

## Programs for Students with Disabilities: Hearing and Review Procedures

### I. Hearing Procedures for students with disabilities

- A. The parties have the following rights in a hearing:
1. to be represented by counsel;
  2. to present evidence and cross-examine witnesses;
  3. to prohibit the introduction of evidence that has not been disclosed in advance;
  4. to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party);
- B. For hearings requested on behalf of students, the student may attend the hearing.
- C. The hearing officer shall insure in connection with the hearing the following matters:
1. An atmosphere conducive to impartiality and fairness.
  2. The appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the Education of All Handicapped Children Act.
  3. Maintenance of an accurate record of the proceedings.
  4. Issuance of a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
  5. The decision must be issued within forty-five (45) calendar days of receipt of the request for a hearing, unless continued for good cause at the request of a party.
  6. Assignment of the burden of proof to the party requesting a change in the status quo.
  7. The hearing officer shall hold all records for thirty (30) days after issuance of a decision. In the event an appeal is noted, the Coordinator will advise the hearing officer of the name and address of the reviewing officer. The hearing officer shall transmit the record to the reviewing officer within three (3) days of the request. In the event no appeal is made, the hearing officer shall return the record to the Coordinator.

## II. Review Procedure

- A. An appeal may be noted by an aggrieved party by filing a written notice with the Coordinator within thirty (30) days of the date of the decision issued by the hearing officer.
- B. A reviewing officer must be appointed by the Coordinator from the same list from which the initial hearing officer was appointed and within one week of receipt of the request for review.
- C. The reviewing officer shall:
  - 1. examine the record of the hearing;
  - 2. seek additional evidence, if necessary;
  - 3. afford the opportunity for written or oral argument;
  - 4. advise the parties of the right to be represented by counsel during the review proceedings; and
  - 5. issue a written decision.
- D. The reviewing officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.
- E. The reviewing officer's decision must be issued within thirty (30) days of receipt of the request for an appeal, unless continued for good cause at the request of a party. A copy of the decision must be sent to all parties.
- F. The record of the administrative hearings shall be sent by the reviewing officer to the Coordinator upon the issuance of the decision.
- G. The Coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.

Adopted: December 11, 1995  
Amended: April 18, 2011