matter has been dismissed with or without prejudice.

NN. 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 the party to show cause why the appeal should not be dismissed for 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.

OO. 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.

PP. Consolidation of Cases.

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

QQ. List of Hearing Officer Qualifications

The Office of Legislation and Hearings maintains a list of persons who serve as Hearing Officers. This list (see Hearing Officer/Alternative Dispute Resolution Officers attached in front portion of Guide) includes a statement regarding the backgrounds of each of the Hearing Officers and is available upon request.

RR. Department Appointment of Hearing Officers

Appointment of Hearing Officers is a statutory requirement of administrative agencies. Department of Education Hearing Officer/Dispute Resolution Officers fulfill Federal and State requirements for Hearing Officer/Mediators in the following areas:

- Special Education Impartial Due Process Hearings
- State Board of Education Hearings which includes:
  - Charter School appeals
  - Disputes of agency or agency personnel decisions
  - Home Education appeals
  - Non-Public School appeals
- Vocational Rehabilitation Fair Hearings
- Alternative Dispute Resolution Proceedings which consists of:
  - Mediations
  - Neutral Conferences

Federal law prohibits Special Education Impartial Due Process Hearing Officers from being employees of a state agency and, therefore, the Department contracts with attorneys or other individuals with knowledge of state and federal special education laws. Individuals who serve as Hearing Officers must have knowledge of the Federal and State statutes, regulations, case law and policies pertaining to the education of children with disabilities, general public education and vocational rehabilitation services. The contracted individual may not have any personal, professional or economic interest which might conflict with their objectivity in performing duties. Ineligible individuals are those who have served as a state or local school board official or a school administrator, including a special education administrator, or as an advocate for students with educational disabilities, in New Hampshire [or in any other state] within the immediately preceding 12-month period.

SS. Assignment of Hearing Officers to a Case

Hearing Officers are assigned to cases based on availability at the time of scheduling.

TT. Appeals of Decisions

Appeals of Special Education Impartial Due Process Hearing Officer decisions are made to a court of competent jurisdiction (generally this is the Federal District Court or the NH Superior Court). Appeals of State Board decisions are to the NH Supreme Court.

UU. 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 final decision has been rendered and the hearing process has been concluded.

VV. Right to Review Hearing Files Retained by Department

Hearing Files constitute the primary documents submitted to or issued by the Hearing Officer in a given proceeding. The Hearing Files consists of the pleadings file: Orders, letters, findings of fact, and rulings of law, scheduling notices; correspondence file; and the exhibits submitted by the parties in support of their position. The term Hearing File should not be confused with the Official Record which is defined as the audio cassette tapes of the proceeding.

Parties to a proceeding who wish to review the Hearing Files may do so by submitting a written request for an appointment to the Office of Legislation/Hearings two weeks prior to the date they intend to review the materials, stating the date and time they plan to appear.

The Department currently provides both parties with written copies of the decision and findings of fact, if any, at no cost. One copy per party of materials maintained in the proceeding's correspondence file will be provided free of charge. Parties requesting additional copies of materials or copies of exhibits will be charged a nominal fee (currently .05 cents per copy) payable at time of review. Acceptable payment is by cash or money order. The Department does not accept personal checks.

Parties appealing a Hearing Officer decision to a court of competent jurisdiction, who wish to supplement materials not in the Hearing Files, shall request the hearing officer to determine whether such material shall be included in the Hearing File.

WW. Tips for Participants to Hearings

• COME PREPARED. Spend some time prior to the hearing to review the issues so that you are clear about what you want as an outcome. Understand your rights. Think about any further information you may

need. If you have questions about the hearing process, feel free to ask the Office of Legislation and Hearings for clarification. We will be happy to answer process questions but cannot offer legal advice.

• BE THOROUGH. Include all information needed in the appeal. If your appeal is rejected for lack of information, you may not receive another one.

• BE COOPERATIVE! Whether or not you have requested the hearing, it is important for you to make every effort to conduct yourself in a cooperative manner. The more uncooperative you are, the more difficult it will be for the Hearing Officer to understand your point of view.

• STAY FOCUSED ON THE ISSUE! It is important not to get lost in emotions of the issue; focus only on the facts because they are why you are at hearing.

• CONTINUANCES. Ask for a continuance if you really need one. Continuances are only granted in emergency situations. Emergency situations include: hospitalization, sudden illness or death, natural disasters, and snowstorms (Please see section "Unexpected Circumstances")

SPECIAL EDUCATION
IMPARTIAL DUE PROCESS HEARINGS

Guide for Administrative Hearings governed by RSA 186-C and Ed 1123.

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. Please ensure you review not only the information contained in this section but also the information contained under the section **Administrative Hearings**, as well as all applicable statutes and rules.

A. Initiation of an Impartial Due Process Hearing

1. A party, or attorney representing the party, requesting a Special Education Impartial Due Process Hearing, must provide the due process complaint notice to the other party in the complaint and forward a copy of the complaint notice to the Department of Education's Office of Legislation and Hearings.

2. The complaint notice must include:

    a. The name of the child
    b. The address of the child (or available contact information in the case of a homeless child)
    c. The name of the school the child is attending
        I. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), available contact information for the child and the name of the school the child is attending.
    d. A description of child's problem relating to the proposed initiation or change, including facts relating to the problem
    e. A proposed resolution to the problem to the extent known to the party filing the complaint notice at the time.

3. The party, or the attorney representing the party, filing a complaint notice will not be able to have a hearing until such time as the complaint notice meets the requirements listed above

4. The Department has developed forms to assist the parties in filing a due process complaint (see B)

5. The due process complaint notice will be deemed sufficient unless the other party notifies the hearing officer and the other party in writing that they believe the notice has not met the statutory requirements. (see G and H for information regarding objections and amendments to complaint)

B. Hearing Request Forms

1. The following forms are available for use in requesting a due process hearing:

a. Local Education Agency Form to Request an Administrative Due Process Hearing (Form AH-IDPH Q);
b. Parent(s) Form to Request an Administrative Due Process Hearing (Form AH-IDPH P)
c. Form to Request Dates (Form AH-IDPH R)

C. Requests for 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. Parties requesting a continuance may utilize Form AH-T – **Written Request for Continuance**.

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.

D. Department Scheduling of Proceedings

Upon receipt of a request for a Special Education Impartial Due Process Hearing (hereinafter "petition"), the Office of Legislation and Hearings (hereafter "office"), schedules mediation (unless specifically advised that the requesting party or opposing party does not want mediation), a pre-hearing conference and two-day hearing.

A procedural requirement of IDEA 2004 is that parents and local school districts have an opportunity to resolve their differences through a local resolution process (see "Resolution Sessions"). The reauthorized act allows up to 30 days to resolve the issues at the local level before proceeding to a hearing. ***If both parties agree***, this new opportunity may be waived or replaced by mediation. The law requires the first resolution session to be held within 15 days of the filing of a petition.

Since the parties may elect mediation instead of a local resolution, the Department schedules the mediation session to commence prior to the expiration of the 30 day statutory period. The Department's scheduling process sets the mediation date on or about the 16th day from the date of receipt of the petition. The parties may take full advantage of the statutory 30 day window for local resolution by requesting an extension of time from the Hearing Officer.

The scheduling notice also schedules a one-to-two hour pre-hearing conference to begin on or about the 31st day from the date of the petition. The two-day hearing is scheduled to begin on or about the 45th day from the date of receipt of the petition. The end date, which means the date by which the Hearing Officer must have the decision completed and submitted to the Office of Legislation/Hearings to send to the parties by certified mail, is scheduled on or about the 70th day after the receipt of the petition.

It is important to note that while the parties are encouraged to submit mutually agreeable dates and may do so by submitting Form AH-IDPH-R to the Department for consideration when scheduling, the dates must comply with timelines set out by statute.

E. Mediation as an Integral Part of Due Process

New Hampshire is perhaps the only state where mediation sessions have, for many years, been scheduled as part of the due process hearing, with either party retaining the ability to opt out. New Hampshire also permits the parties to request that assigned hearing dates be rescheduled for good cause. This combination has encouraged a majority of parties to enter into mediation before a hearing. A high percentage of mediated cases reach settlement, thereby avoiding the need for a due process hearing.

Mediation proceedings are confidential. Information, evidence, or the admission of any party shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or any other participant in aid of such proceeding are privileged and will not be disclosed. In addition, the parties may not introduce into evidence at any subsequent proceeding the fact that there was an alternative dispute resolution proceeding or any other matter concerning the conduct of such proceedings. Prior to the session, parties shall provide the names of the intended participants in mediation. No additional participants to mediation proceedings will be allowed to participate without agreement of all parties.

For more information on mediation sessions, please see **Alternative Dispute Resolution Proceedings.**

F. Non-complaining party response

If the school district files a request for due process, the parent has to file a response within 10 days; if the parent files a request for due process and the school district has not sent a written prior notice contained in the due process complaint, the school district must, within 10 days, send a response to the parent.

School District response:

If the school district has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, the school district shall, within 10 days of receiving the complaint, send to the parent a response that includes:

a. An explanation of why the school district proposed or refused to take the action raised in the complaint;
b. A brief description of other options that the IEP Team considered and the reasons why those options were rejected;
c. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; and
d. A description of the factors that are relevant to the school district's proposal or refusal.

Other party (Parent) response:

The party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

G. Sufficiency Determinations

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) 2004, Section 615, requests for a Special Education Impartial Due Process Hearing are assigned to a mediator and Hearing Officer. Upon receipt of a request for hearing, a mediator is assigned for the purposes of mediation and the Hearing Officer to determine sufficiency of filing should that be challenged by either party.

A Sufficiency Determination is made when the non-complaining party to a proceeding notifies the mediator and the other party in writing that they believe the due process complaint notice does not meet the statutory requirements. A response by the non-complaining party to the complaining party's due process complaint notice does not mean that the non-complaining party cannot assert that the due process complaint notice is insufficient where appropriate.

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.

H. 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 due process hearing occurs.

2. The applicable timeline for a due process hearing shall recommence at the time the party files an amended notice, including the resolution session.

3. The Office of Legislation/Hearings has developed two forms to assist the parties in filing an amended complaint – Suggested Parent Amended **Request for Due Process Hearing** (Form AH-IDPH-W) and **Suggested LEA Amended Request for Due Process Hearing** (Form AH-IDPH-X)

I. Resolution Sessions

1. Prior to the opportunity for an Impartial Due Process Hearing, the Local Educational Agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

   a. Within 15 days of receiving notice of the parents' complaint;
   b. Which shall include a representative of the agency who has decision making authority on behalf of such agency;
   c. Which may not include an attorney of the Local Educational Agency unless the parent is accompanied by an attorney; and
   d. Where the parents of the child discuss their complaint and the facts that form the basis of the complaint, and the Local Educational Agency is provided the opportunity to resolve the complaint, unless the parents and the Local Educational Agency agree in writing to waive the resolution session, or agree to use the mediation process.

2. If the Local Educational Agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the Due Process Hearing may occur, and all of the applicable timelines for a Due Process Hearing shall commence.

3. In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is:

   a. Signed by both the parent and a representative of the agency who has the authority to bind such agency; and,
   b. Enforceable in any state court of competent jurisdiction or in a district court of the United States.

4. If the parties execute an agreement as described above (see 3), a party may void the agreement within 3 business days of the agreement's execution.

5. The Department has developed a form to assist the parties in informing the Department that a resolution session has been conducted. (Form AH-IDPH O)

J. Documents for Pre-Hearing Conference

Parties are requested to submit the following documents at the pre-hearing conference:

1. DETAILED WRITTEN STATEMENT**:**

   In order to ensure the matter moves forward efficiently, the parties are encouraged to provide to the Hearing Officer and the opposing party, prior to the pre-hearing conference, a detailed written statement of what they believe are the issues resulting in the request for Due Process Hearing and procedural complaints, with specificity of date and statute/regulation alleged to have been violated.

2. WITNESS LISTS**:**

   Parties are encouraged to exchange and provide to the Hearing Officer at the time of the pre-hearing conference a preliminary list of witnesses they plan to call.

3. STATEMENT OF FACTS**:**

   It is important to be clear and precise in providing a Statement of Facts. Each party *shall* exchange and file with the Hearing Officer, at or in advance of the pre-hearing conference, a Statement of Facts (Ed 1128.16(c).) It is recommended that this include an historical overview.

4. CORE EXHIBITS:

The school district is encouraged to submit a binder of all core exhibits to this case at the pre-hearing conference (with a copy to the parents) and in any event as soon thereafter as determined at the pre-hearing conference. Thereafter, neither party shall duplicate that exhibit, but either party may supplement that exhibit with other material as long as the supplement is received at least 5 business days before the hearing.

K. 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 (Form AH-IDPH-V) only the Hearing Officer has the authority to reconsider or to reopen a Special Education Appeal.

L. 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.

M. Record of the Hearing.

The audiocassette tape is the Department's official record of the hearing. Parents who are a party to Special Education Impartial Due Process Hearing may request either a copy of the audiocassette tape(s) **or** a written transcript of said tape(s) at no cost.

Parents are advised that if both a verbatim transcript and audiocassette tape of a Special Education Impartial Due Process Hearing is requested, copies of the verbatim transcript will not be provided free. Parties are further advised that only a **parent** has the right to a transcript at no cost. The Department does not provide a free copy of the transcript to the school district. Although the Department can authorize and arrange for a transcript to be made on behalf of the school district, the school district is responsible for payment of such transcript.

Barring unforeseen circumstances, the Department of Education will provide a copy of the transcript to the parents within 30 calendar days of the petitioner's request. If there are more than 20 tapes; however, the Department will provide the transcript within 60 calendar days of petitioner's written request.

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**, as well as all applicable statutes and rules.

A. Initiation of a State Board Hearing

1. A party aggrieved by a decision at the local level may appeal to the state board for review, in accordance with RSA 541-A and Ed 200, provided that such appeal is filed within 30 days of receipt of the written decision of the local board or 7 days after any alternative dispute resolution that did not produce an agreement with parties. Decisions made under RSA 186-C relative to special education shall be appealed directly to a court of competent jurisdiction.

2. Each appeal must be in writing and addressed to the Office of Legislation and Hearings.

3. Each appeal must include:
   a. The name of the person making the appeal;
   b. Address of the person making the appeal;
   c. Phone number of the person making the appeal;
   d. A description of how the person has been adversely affected by the decision;
   e. Any other information the person deems relevant to a speedy resolution of the matter including but not limited to the law, rule or local policy which was the basis for the decision which the person is challenging.
   f. A copy of the final local board decision.

4. The hearing officer may waive this requirement for good cause shown including but not limited to illness, accident, or death of a family member.

B. Department Scheduling of Proceedings

1. Upon receipt of a request for a State Board Hearing (hereinafter "petition"), the Office of Legislation and Hearings (hereinafter "office"), assigns the case to a Hearing Officer and schedules mediation, if agreed to by the parties, and a pre-hearing conference.

2. In cases of teacher non-renewal, as provided in RSA 541-A:31,VII-a, each party has the right to have the Department provide a certified shorthand court reporter, at the party's expense, for proceedings. Any such request must be submitted in writing to the office at least 10 days prior to the proceeding.

C. Pre-Hearing Conference

In addition to the procedures outlined under **Administrative Hearings Section P**, matters which may be considered at pre-hearing conference include, but are not limited to:

1. Recommendations to the board, and subject to its approval, concerning procedures which shall be changed or tailored to suit the needs of the particular parties and their circumstances;

2. Establishment of Hearing date(s)

3. Copies of witness and exhibit lists must also be provided to the Hearing Officer. These lists shall be updated whenever there is a change in the contents of the list. No witness shall testify, and no exhibits shall be offered, if not identified in a list, unless the Hearing Officer waives this requirement for good cause shown. Parties may use the exhibit list form. (see Form AH-N)

D. Proposed Decisions by Hearing Officer

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 board; 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 board 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.

E. Settlements

1. Upon agreement by all parties to an offer of settlement, the Hearing Officer will create a formal document that specifies the terms and conditions of the settlement.

2. The agreement will not become final and binding until the document is signed by all parties. All parties will receive copies of the fully executed documents.

3. 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.

4. The Hearing Officer will write a proposed recommendation to the State Board indicating the parties have settled the matter and include the original settlement agreement defined in (1) and (2).

F. Exceptions to Rulings by the Hearing Officer.

1. There is no interlocutory appeal to the board of procedural or discovery orders made by the Hearing Officer.
2. The parties will be provided a minimum of 15 days after the receipt of the proposed decision to submit written exceptions to rulings of the Hearing Officer, except as otherwise provided by law.
3. The board will rule on any such exceptions and will reopen or modify the record, if necessary, or appropriate to effectuate relief. The board will base its review on any errors in the record, and will request that the Hearing Officer reconsider based upon the board's discovery of such an error.

G. Submission of Written Record to State Board of Education

At the close of the evidentiary hearing and time period to respond to the proposed decision with written exceptions, the Hearing Officer provides the record of the hearing to the full board. The record will include the Hearing Officer's proposed decision required under Ed 212.01 (a) and any written exceptions to rulings by the hearing officer.

H. Petition for Oral Argument Before Board

1. Petitions requesting oral argument before the board shall be submitted with the written exceptions to the Hearing Officer's proposed decision.

2. Once granted, the party has the right to a 10-minute oral argument on the record before the board and will be notified in writing of the party's place on the agenda on the board's meeting date.

3. Oral arguments will focus on:
   a. The findings of the decision;
   b. Any errors of fact or conclusions of law in the decision; and
   c. Any information which the party can show is relevant which the decision omits.

4. In the case of a non-renewal of a contract for educational personnel certified under Ed 500, oral argument is limited to evidence in the written record. If new evidence is available after the conclusion of the hearing and the board's receipt of the proposed decision, the board will refer the matter to the hearing officer for review.

5. The choice of whether the review by the board and the hearing are conducted in a public or nonpublic session shall be that of the:
   a. The public employee, consistent with RSA 91-A:3,II(a), or
   b. Any person, other than a member of the board, if the matter which, if discussed in public, would likely affect adversely the person's reputation, consistent with RSA 91-A:3,II (c).

6. Oral sessions of the proceeding are recorded. If a tape recording is employed, the tape shall be made available for public inspection unless the hearing is held in non-public session pursuant to RSA 91-A. Upon the request of any person or persons, the board shall arrange for transcription. The person or persons requesting the transcript shall bear the costs. Alternatively, a copy of the audio recording shall be made for the requestor in lieu of written transcription. The requestor shall bear the cost of such copying.

7. Transcripts are distributed as follows:
   a. The original to the record of the proceeding; and
   b. One copy to the person requesting the transcript.

8. The board will meet in nonpublic session to deliberate.

I. Final Decision

All interested parties will be notified of the board's final decision in writing and will be provided with a copy of the decision by certified mail within 10 days after the decision date.

J. Right to Appeal Final Board Decision

1. All appeals of final action by the State Board will be done in accordance with RSA 541.
2. The State Board's decision is final unless:
   a. Thirty days after the decision, if there is no request for rehearing in accordance with Ed 213.02; or
   b. At the conclusion of action required by Ed 213.02.

K. Rehearing

1. Within 30 days of a decision of the board, any party pursuant to RSA 541:3 may make a motion for rehearing.

2. A motion for rehearing will:
   a. Include any memorandum of law the petitioner wishes to submit;
   b. Identify each error of fact, error of reasoning, or conclusion of law contained in the decision that the moving party wishes reconsidered; and
   c. Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party.

3. The board will:
   a. Deny the motion for rehearing;
   b. Grant the motion for rehearing and remand the matter to the Hearing Officer; or
   c. Treat the motion for rehearing as a motion for reconsideration and:
      I. Grant the motion as a motion for reconsideration;
      II. Deny the motion as a motion for reconsideration; or
      III. Table the matter for further discussion and decision at the next board meeting.

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**, as well as all applicable statutes and rules.

A. Initiation of an Impartial Fair Hearing

1. A VR customer, or his/her representative, requesting a Vocational Rehabilitation Fair Hearing, must provide a written description of the Fair Hearing complaint to the Department of Education's Office of Legislation and Hearings.

2. The complaint notice must include:
   a. The VR customer's name.
   b. The VR customer's address.
   c. The VR customer's counselor.
      II. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), available contact information for the child and the name of the school the child is attending.

3. The party, or their representative filing a complaint notice will not be able to have a hearing until such time as the complaint notice meets the requirements listed above

B. Requests for 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.

C. Pre-Hearing

1. DETAILED WRITTEN STATEMENT:

   In order to ensure the matter moves forward efficiently, the parties are urged to provide to the Hearing Officer and the opposing party, prior to the pre-hearing conference, a detailed written statement of what they believe are the issues resulting in the request for Due Process Hearing.

2. WITNESS LISTS:

Parties are encouraged to exchange and provide to the Hearing Officer at the time of the pre-hearing conference a preliminary list of witnesses they plan to call.

3. STATEMENT OF FACTS:

It is important to be clear and precise in providing a Statement of Facts. Each party *shall* exchange and file with the Hearing Officer, at or in advance of the pre-hearing conference, a Statement of Facts (Ed 1128.16(c).) It is recommended that this include an historical overview.

4. CORE EXHIBITS:

The VR agency is strongly urged to submit a binder of all core exhibits to this case at the pre-hearing conference (with a copy to the parents) and in any event as soon thereafter as determined at the pre-hearing conference. Thereafter, neither party shall duplicate that exhibit, but either party may supplement that exhibit with other material as long as the supplement is received at least 5 business days before the hearing.

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 (Form AH-VR A) 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. Record of the Hearing.

The audiocassette tape is the Department's official record of the hearing. The VR customer may request a free copy of the audiocassette tape(s) or a written transcript of said tape(s).

The VR customer is advised that if both a verbatim transcript and audiocassette tape of a Fair Hearing is requested, copies of the verbatim transcript will not be provided free of charge.

CHARTER SCHOOL, HOME EDUCATION AND NON-PUBLIC HEARINGS

The statutes provide hearings based on the provisions under Ed 200 in the areas of:

1. Charter School (RSA 194-B:15,II)
2. Home Education (RSA 193-A:7)
3. Non-Public Schools (RSA 186:11,XXIX and XXIX-a)

Please be aware that prior to filing a hearing request under Ed 200 you must first complete preliminary procedures as indicated in the statutes and rules for each of those areas.

1. Charter Schools appeals to the State Board of Education are done through RSA 194-B:15,II and Ed 318.10.
2. Home Education appeals to the State Board of Education are done through RSA 193-A:7 and Ed 315.17. Grievance Committee Rules are found under Ed 315.14-16.
3. Non-Public School appeals to the State Board of Education are done through RSA 186:11,XXIX and XXIX-a and Ed 408.02-03. Grievance Committee Rules are through Ed 408.02.

APPENDIX A

FORMS FOR USAGE IN ALTERNATIVE DISPUTE RESOLUTION SESSIONS (INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR, MEDIATION AND NEUTRAL CONFERENCES)

The following forms are for use in alternative dispute resolution sessions.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-4034
Citizens Services Line 1-800-339-9900

REQUEST FOR INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

Before school district calls the Department to request an Informal Third Party Discussion led by Moderator, each party ("side") must have determined who the participants will be for their "side" and the two parties must have picked 2 specific days which are mutually convenient and must state what issue(s) is/are to be discussed.

A. Date:_____ (Please See "H" Below)

B. Person making the request
Name: _____SAU _____ Title:_____
Representing LEA (Name) _____
Mailing Address: _____
Telephone #:_____

C. Re: Student
Name of student: _____
DOB: _____ Educational Handicap(s): _____
Current placement: _____

D. Name(s) of individuals who will represent the student
*1. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime phone: _____Evening Phone: _____
2. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime phone: _____Evening Phone: _____

E. Name(s) of individuals who will represent the school district
*1. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime Phone: _____ Evening Phone: _____
2. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime Phone: _____ Evening Phone: _____

F. Individual in "E" above who has written authority to make decisions and firm commitments on the part of the school district: _____

G. Issue(s) (brief phrase below)
1._____
2._____
3._____

H. Is/Are the issue(s) presently the subject of a complaint under Ed 1121? Yes_____ No_____

I. Time Frame: Has an Impartial Due Process Hearing been requested? Yes_____ No_____
If yes, what date was Day #1 of the 45 day period?_____ Please determine the date which is mutually convenient to all participants before calling. Generally, mediation will be held during the third week period of the 45-day period, so requests must be made during the first week (before Day 7).

*****Primary person to contact regarding details, arrangements, or changes. The primary contact person is the only one to receive communication from the Department.

(Form ADR-MOD A)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

AGREEMENT TO ENTER INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

1. I understand that an Informal Third Party Discussion Led by Moderator is VOLUNTARY.

2. I understand that by VOLUNTEERING to have an Informal Third Party Discussion Led by Moderator, I am doing so because I want to discuss my case with a Moderator.

3. I understand that I may terminate the Informal Third Party Discussion Led by Moderator or the Moderator may terminate the Informal Third Party Discussion Led by Moderator at any point or for any reason.

4. I understand that I am not required to attend an Informal Third Party Discussion Led by Moderator and that I may have my case heard by a Hearing Officer instead.

5. I understand that I may choose at any time and for any reason to, terminate the Informal Third Party Discussion Led by Moderator without penalty. Furthermore, I understand that if I choose to terminate the Informal Third Party Discussion Led by Moderator I may still pursue my case at an Impartial Due Process Hearing.

6. I agree that I will enter into the Informal Third Party Discussion Led by Moderator in good faith and that all Informal Third Party Discussion Led by Moderator proposals will be made in good faith.

7. I understand that if the Informal Third Party Discussion Led by Moderator results in a settlement, the agreement is legally binding and can be enforced in court.

8. I agree not to use any of the information gained in the Informal Third Party Discussion Led by Moderator against the other party.

9. I understand that the Informal Third Party Discussion Led by Moderator is strictly confidential, and that no part of the discussion with the moderator, excluding violence or threats, is ever reported outside the program.

10. I agree that I will not subpoena the Moderator to testify in any court proceedings connected with the Informal Third Party Discussion Led by Moderator or other activities related to the New Hampshire State Department of Education Alternative Dispute Resolution Program.

PARTICIPANTS:

PARTICIPANTS:

NEUTRAL:

DATE:
(Form ADR-MOD B)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

**AUTHORIZATION TO COMMIT ANY RESOURCES
OF THE SCHOOL DISTRICT
AS A RESULT OF THIRD PARTY DISCUSSION LED BY MODERATOR**

PLEASE RETURN TO:

Stephen W. F. Berwick
NH Department of Education
Hearings/Legislation
101 Pleasant Street
Concord, NH 03301

Tel: (603) 271-2299

Name of Student:_____

Name of School District:_____

SAU #_____

The above named school district agrees to participate in a Informal Third Party Discussion Led by Moderator for the above-named student.

I authorize_____

a) to represent the school district in a Informal Third Party Discussion Led by Moderator regarding this student, and,

b) to commit whatever resources of the school district which he/she sees fit to commit regarding this student as a result of the Informal Third Party Discussion Led by Moderator.

(Signature)_____

Name (please type)_____

Superintendent of Schools, SAU #_____

(Form ADR-MOD C)

Written Request for Withdrawal of Alternative Dispute Resolution Proceeding

To: _____
[enter Mediator/Neutral name here]

From: _____
[enter your name]

Copy: Stephen W. F. Berwick, Legislation/Hearings

Date: _____

Case #: _____

I/We, the undersigned, as a result of _____, request
[enter reason for requesting withdrawal]
that the proceeding scheduled regarding the above-named case be withdrawn. I/We certify that a copy of this request has been sent to the opposing party.

_____ _____
Signature Date

_____ _____
Signature Date

(Form ADR-A)

101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-4034
Citizens Services Line 1-800-339-9900

REQUEST FOR MEDIATION

Before school district calls the Department to request a mediation session, each party ("side") must have determined who the participants will be for their "side" and the two parties must have picked 4 specific days which are mutually convenient and must state what issue(s) is/are to be mediated. *For Vocational Rehabilitation proceedings, replace LEA with Agency and Student with Client.*

A. Date:_____ (Please See "H" Below)

B. Person making the request
Name:_____SAU_____Title:_____
Representing (Name of LEA)_____
Mailing Address:_____
Telephone #:_____

C. Re: Student
Name of student:_____
DOB:_____

If Special Education student:
SPEDIS #:_____
Educational Handicap(s)_____Current placement:_____

D. Name(s) of individuals who will represent the student/client

*1. Name:_____
Title/Relationship to student/client:_____
Mailing Address:_____
Daytime phone:_____Evening Phone:_____

2. Name:_____
Title/Relationship to student/client:_____
Mailing Address: _____
Daytime Phone: _____Evening Phone:_____

3. Name: _____
Title/Relationship to student/client:_____
Mailing Address:_____
Daytime Phone: _____Evening one:_____

E. Name(s) of individuals who will represent the school district/agency

*1. Name: _____Title:_____
Mailing Address:_____
Daytime Phone:_____ Evening phone:_____

2. Name: _____Title:_____
   Mailing Address: _____
   Daytime Phone: _____Evening phone: _____
3. Name:
   _____Title:_____
   Mailing Address: _____
   Daytime Phone: _____ Evening Phone: _____

F. Individual in "E" above who has written authority to make decisions and firm commitments on the part of the school district/agency: _____

G. Issue(s) to be mediated (brief phrase below)
   1._____
   2._____
   3._____

H. Is/Are the issue(s) presently the subject of a Special Education complaint under Ed 1121? Yes_____ No_____

I. Time Frame: Has a Special Education Impartial Due Process Hearing been requested? Yes____ No____

   If yes, what date was Day #1 of the 45 day period?_____ Please determine the date which is mutually convenient to all participants before calling. Generally, mediation will be held during the third week period of the 45-day period, so requests must be made during the first week (before Day 7).

*Primary person to contact regarding details, arrangements, or changes. The primary contact person is the only one to receive communication from the Department.

(Form ADR-M A)

101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-4034
Citizens Services Line 1-800-339-9900

AGREEMENT TO MEDIATE

1. I understand that mediation is VOLUNTARY, and that I have chosen mediation as an alternative to hearing.
2. I understand that by VOLUNTEERING to mediate, I am doing so because I want to attempt to settle my case rather than appear at hearing on this date.
3. I understand that I may stop the mediation or the mediator may stop the mediation at any point or for any reason.
4. I understand that I am not required to mediate and that I may have my case heard by a Hearing Officer instead.
5. I understand that I may choose at any time and for any reason to, end the mediation without penalty. Furthermore, I understand that if I choose to end the mediation I may still pursue my case at an impartial due process hearing.
6. I agree that I will enter into the mediation session(s) in good faith and that all mediation proposals will be made in good faith.
7. I understand that if I do reach an agreement through the mediation process, the agreement is legally binding and can be enforced in court.
8. I agree not to use any of the information gained in the mediation session against the other party.
9. I understand that the mediation process is strictly confidential, and that no part of the discussion with the mediator, excluding violence or threats, is ever reported outside the program.
10. I agree that I will not subpoena the mediator to testify in any court proceedings connected with the mediation session or other activities related to the New Hampshire State Department of Education Alternative Dispute Resolution Program.

PARTICIPANTS: PARTICIPANTS:

Date:

(Form ADR-M B)

101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-4034
Citizens Services Line 1-800-339-9900

AUTHORIZATION TO COMMIT RESOURCES OF THE SCHOOL DISTRICT AS A RESULT OF MEDIATION

PLEASE RETURN TO:

Stephen W. F. Berwick
N.H. Department of Education
Legislation/Hearings
101 Pleasant Street
Concord, NH 03301
Tel: (603) 271-2299

Name of Student:_____

Name of School District:_____

SAU #_____

The above named school district agrees to participate in mediation regarding special education for the above-named student.

I authorize_____

a) to represent the school district in mediation regarding this student, and,
b) to commit necessary resources of the school district to comply with mediation.

(Signature)_____

Name (please type)_____

Superintendent of Schools, SAU #_____

(Form ADR-M C)

101 Pleasant Street
Concord, N.H. 03301
FAX 603-271-4034
Citizens Services Line 1-800-339-9900

REQUEST FOR NEUTRAL CONFERENCE

Before school district calls the Department to request a Neutral Conference session, each party ("side") must have determined who the participants will be for their "side" and the two parties must have picked 4 specific days which are mutually convenient and must state what issue(s) is/are to be mediated.

A. Date:_____ (Please See "H" Below)

B. Person making the request
Name: _____SAU _____ Title:_____
Representing LEA (Name) _____
Mailing Address: _____
Telephone #:_____

C. Re: Student
Name of student: _____
DOB: _____ Educational Handicap(s): _____
Current placement: _____

D. Name(s) of individuals who will represent the student
*1. Name:
_____
Title/Relationship to student: _____
Mailing Address: _____
Daytime phone: _____Evening Phone: _____
2. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime Phone: _____Evening Phone: _____
3. Name: _____
Title/Relationship to student: _____
Mailing Address:_____
Daytime Phone: _____Evening Phone:_____

E. Name(s) of individuals who will represent the school district
*1. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime Phone: _____ Evening Phone: _____
2. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime Phone: _____Evening Phone: _____

3. Name: _____
Title/Relationship to student: _____
Mailing Address: _____
Daytime Phone: _____Evening Phone: _____

F. Individual in "E" above who has written authority to make decisions and firm commitments on the part of the school district:
_____

G. Issue(s) (brief phrase below)
1._____
2._____
3._____

H. Is/Are the issue(s) presently the subject of a complaint under Ed 1121? Yes_____ No_____

I. Time Frame: Has an Impartial Due Process Hearing been requested? Yes____ No____

If yes, what date was Day #1 of the 45 day period?_____ Please determine the date which is mutually convenient to all participants before calling. Generally, mediation will be held during the third week period of the 45-day period, so requests must be made during the first week (before Day 7).

*Primary person to contact regarding details, arrangements, or changes. The primary contact person is the only one to receive communication from the Department.

(Form ADR-NC A)

AGREEMENT TO A NEUTRAL CONFERENCE

1. I understand that a Neutral Conference is VOLUNTARY, and that I have chosen a Neutral Conference as an alternative to an Impartial Due Process Hearing.
2. I understand that by VOLUNTEERING to have a Neutral Conference, I am doing so because I want to have my case reviewed by a neutral.
3. I understand that I may terminate the Neutral Conference or the neutral may terminate the Neutral Conference at any point or for any reason.
4. I understand that I am not required to attend a Neutral Conference and that I may have my case heard by a Hearing Officer instead.
5. I understand that I may choose at any time and for any reason to, terminate the Neutral Conference without penalty. Furthermore, I understand that if I choose to terminate the Neutral Conference I may still pursue my case at an Impartial Due Process Hearing.
6. I agree that I will enter into the Neutral Conference in good faith and that all Neutral Conference proposals will be made in good faith.
7. I understand that if I do accept the neutral's recommendation through a Neutral Conference, the agreement is legally binding and can be enforced in court.
8. I agree not to use any of the information gained in the Neutral Conference against the other party.
9. I understand that the Neutral Conference is strictly confidential, and that no part of the discussion with the neutral, excluding violence or threats, is ever reported outside the program.
10. I agree that I will not subpoena the neutral to testify in any court proceedings connected with the Neutral Conference or other activities related to the New Hampshire State Department of Education Alternative Dispute Resolution Program.

PARTICIPANTS: PARTICIPANTS:

NEUTRAL:

DATE:

(Form ADR-NC B)

**AUTHORIZATION TO COMMIT ANY RESOURCES
OF THE SCHOOL DISTRICT
AS A RESULT OF A NEUTRAL CONFERENCE**

PLEASE RETURN TO:

Stephen W. F. Berwick
NH Department of Education
Hearings/Legislation
101 Pleasant Street
Concord, NH 03301
Tel: (603) 271-2299

Name of Student:_____

Name of School District:_____

SAU #_____

The above named school district agrees to participate in a Neutral Conference regarding special education for the above-named student.

I authorize_____

a) to represent the school district in a Neutral Conference regarding this student, and,
b) to commit whatever resources of the school district which he/she sees fit to commit regarding this student as a result of the Neutral Conference.

(Signature)_____

Name (please type)_____

Superintendent of Schools, SAU #_____

(Form ADR-NC C)

APPENDIX B

FORMS FOR USAGE IN ADMINISTRATIVE HEARINGS

The following forms are for use in any type of administrative hearing.

EXHIBIT LIST

CASE #_____ IN RE:_____

Document # Date Filed Description

Page ____ of____

(Form AH N)

SAMPLE FINDINGS OF FACT AND RULINGS OF LAW

RE:_____--_____
[Student/Client's first name last initial/LEA/Agency – Case Number]

[After a hearing on motions, the Hearing Officer, if requested to do so by a party, may issue Findings of Fact and Rulings of Law (sometimes called "conclusions of law"). These set forth the facts the Hearing Officer found to be true and the conclusions of law he or she reached regarding those facts. These facts allow the parties to know how and why the Hearing Officer reached his/her decision and may assist the non-prevailing party to determine whether an appeal is warranted. If the party that lost in the Due Process Hearing appeals, the court of competent jurisdiction would determine whether the factual findings are supported by the evidence and whether the conclusions of law are correct. If the court answers either question in the negative, the case may be overturned.]

NOW COME _____/_____,
[Parent(s) name/School District]
respectfully request that the following Findings of Fact and Rulings of Law be made in this matter:

FINDINGS OF FACT

1. _____ was born on_____.
2. _____ attends _____school.
3. _____

RULINGS OF LAW

1. Under New Hampshire RSA _____, _____
2. Pursuant to Ed_____

Respectfully Submitted,

_____ _____
Signature Date

(Form AH U)

Written Request for Continuance of Hearing

To: _____
[enter Hearing Officer name here]

From: _____
[enter your name]

Copy: Stephen W. F. Berwick, Legislation/Hearings

Date: _____ Case #: _____

NOW COME _____,
[Parent/Guardian/Client name or School District]

respectfully request Continuance of Hearing in the matter _____/
_____due to
[Student/Client's first name last initial/School District/Agency]
_____. _____ is currently
[indicate reason for request] *[enter student's name]*

_____We understand that postponement for an
[indicate student's status].

indefinite period will not be granted and, in the case of a special education hearing that any request for continuance must address the 45 day rule. We propose the pre-hearing and/or hearing be rescheduled to: _____
[indicate date(s) certain when you and the other party (and counsel) would be available]

We have contacted the other party and they have:

_____ agreed with the continuance and dates listed above.
_____ not agreed with the continuance
_____ agreed with the continuance but not the dates listed above
_____ agreed with the continuance but are only available:
_____
[give dates other party available]

Parent	Date
Parent	Date
Attorney/Advocate for Parent	Date
School District Representative	Date
School District Representative	Date
Attorney for School District	Date

(Form AH-T)

Written Request for Withdrawal of Hearing

To: _____
[enter Hearing Officer name here]

From: _____
[enter your name]

Copy: Stephen W. F. Berwick, Legislation/Hearings

Date: _____

Case #: _____

I/We, the undersigned, as a result of _____,
*[enter reason for requesting withdrawal]**

request that the hearing scheduled regarding the above-named student be withdrawn.

I/We certify that a copy of this request has been sent to the opposing party.

_____ _____
Signature Date

_____ _____
Signature Date

** if mediation or settlement as part of a special education hearing request please use Form AH-IDPH S "Written Request for Cancellation of Hearing"]*

(Form AH-Y)

APPENDIX C

FORMS FOR USAGE IN SPECIAL EDUCATION IMPARTIAL DUE PROCESS HEARINGS

The following forms are solely for use in Special Education Impartial Due Process Hearings.

Special Education Impartial Due Process Hearing Program
Notice of Resolution Session

To: Hearing Officer
Copy: Stephen W. F. Berwick, Legislation/Hearings,
New Hampshire State Department of Education

From: _____School District

Date: _____

In re: _____

Case Number: _____

This is to inform you that the following has occurred:

_____ The parties held a resolution session on_____

_____ A written settlement agreement has been signed by the parties and the 3 day review period has expired; therefore, the scheduled Special Education Impartial Due Process Hearing is withdrawn.

_____ The parties have mutually agreed to waive the resolution session and go directly to a Special Education Impartial Due Process Hearing.

_____ The parties have mutually agreed to waive the resolution session and to use a local or the state scheduled mediation instead.

_____ The parties were unable to reach an agreement and will go forward with the scheduled Special Education Impartial Due Process Hearing.

_____ Other_____

_____
Parent(s)/Guardian/Adult Student Signature Date

_____
School District Representative Signature Date

(Form AH-IDPH O)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

Office of Legislation and Hearings
101 Pleasant Street, Concord, N.H. 03301
FAX 603-271-4034; Citizens Services Line 1-800-339-9900

Special Education Impartial Due Process Hearing Program
PARENT(S)

FORM TO REQUEST AN ADMINISTRATIVE DUE PROCESS HEARING

NOTE: *SEND ORIGINAL TO LOCAL EDUCATION AGENCY; COPY TO STATE DEPARTMENT OF EDUCATION*

WITH RESPECT TO ANY MATTER RELATING TO THE IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT AND PROVISION OF A

FREE APPROPRIATE PUBLIC EDUCATION

1. Child's name: _____
   SPEDIS number:_____
   Date of Birth: _____

2. Child's home address and mailing address (if not the same as home address):
   _____
   _____
   _____

3. Name of school district and school the child is attending:

   _____

4. Name of school district in which the child resides:

   _____

5. LEA name: _____

6. Are you presently involved in a complaint under Ed 1121 on this same issue?_____

7. Parent's name:_____

8. Parent's name:_____

9. Parent's mailing address (if not the same as child's mailing address):_____
_____
_____

10. Parent's mailing address (if not the same as child's mailing address):_____
_____
_____

11. Parent's daytime telephone number:_____

12. Parent's daytime telephone number:_____

13. Would you be willing to attend a mediation session? _____

14. **NOTE:** *Federal law requires that you completely and accurately describe the reason(s) you are asking for a hearing and the outcome you are seeking. This includes a description of the student's special needs, all of the issue(s) you want the Hearing Officer to address, and the facts relating to those issues.* ***Failure to provide complete information may result in a challenge to the sufficiency of the Hearing Request.***

Description of the issue(s): Please describe the student, the student's IEP or educational program, and the reason(s) you are requesting a hearing. Please be as complete as possible including dates, names, and places when appropriate. Please identify all the issues you want the Hearing Officer to address. Incomplete information may limit the scope of the hearing.
(Use additional pages if needed.)

IT IS VERY IMPORTANT THAT YOU DESCRIBE BELOW ANY ISSUE YOU WISH TO ADDRESS IN THE HEARING. IF THE ISSUE IS NOT DESCRIBED BELOW, YOU WILL NOT BE ALLOWED TO RAISE IT IN THE HEARING. FOCUS ON THE ISSUES THAT GENUINELY AFFECT THE EDUCATION OF THE STUDENT. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

A. Evaluations- including initial evaluations re-evaluations and independent evaluations. Please describe any issues you wish to raise which relate to the evaluation of the student, including any area of disagreement about what evaluation measures will be used, who the evaluators will be, how the evaluation will be conducted, the timing of the evaluation, the provision of an independent evaluation when a parent disagrees with a school district evaluation, or any other issue related to evaluation.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: How would you like to see the evaluation issue resolved? Please describe.

_____
_____
_____
_____
_____
_____
_____

B. Eligibility/Identification: This section relates to questions or disagreements about whether a student is eligible for special education and related services or not- a decision

usually made after the evaluation process is complete. There may also be a question as to whether a student who was eligible continues to be eligible. A related question for students who are found eligible for special education is what disability category is appropriate for the student, i.e., what is the educational disability that best fits the student's profile. Please describe any issues you wish to raise related to the student's initial eligibility, ongoing eligibility, or disability category.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: How would you like to see the eligibility or identification issues resolved? Please describe.

_____
_____
_____
_____
_____
_____
_____

C. The Individualized Education Program (IEP): This section relates to issues about the student's IEP. The IEP is written after the evaluations are completed and after a finding that the student is eligible for special education and related services. These issues may include disagreements about what items should be included in a student's IEP, or questions about whether the student is receiving services that have been agreed upon by the IEP team, or questions about making changes to the IEP, or questions about whether the student is making adequate progress in school with the IEP that is in place.

_____
_____
_____
_____
_____
_____
_____

Please describe any issues related to the IEP.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: How would you like to see the IEP issues resolved?

_____
_____
_____
_____
_____
_____
_____

D. Placement: This section relates to the question of where a student should go to school. This is a decision that is made after the IEP is written. Please describe any issues you wish to raise related to the question of where the student should go to school.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: How would you like to see the placement issue resolved?

_____
_____
_____
_____
_____
_____
_____

E. Discipline: This section relates to the process by which disciplinary matters are handled in the school setting. Issues include such things as whether a student's disability is related to the conduct in question, what discipline is appropriate, and whether additional evaluations are needed after a disciplinary event. Please describe any issues you wish to address which are related to discipline.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: How would you like to see the placement issue resolved?

_____
_____
_____
_____
_____
_____
_____

F. Procedural Issues: State and federal law require that various procedures be followed during the course of the evaluation, identification, IEP, placement, and discipline processes. Please describe any significant issues which you believe constitute a violation of the procedures required by law, with a focus on those issues which had an adverse effect on the education of the student.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: How would you like to see the issue of procedural violations resolved?

_____
_____
_____
_____
_____
_____
_____

G. Other Issues: If you wish to address other issues which are not identified above, please do so here. This may include any issue related to the provision of a free appropriate education to the student. Please describe any other issue you wish to have addressed in the hearing.

_____
_____
_____
_____
_____
_____
_____

Proposed solution: For any issue raised above, how would like to see that issue resolved?

_____
_____
_____
_____
_____
_____
_____

Parental signature(s)

_____ _____
Signature Date

_____ _____
Signature Date

CERTIFICATION:

In accordance with JUS 804.02(a)(4), I certify that on this date, _____, that I have sent a copy to the state and simultaneously the original of this document to the school district.

_____ _____
Signature Date

(Form AH-IDPH P)

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

Office of Legislation and Hearings
101 Pleasant Street, Concord, N.H. 03301
FAX 603-271-4034; Citizens Services Line 1-800-339-9900

Special Education Impartial Due Process Hearing Program

LOCAL EDUCATION AGENCY (LEA)

FORM TO REQUEST AN ADMINISTRATIVE DUE PROCESS HEARING

NOTE: *SEND ORIGINAL TO PARENT; COPY TO STATE DEPARTMENT OF EDUCATION*

WITH RESPECT TO ANY MATTER RELATING TO THE IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT AND PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION

1. Child's name: _____
   SPEDIS Number:_____
   Date of Birth: _____

2. Child's home address and mailing address (if not the same as home address):
   _____
   _____
   _____

3. Name of school district and school the child is attending:

   _____

4. Name of school district in which the child resides:

   _____

5. LEA name: _____

   - LEA's description of the problem relating to a proposed or refused initiation or change of the child's special education program, including related facts:
   _____
   _____
   _____
   _____
   _____
   _____

   - LEA's suggested resolution to the problem:
   _____
   _____
   _____
   _____
   _____
   _____

6. Are the parties presently involved in a complaint under Ed 1121 on this same issue?_____

7. Parent/Guardian's name:_____

8. Parent/Guardian's name:_____

9. Parent/Guardian's mailing address (if not the same as child's mailing address):_____

_____

_____

10. Parent/Guardian's mailing address (if not the same as child's mailing address): _____

_____

_____

11. Parent/Guardian's daytime telephone number:_____

12. Parent/Guardian's daytime telephone number:_____

13. Would you be willing to attend a mediation session? _____

Signature(s)

_____ _____
Signature Date

CERTIFICATION:

In accordance with JUS 804.02(a)(4), I certify that on this date, _____, that I have sent a copy to the state and simultaneously the original of this document to the opposing party.

_____ _____
Signature Date

(Form AH-IDPH Q)

Special Education Impartial Due Process Hearing Program

FORM TO REQUEST DATES

SCHEDULING OF ALTERNATIVE DISPUTE RESOLUTION, PREHEARING CONFERENCE, AND ADMINISTRATIVE DUE PROCESS HEARING

General Information: Include this form with either the Parent Request or LEA Request if you have mutually agreeable dates.

1. **Mutually Agreeable Dates (if the parties agree): In submitting dates, please keep in mind that unless exact dates are submitted, the dates may be unworkable. Stating only dates when parties are unavailable; blocking dates when parties are unavailable; not taking into consideration time lines required by federal and state statutes; or not taking into consideration time periods needed for filing of documentation, may make the offered dates unworkable and as a consequence, the office of legislation and hearings may find it necessary to supply a schedule to the parties.**

THE LEA AND PARENT HAVE AGREED UPON THE FOLLOWING DATES

(a) One day for an alternative dispute resolution (optional): Date _____

(b) One-half day for a prehearing conference: Date _____

(c) Two days for a hearing: Dates _____ and _____

(d) Two alternative days for the hearing: Dates _____ and _____

2. **Activities to be Scheduled:** As soon as the office of legislation and hearings has scheduled the optional alternative dispute resolution, if any, the prehearing conference, and the administrative due process hearing, the office of legislation and hearings shall notify the parties in writing of:

(a) The time and place of the optional alternative dispute resolution, and prehearing conference;
(b) The time, place, an nature of the administrative due process hearing;
(c) Leal authority under which the hearing is to be held;
(d) The particular sections of the statutes and rules involved, including a copy of Ed 1123;
(e) A short and plain statement of the issues involved; and
(f) The party's right to have an attorney present to represent the party at the party's expense.

3. **Return of this Form to office of legislation and hearings:** If the parties agree on dates for the activities described above, return this document to:

Stephen W. F. Berwick; Paralegal I
Office of Legislation and Hearings
New Hampshire Department of Education
101 Pleasant Street
Concord, NH 03301

Fax: 271-4034, E-mail Stephen.Berwick@doe.nh.gov

(Form AH-IDPH R)

Special Education Impartial Due Process Hearing Program

Written Request for Cancellation of Hearing

To: _____
[enter Hearing Officer name here]

From: _____
[enter your name]

Copy: Stephen W. F. Berwick, Legislation/Hearings

Date: _____ Case #: _____

We, the undersigned, as a result of _____,
[enter successful mediation or settlement]

request that the Impartial Due Process Hearing scheduled regarding the above-named student be cancelled.

_____	_____
Parent	Date
_____	_____
Parent	Date
_____	_____
Attorney/Advocate for Parent	Date
_____	_____
School District Representative	Date
_____	_____
School District Representative	Date
_____	_____
Attorney for School District	Date

(Form AH-IDPH S)

Special Education Impartial Due Process Hearing Program

REQUEST FOR RECONSIDERATION

_____
[date]

_____

_____
[Address of Hearing Officer]

Case #: _____

Dear Hearing Officer _____
[insert Hearing Officer name here]:

I have received your _____ decision on _____
[insert date] *[insert date you received hearing officer decision]*

regarding my request for the hearing on _____.
[insert issues]

As part of the appeals process, I am now writing to request reconsideration of that decision.

My reason for requesting reconsideration of your decision is as follows:

Hearing Officer applied the wrong law and should have used_____

and/or

Additional information that was unavailable at the time has come to light since your decision was made. The additional information is: _____

_____.

Thank you for your consideration of our request.

Sincerely,

_____

_____
[print name]

Copy to: _____
[other party]

(Form AH-IDPH V)

Special Education Impartial Due Process Hearing Program

PARENT AMENDED REQUEST FOR DUE PROCESS HEARING *(send to hearing officer]*

1. Student, _____by and through his/her Parent(s), filed a Request
[insert name]
for Due Process, received by the NH Department of Education and _____ school district on _____. In response, the _____ school district
[insert date]
filed an Objection to Sufficiency of Hearing Complaint on _____.
[insert date]

2. On _____, the "Sufficiency Complaint Determination" granted leave to
[insert date]
address with more specificity the _____.
[enter issues hearing officer granted you leave to address]

3. The Hearing Officer "Sufficiency Complaint Determination" notes that the Due Process Notice is insufficient as a request for hearing for the following reasons _____.

4. The following augments _____of the Parent Form to
[enter section of Form, Parent Request for Due Process]

Request an Administrative Due Process Hearing, filed _____ and incorporated
[enter date of request for hearing]
herein by reference.

ISSUES IN DISPUTE

[List here, by number, the issues with which you are in dispute. Use as many numbers as you need in order to be clear about the issues]

5.
6.
7.

RELIEF REQUESTED

Student, _____by and through his/her Parent(s), requests that the Hearing Officer hold a hearing and issue an Order finding that:
[List here, by capital letter, the findings with which you want the hearing officer to agree. Use as many letters as you need in order to be clear about the results you want.]

A.
B.

Respectfully submitted this _____of _____.
[day] *[month and year]*

_____
Signature

_____
[print name]

(Form AH-IDPH W)

Special Education Impartial Due Process Hearing Program

SCHOOL DISTRICT AMENDED REQUEST FOR DUE PROCESS HEARING
[send to hearing officer]

1. The _____ school district, filed a Request for Due Process, received by the NH Department of Education and _____ parent(s) on
[insert student name]
_____ . In response, the _____ parent(s) filed an Objection to Sufficiency
[insert date] *[insert student name]*
of Hearing Complaint on _____.
[insert date]

2. On _____ the "Sufficiency Complaint Determination" granted
[insert date], leave to address with more specificity the
_____.
[enter issues hearing officer granted you leave to address]

3. The Hearing Officer "Sufficiency Complaint Determination" notes that the Due Process Notice is insufficient as a request for hearing for the following reasons _____.

4. The following augments _____of the School District
[enter section of request]
Form to Request an Administrative Due Process Hearing, filed _____and
incorporated herein by reference. *[enter date of request for hearing]*

ISSUES IN DISPUTE
[List here, by number, the issues with which you are in dispute. Use as many numbers as you need in order to be clear about the issues]

5.
6.
7.

RELIEF REQUESTED

_____school district, requests that the Hearing Officer hold a hearing and issue an Order finding that:
[List here, by capital letter, the findings with which you want the hearing officer to agree. Use as many letters as you need in order to be clear about the results you want.]

A.
B.

Respectfully submitted this _____of _____.
[day] *[month and year]*

_____
Signature

_____
[print name]

(Form AH-IDPH X)

APPENDIX D

FORM FOR USAGE IN STATE BOARD HEARINGS

The following form is solely for use in State Board of Education Hearings.

Office of Legislation and Hearings
101 Pleasant Street, Concord, N.H. 03301
FAX 603-271-4034; Citizens Services Line 1-800-339-9900

FORM TO REQUEST A STATE BOARD HEARING

NOTE: *SEND ORIGINAL TO OPPOSING PARTY;*

COPY TO STATE DEPARTMENT OF EDUCATION

NOTE: IN ORDER FOR A HEARING TO BE SCHEDULED YOU MUST PROVIDE A COPY OF THE LOCAL SCHOOL BOARD DECISION. WITHOUT A COPY OF THE DECISION A HEARING CAN NOT BE SCHEDULED.

1. Student's name: _____
   Date of Birth: _____

2. Student's home address and mailing address (if not the same as home address):
   _____
   _____
   _____

3. Name of school district and school the student is attending:
   _____

4. Name of school district in which the student resides: _____
   _____

5. School District name: _____

- Description of the dispute that has led to your request for hearing:
  _____
  _____
  _____
  _____
  _____

- Description of what you would like as an outcome:
  _____
  _____
  _____
  _____
  _____

6. Parent/Guardian's name:_____

7. Parent/Guardian's name:_____

8. Parent/Guardian's mailing address (if not the same as child's mailing address):_____
_____
_____

9. Parent/Guardian's mailing address (if not the same as child's mailing address): _____
_____
_____

10. Parent/Guardian's daytime telephone number:_____

11. Parent/Guardian's daytime telephone number:_____

12. Would you be willing to attend a mediation session? _____

Signature(s)

_____ _____
Signature Date

CERTIFICATION:

In accordance with JUS 804.02(a)(4), I certify that on this date, _____, that I have sent a copy to the state and simultaneously the original of this document to the opposing party.

_____ _____
Signature Date

(Form AH-SB A)

APPENDIX E

FORM FOR USAGE IN VOCATIONAL REHABILITATION FAIR HEARINGS

The following form is solely for use in Vocational Rehabilitation Fair Hearings.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

Office of Legislation and Hearings
101 Pleasant Street, Concord, N.H. 03301
FAX 603-271-4034; Citizens Services Line 1-800-339-9900

FORM TO REQUEST A VOCATIONAL REHABILITATION HEARING

NOTE: *SEND ORIGINAL TO VOCATIONAL REHABILITATION;*

COPY TO STATE DEPARTMENT OF EDUCATION

1. Client's name: _____

2. Client's home address and mailing address (if not the same as home address):
_____
_____
_____

3. Description of the dispute that has led to your request for hearing:
_____
_____
_____
_____
_____

- Description of what you would like as an outcome:
_____
_____
_____
_____
_____

4. Client's daytime telephone number:_____

5. Would you be willing to attend a mediation session? _____

Signature(s)

_____ _____
Signature Date

CERTIFICATION:

In accordance with JUS 804.02(a)(4), I certify that on this date, _____, that I have sent a copy to the state and simultaneously the original of this document to the school district.

_____ _____
Signature Date

(Form AH-VR A)

Request for Reasonable Accommodation

If you believe you may need an accommodation to fully participate in a particular proceeding or activity, you may request a reasonable accommodation.

For a party to request a reasonable accommodation, please complete the **Request for Reasonable Accommodation Form** and return to the Office of Legislation and Hearings with your request for a hearing or response to request for a hearing, with any and all supporting documentation regarding the need for an accommodation. If you need assistance completing this form, contact the Office of Legislation and Hearings at 271-2299 or Stephen.Berwick@doe.nh.gov.

Accommodation requests are granted to any person with a disability for whom such accommodation is reasonable and necessary under the Americans with Disabilities Act of 1990 (ADA), other similar local, state, and federal laws and in such other circumstance as may be required by law. A request will be granted unless:

- It is impossible for the Office of Legislation/Hearings to provide the requested accommodation on the date of the proceeding; and the proceeding cannot be continued without prejudice to a party to the proceeding.

- It is impractical for the Office of Legislation/Hearings to provide the requested accommodation on the date of the proceeding; and the proceeding cannot be continued without prejudice to a party to the proceeding.

or

- Given the nature of the request, supporting documentation is not provided regarding the need for the accommodation.

You may be required to provide additional information for [*the Office of Legislation/Hearings*] to properly evaluate your reasonable accommodation request**. *Medical and other health information submitted with the form shall not be made public or shared with anyone outside the department, except the Hearing Officer, unless authorized by law.***

Generally, five days advance notice is required to review reasonable accommodation requests. However, a response to an immediate need for accommodation will be considered to the fullest extent possible.

For Deaf and Hard of Hearing participants, please be advised that to increase the possibility of securing an appropriate interpreter in your locale, requests for interpreting services should be made AT LEAST SEVEN TO TEN WORKING DAYS prior to the scheduled appointment whenever possible. Requests made with less time will be accepted with the understanding that last minute requests may be very difficult to fill.

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

Request for Reasonable Accommodation (_____)

1. Date: _____

2. Name of Person Requesting: _____

Address: _____ Phone No.: _____
(Mailing Address) *(Area Code, Phone Number)*
_____ E-mail: _____
(City, State, Zip Code)

3. I am participating in a proceeding/activity as a (check all that apply):
☐ Parent/Client ☐ School District/LEA ☐ Attorney
☐ Witness
☐ Other (*specify interest in or connection to proceeding, if any*) _____
_____ _____.

4. List all known dates/times the accommodation(s) are needed (specify):
_____
_____
5. Why is an accommodation needed?
_____
_____.

6. What accommodation would you like? And why?
_____
_____.

7. Please provide any information that would help the Office of Legislation/Hearings respond to your request. Please describe the nature of all supporting documentation attached.
_____
_____.
8. How do you want to be informed of the status of your request for accommodation?

☐ Phone ☐ Writing ☐ E-mail ☐ In person ☐ Other (specify):
Date: _____ ➢_____
(Signature of Person Requesting)
_____
(Print Name of Person Requesting)

Review and Action by the Office of Legislation/Hearings

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
USERS' GUIDE TO ADMINISTRATIVE PROCESS

(For Office of Legislation/Hearings Use Only-Copy of completed form should be maintained for future reference.)

Case No: _____

Case Name: _____

Request No.: _____
(Sequential Number)

Reasonable Accommodation Request Form received: _____
(Date)

Additional information requested: _____
(Date)

Additional information received: _____
(Date)

Type of proceeding: ☐ SPED/Voc Rehab/State Board Hearing
☐ Mediation ☐ Neutral Conference

Requested Accommodation Denied: _____
(Date)

☐ Fails to satisfy the requirements (specify)

☐ Creates an undue burden on the proceedings

☐ Permitting the applicant to participate in the proceeding with the requested accommodation creates a direct threat to the safety or well-being of the person requesting or others.

Basis for Finding: _____

_____.

Requested Accommodation Granted: _____
(Date)

☐ In whole ☐ In part *(specify)* ☐ Alternative *(specify)*

_____

_____.

Dates accommodation will be provided:

_____

Person requesting accommodation notified on:

_____
(Date)

Notification achieved via:

☐ Phone ☐ Writing ☐ E-mail ☐ In person ☐ Other (specify):

_____

Date: _____ ➢_____
(Signature of Official)

_____
(Type or Print Name of Official)