

Rhode Island Department of Elementary and Secondary Education



## ***SPECIAL EDUCATION IMPARTIAL DUE PROCESS HEARING PROCEDURES***

**Office of Student, Community and Academic Supports**

**Updated October 9, 2013**

**These procedures are available on the Rhode Island Department of Education website at:**  
<http://www.ride.ri.gov/StudentsFamilies/SpecialEducation/WhenSchoolsandFamiliesDoNotAgree.aspx>

**Telephone** (401)222-4600   **Fax** (401)222-6178   **TTY** (800)745-5555   **Voice** (800)745-6575   **Website:** [www.ride.ri.gov](http://www.ride.ri.gov)

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# **SPECIAL EDUCATION**

# **IMPARTIAL DUE PROCESS HEARING PROCEDURES**

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## ***Overview of the Rhode Island Special Education Dispute Resolution System***

### **Parent-School Partnership and Shared Decision-making**

The Rhode Island Department of Elementary and Secondary Education (RIDE) is committed to supporting school personnel and parents to work in partnership on behalf of children with disabilities. The goals of parent-school partnership are to ensure that a free appropriate public education (FAPE) is available for each eligible Rhode Island child with a disability and that each student successfully completes his or her elementary and secondary education ready for post-school success.

Determining FAPE for an eligible child presents both opportunity and challenge for school personnel and parents engaged in shared decision-making. Team members must be able to invite and consider others' diverse perspectives, ideas and expertise and be able to work toward agreement about the identification, evaluation and individualized educational program (IEP) of special education and related services for each student with a disability. Accomplishing these requires an honest and open dialogue, led by effective team leadership. A skilled team facilitates productive discussion to ensure that: (a) diverse ideas are surfaced, considered, and weighed in light of student strengths and needs; b) common ground is identified; and c) the team is supported to work toward reaching agreement. Although evaluation teams and IEP teams throughout Rhode Island are successfully meeting this challenge every day, there are occasions when parents and school departments do not reach agreement or situations where the provision of a free, appropriate public education comes under question.

### **Informal Resolution of Disputes**

When parents and school team members disagree, or should the provision of FAPE come under question, RIDE recommends that parents and school departments attempt informal local resolution as a first step in addressing the dispute or concern. For example, when agreement about eligibility cannot be reached in an evaluation team meeting, reconvening the team at another time or with a different facilitator can create a fresh opportunity to reconsider perspectives, additional solutions and decision options. As another example, one way to address emerging concerns about provision a student's IEP accommodations or services is to reconvene the IEP team to review the appropriateness or implementation of a student's individualized program. A third example of ways to intervene locally in disputes is to bring concerns arising from school level discussions to the attention of district level administrators, to intervene and assist with dispute resolution.

Consistent with the federal Individuals with Disabilities Education Act (IDEA), RIDE has established a system of due process that provides options and resources for addressing concerns or disagreements that arise between parents and school departments in special education matters. As a source of direct information, support and informal dispute resolution, the Office of Student, Community and Academic Supports operates a special education Call Center, available through telephone contact at 401-222-8999. The Call Center staff is

committed to helping the school, parent or other caller to identify ways to address the issues of concern.

### **Mediation**

When informal attempts are not successful in resolving disagreements, a parent or school department may request state level special education mediation. Mediation services are available at no cost to assist parents and school representatives in resolving disputes about the identification, evaluation, special education and related services, or the provision of a free appropriate public education for a student with a disability. Participation in mediation is voluntary. Mediation is a process whereby both the parent and the school department agree to allow an impartial third party, assigned by RIDE, to help them effectively communicate, address identified issues and reach agreement. A state-assigned mediator is a person knowledgeable about special education and experienced in effective communication and problem-solving processes. The mediator serves as an impartial facilitator and does not issue a decision; the control over the final agreement stays in the hands of the parent and school department participants. In the majority of mediations conducted in Rhode Island, participants are successful in resolving the issues of concern and in reaching an agreement. Such agreements, described in writing and signed by both parties, are legally binding. Should the participants in a mediation session be unable to reach agreement, the mediator will not issue a decision on their behalf, and their participation does not deny or delay either party's right to pursue further remedies, such as a due process hearing.

### **Written Special Education State Complaints**

In an instance where the primary issue concerns regulatory procedures followed in the provision of FAPE, a parent or other individual concerned with the education of a child with a disability may file a written special education state complaint claiming that a public education agency has failed to comply with federal or state special education law or regulations. The state complaint process enables an individual to bring to the attention of RIDE an alleged violation of special education regulations. Upon receipt of a written special education state complaint, the Office of Student, Community and Academic Supports conducts an investigation of the complaint and issues a written letter of findings regarding the cited public education agency's compliance with IDEA and, if applicable, its required corrective action. These findings reflect the final administrative decision of RIDE.

### **Impartial Due Process Hearings**

To address a dispute or alleged violation regarding the identification, evaluation, educational placement, or provision of free appropriate public education to a child, a parent or public agency may request a special education impartial due process hearing by filing a due process complaint. A due process hearing is an administrative proceeding in which the parent and school department present their respective cases to an impartial hearing officer. Unlike mediation, if the parties cannot reach agreement, the hearing officer makes a decision for the parties, rendered in writing. The hearing officer's decision is final and legally binding unless appealed through civil action in district court or a state court of competent jurisdiction.

When a parent requests a special education due process hearing by filing a due process complaint, the school department or local education agency is responsible for attempting to first resolve the due process matter by convening a resolution meeting with the parent and relevant members of the IEP team, unless the parent and school department agree in writing to waive the meeting. If the school department does not resolve the matter to the parents' satisfaction, the impartial due process hearing will be scheduled consistent with the regulatory timeline. Prior to the scheduled hearing or hearing decision, the parties may continue to work to resolve the matter before the hearing officer, entering into a settlement agreement, consent order or other action. Should the due process complaint matter be resolved or withdrawn prior to the hearing, the matter will be closed by the hearing officer.

The Rhode Island Department of Education maintains a list of qualified special education impartial due process hearing officers who are appointed and trained by the state. Hearing officers are assigned on a rotating basis to preside over the proceedings of due process complaints.

A parent or public agency seeking a special education impartial due process hearing based a due process complaint must file a written request, providing a copy to the other party as well as to RIDE. A model form to assist with filing such a request is included in these procedures and is also available on the Department's website or by request from the Office of Student, Community and Academic Supports.

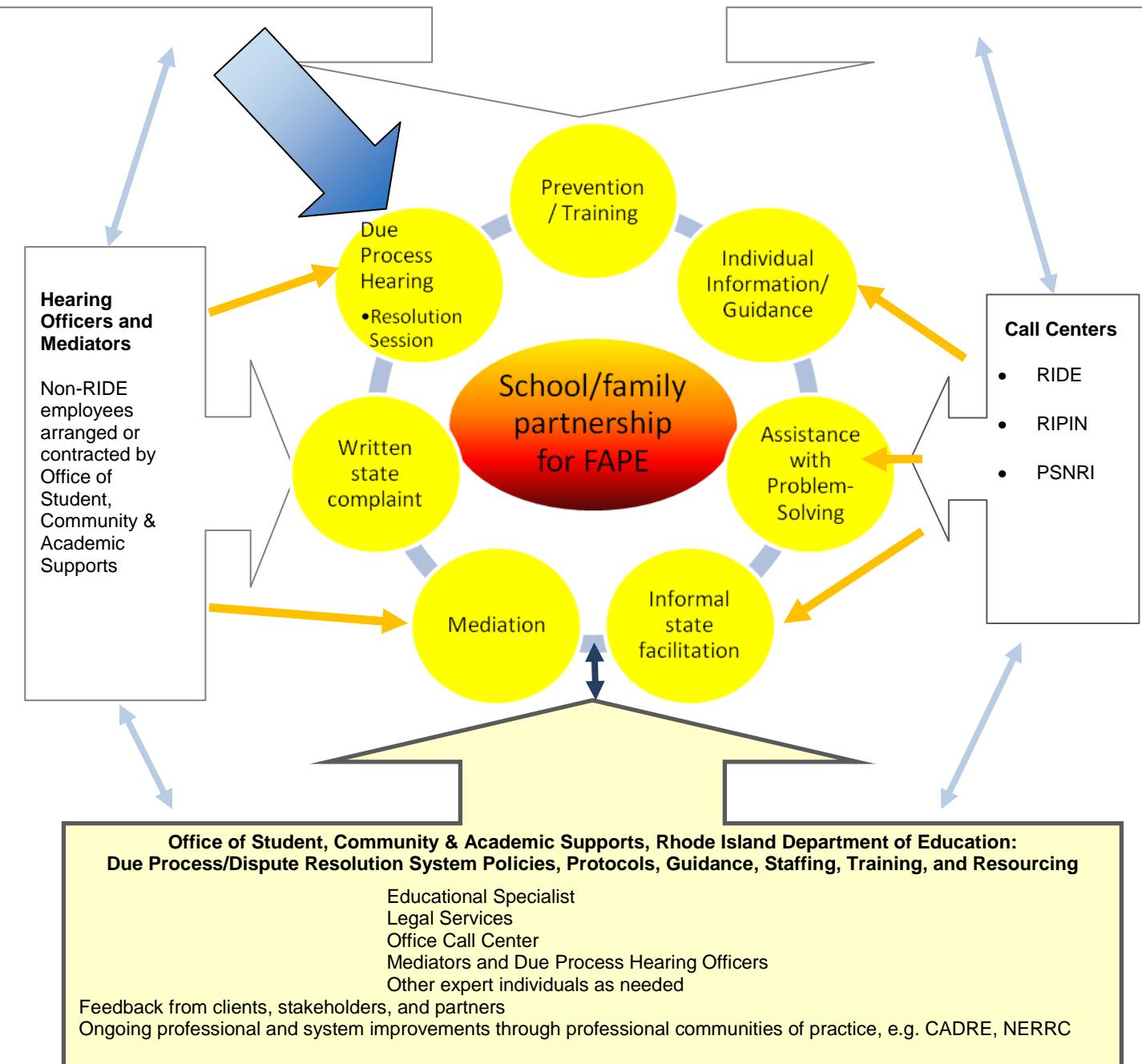
Consistent with IDEA and the *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities*, RIDE administers due process hearings in accordance with the procedures outlined in this document. Figure 1, *Impartial Due Process Hearings in Context*, portrays where due process hearings fit within RIDE's dispute resolution system. This system is designed to promote productive, shared parent-school decision-making leading to consensus.

## Figure 1: Impartial Due Process Hearings in Context

### Rhode Island Department of Education (RIDE) Special Education Dispute Resolution: A System of Continuous Improvement

#### Ongoing and periodic training and professional development:

- RIDE Family-School Partnership training & measurement: State Performance Plan (SPP) Indicator 8 improvement activities;
- RIDE Cultural & linguistic competency guidance through SPP Indicator 9 & 10 improvement activities;
- RIDE technical assistance in secondary transition through SPP Indicator 13 improvement activities;
- Family-School partnership and parent training and support through contracted and other activities of the Parent Training & Information Center at the RI Parent Information Network (RIPIN) & Parent Support Network of RI (PSNRI)
- IEP Training through a contract with the RI Technical Assistance Project at RI College
- RIDE training programs to promote consensus decision-making, mediation, and dispute prevention



## ***The Special Education Impartial Due Process Hearing: Regulatory Requirements***

A special education impartial due process hearing is an administrative proceeding in which both the parent and school department present their respective cases to an impartial hearing officer. If the parties cannot reach an agreement, the hearing officer will make a decision for the parties. A due process complaint filed under §300.507 of the *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities*, warranting an impartial due process hearing, differs from a written special education state complaint filed under §300.153, which is addressed through a written final decision from RIDE based on findings and conclusions of its investigation.

### **Regulatory Requirements**

Rhode Island's regulatory requirements regarding special education impartial due process hearings/due process complaints and appeals are outlined in §§300.507-300.518 and §§300.532-300.536 of the *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities* (referred to herein as the *Regulations*).

### **Rhode Island Department of Education Responsibility for Procedures**

(*Regulations* §300.511)

Whenever a due process complaint is received under §300.507 or §300.532, the parents or the local education agency (LEA) involved in the dispute must have an opportunity for an impartial due process hearing. As the agency conducting such hearings, RIDE is responsible for establishing, implementing, determining financial responsibility, and developing procedures for administering a system of due process.

### **Request for a Special Education Impartial Due Process Hearing**

(*Regulations* §300.507–514 and §300.532)

Unlike a written special education state complaint, resulting in a RIDE investigation and written findings, an impartial due process hearing is an opportunity for the parent(s) or LEA to address a due process complaint through formal presentation of testimony, documentary evidence, and a formal written decision from an impartial hearing officer.

A parent\* or LEA may initiate a special education due process hearing on any of the matters relating to initiating, changing, or refusing to initiate or change, the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child.

\*parent: Defined as a biological or adoptive parent of the child; a foster parent; a guardian authorized to act as the child's parent or to make educational decisions for the child, such as an appointed educational surrogate parent; an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare. See *RI Board of Education Regulations Governing the Education of Children with Disabilities*, Section 300.30.

The hearing request based on a due process complaint must allege a violation that occurred not more than two years before the date the complainant knew, or should have known, about the alleged action. The two-year timeline does not apply to a parent complainant if the parent was prevented from filing a due process complaint due to the LEA's: (a) misrepresentations that it had resolved the problem forming the basis of the complaint; or (b) withholding of information from the parent that was required under this part.

*Regulations §300.507* requires the public agency to inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or when the parent or the agency requests a due process hearing based on a due process complaint. This requires that both the RIDE as well as LEAs provide such information to parents if requested. Upon receiving a request for a due process hearing from either party, RIDE forwards this information to parents.

The due process hearing is initiated by filing a written request with the RIDE Office of Student, Community and Academic Supports. Parents requesting a due process hearing must provide a copy of their due process complaint to the school department; likewise, school departments requesting a hearing must provide a copy of their due process complaint to the parent(s). In every case, a copy of the due process hearing request/due process complaint must be forwarded directly to RIDE.

A request for a special education due process hearing must minimally include:

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;
- (4) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (5) A proposed resolution of the problem to the extent known and available to the parents at the time.

In the case of a homeless child or youth, the request must additionally indicate available contact information for the child.

## **Model Form**

*(Regulations §300.509)*

To assist parents and public agencies in filing a request for a special education impartial due process hearing, the RIDE provides a model form that includes the necessary information delineated above as well as other helpful information. Appendix B of these procedures illustrates the model form, also available in three languages on the Department of Education's website at:

<http://www.ride.ri.gov/StudentsFamilies/SpecialEducation/WhenSchoolsandFamiliesDoNotAgree.aspx> or by calling the RIDE Office of Student, Community and Academic Supports at (401) 222-8999.

## **Response to a Due Process Complaint/Hearing Request**

*(Regulations §§300.504, 300.507, 300.508, and 300.510)*

In responding to a parent's due process complaint, the LEA must:

- Inform the parents of any free or low-cost legal and other services available in the area;
- when the parents' request for a due process hearing is their first due process complaint in a school year, provide a copy of procedural safeguards available to the parents;
- if the agency has not already sent a prior written notice to the parent regarding the subject matter of the parent's complaint, send within 10 calendar days a response that includes:
  - (a) an explanation of why it proposed or refused to take the action raised in the due process complaint;
  - (b) a description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - (c) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
  - (d) a description of the other factors that are relevant to the agency's proposed or refused action; and
- implement a resolution process as described below.

## **Resolution Process**

*(Regulations §300.510)*

Within 15 days of receiving notice of the parent's due process complaint, the LEA must convene a meeting with the parent and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the complaint. The relevant members of the IEP team to attend the meeting are determined by the parent and the school department.

The resolution meeting must include a representative of the LEA who has decision-making authority on the agency's behalf. The resolution meeting may not include a school department attorney unless the parent is accompanied by an attorney.

The purpose of the meeting is for the parent(s) to discuss the due process complaint, including the facts that form the basis of the complaint, so that the LEA has the opportunity to resolve the dispute upon which the due process complaint is based.

### **Reaching a Settlement Agreement through the Resolution Process**

If a resolution to the dispute is reached through the resolution meeting, the parties must create a legally binding agreement that is:

- signed by both the parent and the public agency's representative with the authority to bind the agency and
- enforceable in any State court of competent jurisdiction or in U.S. District Court.

3-day review period: Either party to the resolution agreement has the right to void the agreement within 3 business days of its execution.

The resolution meeting need not be held if:

- the parent and the LEA agree, in writing, to waive the meeting; or
- the parent and the LEA agree to use the special education state mediation process.

## **Proceeding with the Impartial Due Process Hearing**

If the LEA has not resolved the complaint to the parent's satisfaction with 30 calendar days of receiving the due process complaint, the impartial due process hearing may proceed, unless the parties are engaged in mediation and have agreed in writing to continue the mediation at the end of the 30 day period.

## **Timelines and Convenience of Hearings**

*(Regulations §300.515)*

Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Following RIDE's receipt of a request for a due process hearing based on a due process complaint, the hearing officer's final decision must be reached in the hearing and a copy of the decision mailed to each of the parties within 45 calendar days following the 30-day resolution period, unless this 45-day timeline is adjusted based on the resolution process or mediation.

The 45-day timeline for the hearing starts the day after one of the following events:

- both parties agree in writing to waive the resolution meeting; or
- both parties agree in writing before the end of the 30 day period that, after attempting the resolution meeting or a mediation, agreement is not possible; or
- the parent or public agency withdraws from mediation after having begun mediation and having agreed in writing to continue mediation at the end of the 30-day resolution period.

The due process hearing officer may grant specific extensions of time beyond the 45-day timeline at the request of either party.

## **Hearing Rights**

*(Regulations §300.512 and §300.532)*

Any party to a special education impartial due process hearing or an appeal pursuant to §300.532 has the right to—

- (1) Be accompanied and advised by counsel and accompanied by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.

## **Additional disclosure of information**

- (1) At least 5 business days prior to a due process hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
- (2) A hearing officer may bar any party that fails to comply with the preceding disclosure requirements from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

### **Parental rights at hearings**

Parents involved in hearings must be given the right to:

- have the child who is the subject of the hearing present;
- open the hearing to the public; and
- receive the record of the hearing and the findings of fact and decisions at no cost to the parents.

### **Authority of the Hearing Officer Regarding Interim Orders**

While a due process hearing matter is being heard, and pending a final due process hearing decision, a hearing officer has the power and authority to issue interim orders as s/he deems necessary and appropriate to ensure that a child receives an education in accordance with applicable state and federal laws and regulations.

### **Expedited Special Education Due Process Hearings**

(*Regulations §§300.530-300.532*)

A parent of a child with a disability who disagrees with a decision regarding placement under discipline procedures or with the IEP team's manifestation determination regarding his or her child, or a school department that believes a child's current placement is substantially likely to result in injury to the child or others, may also request a due process hearing to appeal the decision.

Due process hearings requested to address such disciplinary placement appeals are expedited under the following timelines:

- Within 7 calendar days from receipt of notice, the school department must convene a resolution meeting, unless the parents and school department agree in writing to waive the resolution meeting or to use state mediation.
- Unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the due process hearing may proceed.
- No later than 20 school days from the date that the complaint requesting the hearing is filed, the due process hearing officer must conclude the hearing and, within 10 school days of the hearing conclusion, render a decision.

### **Authority of the Hearing Officer in an Expedited Due Process Hearing**

A due process hearing officer hearing an appeal of a disciplinary placement decision regarding a child with a disability has the authority to:

- return the child to the placement from which the child was removed, if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or
- order a change of the child's placement to an appropriate interim alternative educational setting for not more than 45 days, if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

### **Finality of Decision; Appeal**

(*Regulations §300.514*)

A decision made in a special education due process hearing is final, except that either party involved in the hearing may appeal the decision through civil action in U.S. District Court or a State court of competent jurisdiction.

## Civil Action

(*Regulations §300.516*)

Any party aggrieved by the findings and decision made by a special education due process hearing officer has the right to bring a civil action with respect to the due process complaint. The action may be brought in any State court of competent jurisdiction or in a U.S. District Court without regard to the amount in controversy.

## Time Limitation

The party bringing the action has 30 days from the date of the receipt of the decision of the hearing officer to file a civil action.

## Additional requirements

In any civil action brought under paragraph (a) of this section, the court:

- receives the records of the administrative proceedings;
- hears additional evidence at the request of a party; and
- basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

## Jurisdiction of district courts

The district courts of the United States have jurisdiction of actions brought under §615 of the IDEA without regard to the amount in controversy.

## Rule of construction

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under §615 of IDEA, the procedures under *Regulations §300.507* and *§300.516* must be exhausted to the same extent as would be required had the action been brought under IDEA §615.

## Qualifications of Special Education Impartial Due Process Hearing Officers

(*Regulations 300.511*)

To be eligible for RIDE appointment as an impartial due process hearing officer to hear matters pertaining to the special education of students with disabilities, an individual must, at a minimum:

- (1) Not be an employee of the Rhode Island Department of Education or the local education agency involved in the education or care or the child;
- (2) Not be a person having a personal or professional interest that conflicts with his or her objectivity in the hearing;
- (3) Possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the Act by Federal and State courts; and
- (4) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.

An individual who otherwise qualifies to conduct a hearing as delineated above is not considered to be an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

## List of Qualified Hearing Officers Maintained by the Rhode Island Department of Education

RIDE maintains a list of individuals who serve as special education impartial due process hearing officers.

## ***Impartial Due Process Hearings: Rhode Island Department of Education Procedures***

### **Impartial Due Process Hearing Officers**

In addition to the minimum qualifications for hearing officers established by *Regulations §300.511*, RIDE requires that impartial due process hearing officers:

- (1) Not have been employed by, or served as an agent of, a Rhode Island local education agency, state-operated school, or non-public special education school, for two years preceding appointment as a special education due process hearing officer;
- (2) Not have been an employee of the Rhode Island Department of Education;
- (3) Attend periodic updated training programs as scheduled by Rhode Island Department of Education; and
- (4) Conduct due process hearings within regulatory timelines, unless a specific extension of time is granted at the request of one of the parties.

The list of individuals qualified to serve as due process hearing officers is maintained by the Office of Student, Community and Academic Supports (OSCAS).

RIDE may remove an individual from its list of qualified impartial due process hearing officers for good cause as determined by RIDE. Should the need for such removal be warranted, RIDE will provide notice of the cause for removal and an opportunity for the individual to be heard.

### **Requests for an Impartial Due Process Hearing**

To initiate an impartial due process hearing, a parent or local education agency must submit to the RIDE OSCAS, as well as to the other party, a written, signed request based on either a due process complaint under *Regulations §300.507* or a disciplinary placement appeal under §300.532. The model form provided in Appendix B illustrates both required and helpful information to include in a due process hearing request. This form, *Model Form to Assist Parents/ Guardians or Public Agencies in Requesting a Special Education Impartial Due Process Hearing*, is available in three languages on the Department website at [www.ride.ri.gov](http://www.ride.ri.gov) or by calling the RIDE OSCAS. Although all information required for filing a due process complaint must be included, use of the model form itself is not required. Parental requests for an impartial due process hearing received by an LEA must be immediately forwarded to the OSCAS.

The due process complaint is considered sufficient unless the party receiving the due process complaint notifies the complainant and the hearing officer in writing, via RIDE, within 15 days of receipt of the due process complaint that the receiving party believes the complaint does not meet all requirements of § 300.508(b) regarding content. RIDE ensures in such an occurrence that a hearing officer is immediately assigned such that, within 5 days of the sufficiency challenge, the hearing officer will make a determination on the face of the due process complaint whether it meets requirements. The hearing officer immediately notifies the parties in writing of the determination.

### **Appointment of an Impartial Due Process Hearing Officer**

In matters involving special education due process complaints, RIDE appoints on a rotational basis a hearing officer from its list of individuals serving as special education impartial due process hearing officers. In making each appointment, RIDE considers the individual's availability and potential conflicts of interest.

## Due Process Hearing Requests by Parents

### Parent Requests: RIDE Procedure

Upon receipt of a parent's request for a due process hearing based on a due process complaint, the RIDE OSCAS monitors the required resolution process implemented by the school department. Should the resolution process result in a written agreement resolving the due process matter(s), with signed documentation from both parties forwarded to RIDE, the due process matter will be closed by RIDE.

Should the resolution period expire without resolution, RIDE will assign a hearing officer consistent with these procedures. Such appointment will be made sooner should: a) both parties indicate to RIDE in writing, before the end of the resolution period, that the resolution process has concluded without agreement; or b) the school department notify RIDE that it is challenging the sufficiency of the complaint.

Upon receipt of the parent's due process hearing request, the RIDE OSCAS will:

- (1) Forward to all parties a copy of the due process complaint/request for due process hearing and a Resolution Session Reporting Form for the school department's timely reporting to OSCAS regarding the status of the resolution meeting and the conclusion of the resolution process; and
- (2) Mail to the parent(s) copies of the additional following documents:
  - Cover letter acknowledging the parents' due process hearing request
  - *Resource Information: Links to Free or Low-Cost Legal Services Regarding Special Education Matters*
  - Brochure: *Options and Resources: Rhode Island Informal and Formal Special Education Options and Resources for Dispute Resolution*
  - *Rhode Island Procedural Safeguards Notice Model Form*
  - *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities*

The resolution period expires on the 30<sup>th</sup> calendar day from RIDE's receipt of the due process hearing request, unless the period concludes on an earlier or later date established by the occurrence of any of the following events:

- both parties agree in writing to waive the resolution meeting; or
- both parties agree in writing before the end of the 30 day period that, after attempting the resolution meeting or a mediation, agreement is not possible; or
- the parent or public agency withdraws from mediation after having begun state mediation and having agreed in writing to continue mediation at the end of the 30-day resolution period.

Upon the expiration of the 30-day resolution period, unless adjusted to a shorter or longer period based upon conclusion of the resolution process as delineated above, the impartial due process hearing may proceed and the 45-day hearing timeline begins. The RIDE OSCAS will assign an impartial due process hearing officer and forward a copy of the assignment letter to the parties in the due process matter.

### **Parent Requests: School Department Procedure**

Upon receiving notice that a parent has filed a due process complaint requesting a due process hearing, the school department or local education agency must:

- implement applicable regulatory obligations to the parent, pursuant to *Regulations §§300.504, 300.507, 300.508, and 300.510*, regarding free and low-cost legal information, provision of procedural safeguards, prior notice and other descriptions;
- promptly implement a resolution process pursuant to *Regulations 300.510*;
- report to the RIDE OSCAS regarding the status of the resolution meeting and provide immediate notice, within one business day, to the RIDE OSCAS of the conclusion of the resolution process; and
- forward the completed Resolution Session Reporting Form including, as applicable, signed documentation from both parties (or signed written agreement) to the RIDE OSCAS within one business day of the resolution process conclusion date.

### **Due Process Hearing Requests by School Departments/LEAs**

#### **LEA Requests: RIDE Procedure**

Upon receipt of a school department or local education agency request for a due process hearing based on a due process complaint, the OSCAS will assign a due process hearing officer consistent with these procedures and:

- (1) Forward to all parties a copy of the hearing officer assignment letter and due process complaint/request for due process hearing;
- (2) Mail to the parent(s) copies of the additional following documents:
  - Cover letter notifying the parents of a due process hearing request from their school department
  - *Resource Information: Links to Free or Low-Cost Legal Services Regarding Special Education Matters*
  - Brochure: *Options and Resources: Rhode Island Informal and Formal Special Education Options and Resources for Dispute Resolution*
  - *Rhode Island Procedural Safeguards Notice, Model Form*
  - *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities*

#### **LEA Requests: School Department Procedure**

Upon filing a due process complaint requesting an impartial due process hearing with RIDE, the school department or local education agency must:

- forward to the parent(s) a copy of the due process complaint/request for due process hearing; and
- implement applicable regulatory obligations to the parent, pursuant to *Regulations §§300.504, 300.507, 300.508, and 300.510*, regarding free and low-cost legal information, provision of procedural safeguards, prior notice and other descriptions.

### **Hearing Schedule & Reporting Responsibilities**

The school department is responsible for managing the resolution process and reporting the status of the resolution process to the OSCAS. Once assigned, the hearing officer is responsible for scheduling the hearing at a time and place that is reasonably convenient to the parent(s) and child involved and for adherence to the 45-day timeline for reaching a final decision and mailing a copy of the decision to each party. The hearing officer is also authorized to grant specific extensions of time beyond this timeline at the request of either party. Extensions cannot be indefinite; a hearing date must be specified.

### **Pre-hearing Conference**

Once the 45-day timeline begins, a hearing officer may schedule a pre-hearing conference before the formal due process hearing is scheduled or convened. The purposes of pre-hearing conferences are to identify the issues, allow the parties additional opportunity to discuss possible resolution of differences, and to confirm a hearing date(s).

### **Nature of the Due Process Hearing**

The hearing itself is an administrative procedure, quasi-judicial in nature. The due process hearing is closed to the public unless the parent requests an open hearing. The parent has the right to determine whether the student will attend the hearing.

The hearing is conducted by an impartial hearing officer who must listen to testimony of witnesses, examine evidence, rule on motions, and make a final written decision based on the facts established at the hearing. The hearing officer is authorized to administer oaths and to issue subpoenas in connection with the administrative proceeding. Parties will be afforded the opportunity to present witnesses and evidence, cross-examine witnesses, object to and rebut any evidence presented by the opposing party. A transcript of the proceeding is recorded by a stenographer and made available to all parties. The final written decision by the hearing officer may contain specific orders requiring action by one or both of the parties to the hearing.

Parties may decide to enter into a settlement agreement which may eliminate the need for a final written decision by the hearing officer. Due process matters that have been fully resolved or withdrawn are closed by the assigned hearing officer.

### **Due Process Hearing Costs**

Upon the initiation of a due process hearing, RIDOE will provide the parent(s) with information about free and low cost legal services. The decision whether to be represented or advised by legal counsel for a due process hearing is at the discretion of each of the parties. Each party represented by legal counsel is responsible for costs incurred related to its respective attorney's fees.

The record of the hearing and the findings of fact and the decision must be provided at no cost to the parent. The local education agency is responsible for providing a record of the hearing to the parents and for payment of the hearing officer's bill, calculated on an hourly basis at an hourly rate established by RIDOE. Where required, sign interpreters or language interpreters needed to enable the parent(s) to access the hearing process must be provided at the expense of the LEA.

Matters related to awarding of reasonable attorneys' fees are within the purview of civil action brought by either party in a State court of competent jurisdiction or in a U.S. district court subsequent to a due process hearing decision.

## Due Process Hearing rights include:

- The right to be represented by legal counsel.
- The right to be accompanied by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities.
- The right to receive information about free or low cost legal services.
- The right to have an impartial hearing officer (someone not employed by the school district and who is familiar with the provisions and regulations pertaining to IDEA and otherwise qualified).
- The right to know at least 5 business days before the hearing all of the evidence (e.g. evaluations and recommendations) that will be used at the hearing.
- The right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 business days before the hearing.
- The right to present evidence and to confront, cross-examine, and require the attendance of witnesses.
- The right to have the hearing opened to the public (if requested by the parent(s)).
- The right to receive the hearing officer's written, or, at the option of the parents, electronic, findings of fact and decision within 45 calendar days following a 30-day resolution period, unless this 45-day timeline is adjusted to begin following the date upon which:
  - both parties agree in writing to waive the resolution meeting; or
  - both parties agree in writing that, after attempting the resolution meeting or a mediation, agreement is not possible; or
  - the parent or public agency withdraws from the resolution or mediation process after having continued that process, based on agreement in writing, beyond the 30-day resolution period.
- The right to a written or, at the parent(s)' option, electronic verbatim record of the hearing.
- The right of a parent to seek in state or federal court reimbursement of attorney fees if the hearing decision is in favor of the parents.
- The right to appeal the hearing decision through civil action in a state court of competent jurisdiction or in a U.S. district court.

## Appendix A

### ***Questions and Answers Related to Impartial Due Process Hearings In Matters Involving the Special Education of Students with Disabilities***

#### ***1. How is an impartial due process hearing started?***

A parent or local education agency may initiate an impartial due process hearing by submitting to the Rhode Island Department of Education, Office of Student, Community and Academic Supports, a signed, written request that includes information indicated on the model form provided in Appendix B. Although the form contains both required and helpful information and is recommended, use of the form itself is not required. At the same time it makes its request, the party requesting the hearing must provide a copy of the request to the other party.

#### ***2. What happens after a request for a due process hearing is made?***

Upon receipt of a valid request from a school department/local education agency for an impartial due process hearing based on a due process complaint, the Rhode Island Department of Education assigns a hearing officer from a list of qualified impartial due process hearing officers. Upon receipt of a parent's request for an impartial due process hearing, the local school department is responsible for scheduling a resolution session and reporting the status and conclusion of the resolution process to the Rhode Island Department of Education. Should the parent and school department resolve the due process matter(s) in the resolution session(s), the written resolution agreement and reporting form are promptly forwarded to the Rhode Island Department of Education, and the due process matter is closed.

When the parent and school department agree in writing to waive the resolution meeting, or otherwise do not resolve the due process matter(s) through the resolution process, the Rhode Island Department of Education assigns a due process hearing officer and the hearing process may proceed. The hearing officer schedules the hearing and any pre-hearing settlement sessions and presides over the hearing process until its conclusion, either through a settlement agreement or a written decision. The hearing officer mails the signed settlement agreement or written decision to each party and to the Rhode Island Department of Education.

#### ***3. Where are due process hearings conducted?***

A due process hearing must be conducted at a time and location that is reasonably convenient to the parent and student involved. The specific location is decided by the impartial hearing officer in consultation with the school department and the parent. Usually, the hearing takes place at a school, school department building, or the office of the hearing officer. Other locations agreeable to the parties may be utilized, with particular consideration for confidentiality.

#### ***4. What happens if the parties cannot agree on times or a location to meet for a hearing?***

The impartial hearing officer has the authority to set dates and locations for meeting to conduct the hearing. The impartial hearing officer will make an attempt to schedule the hearing at a time and location reasonably convenient for the parties. When the parties cannot agree on a time or location to meet for the hearing, the impartial hearing officer must determine the time and location, which may include weekends and/or evenings, to ensure that the hearing proceeds within required timelines.

**5. Must the school department and the parent have attorneys to represent them at a due process hearing?**

No. Each party may decide whether they want to be represented by legal counsel, but legal representation is not a requirement of the hearing. Information about free and low-cost legal services is available from the RIDE Office of Student, Community and Academic Supports,

**6. Under what circumstances may an impartial due process hearing officer communicate with one party without the other party present?**

No *ex parte* communication (communication with one party to the hearing without the other party present) may occur regarding the hearing issues. A hearing officer may discuss hearing arrangements with one or more of the parties, such as the dates and times of the hearings, the hearing location, the need for interpreters or other logistical matters. However, an impartial hearing officer must refrain from communicating with any party or party representative about an issue of fact or law related to the hearing except upon notice with opportunity for all parties to participate.

**7. What is the role of the hearing officer in an impartial due process hearing?**

The role of the hearing officer is to manage the due process case from assignment through settlement or full adjudication. Should the party receiving the due process complaint challenge the sufficiency of the complaint, the hearing officer's role is to determine whether the due process complaint meets all regulatory requirements regarding content.

The impartial due process hearing officer is responsible for conducting the hearing in a manner that allows each party to present its case. The hearing officer must maintain control of the hearing at all times and will take appropriate action to exercise that control. In conducting the due process hearing, the impartial hearing officer may go off the record or call a recess for the purpose of reminding a party or attorney representing a party that the hearing must be conducted in a respectful and orderly fashion.

**8. What do the terms "on the record" and "off the record" mean?**

All impartial due process hearings must be recorded, either by stenographer or electronic recording. During the hearing, a record of the hearing is established. A hearing officer may refer to a matter as "on the record" to indicate the matter is properly dealt with as part of the official hearing record. The term "off the record" refers to conduct or comments that are not made a part of the official hearing record.

**9. What does "open hearing" mean?**

A parent may request that the impartial hearing be open to the public. An "open hearing" means the parent has elected to have the hearing open for the public to observe.

**10. What is a due process hearing officer's authority with regard to issuing subpoenas and administering oaths?**

An impartial hearing officer is authorized to issue a subpoena for the appearance of a witness and to administer oaths. The party requesting the witness may seek court enforcement of a subpoena.

**11. If a party compels the attendance of an expert witness, who is responsible for the costs associated with having the witness appear?**

The party requesting the attendance of a witness is responsible for the costs associated with having that witness appear. A school district makes its current employees available as witnesses at no cost to the parent.

## ***12. How long does the impartial due process hearing procedure take?***

Once the request for a due process hearing is filed, the hearing must conclude, with a final decision rendered, within 45 calendar days of a school district request or within 45 days following a 30-day resolution period upon a parent's due process request. The 45-day timeline following the resolution period is adjusted, when applicable, to begin following the date upon which:

- both parties agree in writing to waive the resolution meeting; or
- both parties agree in writing that, after attempting the resolution meeting or a mediation, agreement is not possible; or
- the parent or public agency withdraws from the resolution or mediation process after having continued that process, based on agreement in writing, beyond the 30-day resolution period.

The due process hearing officer may grant specific extensions beyond this timeline at the request of one of the parties.

In the instance of an expedited hearing, the resolution session must be convened by the school department within 7 calendar days of receiving notice of the parental request. RIDE arranges the expedited due process hearing, which concludes within 20 school days of the filing. The hearing decision is rendered within 10 school days of the hearing conclusion.

## ***13. What are examples of appropriate reasons for a hearing officer to grant an extension to a due process hearing?***

If requested by one of the parties, an impartial hearing officer may grant an extension to the time period for a due process hearing to allow necessary time for actions such as the following examples:

- provide additional time for an evaluation or independent evaluation to be completed; or
- allow a witness to appear at a later date; or
- provide a parent, who had not been given access to school records, an opportunity to exercise his or her right to access such records prior to the hearing.

## ***14. Can a hearing officer limit the number of witnesses providing testimony at any impartial due process hearing?***

Yes. An impartial hearing officer may exercise his or her discretion to limit the number of witnesses providing testimony at an impartial hearing to ensure that the decision is reached within the required time period. This discretion must be exercised in the interest of justice consistent with due process rights of the parties. An impartial hearing officer may limit the number of witnesses, for example, if the impartial hearing officer determines that the testimony of additional witnesses is irrelevant or would duplicate evidence previously presented and therefore unnecessarily delay a timely decision in the case. An impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony.

## ***15. What happens if special education state mediation is requested after a due process hearing has been initiated?***

If, after a request for an impartial hearing has been received, the parents and school district seek state mediation to resolve the dispute that is subject to the impartial hearing, the hearing and timeline must still continue while mediation is conducted, unless the request for the impartial hearing is withdrawn. The use of mediation may not deny or delay a parent's right to an impartial due process hearing. However, a party may request of the hearing officer an extension to the hearing timeline in order to pursue mediation.

**16. What happens to the child's educational placement during the due process hearing proceedings?**

The student must remain in his or her current (last agreed-upon) educational placement, unless the parent and the school department agree otherwise. An exception to this rule applies in matters as described in Question 18, involving weapons, illegal drugs/controlled substances, or serious bodily injury, which permits the school department to place a student in an interim alternative placement.

**17. What happens when the parents and local education agency disagree about the student's current educational placement to be maintained pending the due process hearing?**

Either party may submit to the Commissioner of Elementary and Secondary Education a written request for an interim protective order to determine which placement reflects the student's last agreed-upon educational placement for purposes of "stay put".

**18. Under what circumstances may the school department place a student in an interim alternative educational setting?**

A school department may place a student in an interim alternative educational setting for up to forty-five (45) calendar days, without parental agreement or consent, if the student:

- a) carries or possesses a weapon to school or to a school function;
- b) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or
- c) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The interim alternative educational setting becomes the student's current educational setting for up to forty-five (45) days, even if a due process hearing is requested by the parent or school department.

**19. Can the hearing officer order a student to be placed in an interim alternative educational setting?**

An impartial hearing officer may order a change in the educational placement of a student with a disability to an appropriate interim alternative educational setting for no more than forty-five (45) days if the hearing officer, in an expedited due process hearing, determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

**20. How is a decision of an impartial due process hearing officer enforced?**

The decision of an impartial due process hearing officer is final and binding on the parties unless appealed through civil action to a State court of competent jurisdiction or in U.S. District Court. In the event that a local education agency fails to comply with the due process decision, a written special education state complaint may be filed with the Rhode Island Department of Education Office of Student, Community and Academic Supports. Due process hearing decisions are also enforceable by seeking court action.

**21. What is an interim protective order hearing?**

R.I. General Law 16-39-3.2 empowers the Commissioner of Elementary and Secondary Education to issue interim orders pending a hearing as needed to ensure that a child receives an education in accordance with applicable laws and regulations. Interim orders are not limited to students with disabilities. Hearings on interim orders must be conducted within five (5) working days of a request for relief and a decision issued within five (5) working days of the completion of the hearing. Requests for the interim protective order are filed with the Commissioner of Elementary and Secondary Education by written request.

## ***Appendix B***

### **Model Form to Assist Parents and Public Agencies In Requesting a Special Education Impartial Due Process Hearing**



Rhode Island Department of Elementary & Secondary Education  
**Model Form to Assist Parents/Guardians or Public Agencies in Requesting**  
**A Special Education Impartial Due Process Hearing**

(Revised 6/2011)

This form assists you in providing the information needed for requesting a special education impartial due process hearing on a matter related to the identification, evaluation, educational placement/services, or provision of a free, appropriate public education of a child with a disability under the Individuals with Disabilities Education Act (IDEA). It is recommended that this due process complaint action is used only after the parties have attempted other remedies such as informal, local resolution, mediation, or written special education state complaint, as applicable. Special Education dispute resolution processes are explained on the Department's website at:

<http://www.ride.ri.gov/StudentsFamilies/SpecialEducation/WhenSchoolsandFamiliesDoNotAgree.aspx>

Assistance with this form is available from the Office of Student, Community and Academic Supports Call Center at (401) 222-8999 or at (401)222-8344.

Child's Information	<p>Child's Name: _____</p> <p>Address where the child lives: Street _____ City _____ _____ State, Zip _____</p>	<p>Date of Birth: _____</p> <p>School &amp; Grade Level that the child attends: _____ City/Town where the school is located: _____ City or Town _____</p>
Parent(s)/Guardian (s) Information	<p>Parent(s) or Guardian(s) Name(s): _____</p> <p>Mailing Address (if different than child's) _____ _____ (Street, City, State, Zip) _____</p>	<p>Parent(s) Phone/Contact Number(s): _____</p> <p>Language used for <u>printed</u> material: _____ Language preferred for spoken conversation: _____</p>

(Please use an additional page for the following, as needed.)

Allegation	Please state the nature of the problem of the child, relating to the proposed or refused initiation or change of the child's identification, evaluation, educational placements or provision of free, appropriate public education:
Facts	Please describe the facts related to the problem:
Proposed Resolution	To the extent known, what would resolve the problem?

ATTORNEYS OF RECORD, IF KNOWN:

For the parent(s)

For the public agency

PARTY FILING DUE PROCESS COMPLAINT:

NAME (Print): \_\_\_\_\_ TELEPHONE/CELL/FAX: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
Street \_\_\_\_\_ City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

VERIFICATION THAT A COPY OF THIS DUE PROCESS COMPLAINT/HEARING REQUEST IS BEING FORWARDED TO THE OTHER PARTY TO THIS COMPLAINT (PARENT OR SCHOOL SUPERINTENDENT) (Circle one) Yes No

SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

Please submit this completed form, or all information contained within, to: Dispute Resolution/Student, Community & Academic Supports, RI Dept. of Education Suite 500, 255 Westminster Street, Providence, RI 02903-3400.