

Operational Guidelines for Due Process Hearings

I. The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local school divisions with respect to any matter relating to the items identified in II of this section. The Virginia Department of Education uses the impartial hearing officer system administered by the Supreme Court of Virginia. The Virginia Department of Education provides the Supreme Court of Virginia, on an annual basis, with the names of those special education hearing officers who are recertified to serve in this capacity.

II. Basis for due process hearing request

- A. Either a parent or the Division may request a due process hearing when a disagreement arises regarding any of the following:
1. Identification of a child with a disability, including ineligibility, any change in categorical placement and any partial or complete termination of special education and related services;
 2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
 3. Educational placement and services of the child; and
 4. Provision of a free appropriate public education to the child.
- B. The Division may initiate a due process hearing to resolve a disagreement when the parents withhold consent for an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability, except for initial placement.

- C. In circumstances involving disciplinary actions, the parents of the student with a disability may request an expedited due process hearing if the parents disagree with:
 - 1. A determination that the child's behavior was not a manifestation of the child's disability; or
 - 2. Any decision regarding placement under the disciplinary operational guidelines.
- D. The Division may request an expedited hearing if the school division maintains that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative setting) during the pendency of the due process proceedings.

III. Procedure for requesting a due process hearing

- A. A request for a hearing, which specifies the issues that allegedly occurred not more than two years before the parent(s) or the division knew or should have known about the alleged action that forms the basis of the request for due process and the relief sought, shall be made in writing to the Virginia Department of Education with a copy of that request delivered contemporaneously by the requesting party to the other party. If the school division initiates the due process hearing through the Superintendent, it will advise the parents and the Virginia Department of Education in writing of this action. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the Division by telephone or by facsimile and forward a copy of the request to the Division within one day of the Virginia Department of Education's receipt, including those cases where mediation is requested. The request for a hearing shall be kept confidential by the Division and the Virginia Department of Education.

- B. The notice of request must include the following information:
1. The name of the child;
 2. The address of the residence of the child; or in the case of a homeless child or youth, available contact information;
 3. The name of the school the child is attending;
 4. A description of the nature of the child's problem 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 of the notice.
- C. The due process notice will be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party has not met the requirement of subdivision B in this section.
1. Within five calendar days of receipt of notification challenging the sufficiency of the due process notice, the special education hearing officer will determine on the face of the notice whether the notification meets the requirements in subdivision B of this section.
 2. The special education hearing officer has the discretionary authority to permit either party to raise issues that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

- D. The Division shall upon receipt of a request for a due process hearing, inform the parents of the availability of mediation described in 8 VAC 20-81-190 and of any free or low-cost legal and other relevant services available in the area. The Division must also provide the parents with a procedural safeguards notice.
- E. If the School Division is the requesting party, it must provide the parent with prior written notice (Notice of Intent) about the issues in the due process request within 10 days of the request for due process.
- F. The Division shall contact the Supreme Court of Virginia for the appointment of the hearing officer within five business days of the request for a hearing. The Division's Director of Special Education and Assessment Services or designee will contact the Supreme Court of Virginia to secure the name of a hearing officer, contact the hearing officer to confirm availability, and upon acceptance, appoint the hearing officer in writing, with a copy to the Virginia Department of Education and to the parent. In the case of an expedited hearing, the Division must appoint the hearing officer within the three business days of the request for a hearing.

IV. Response to the Notice requesting a due process hearing

- A. Within 10 calendar days of receiving the notice requesting a due process hearing, the non-requesting party must send the requesting party a response that specifically addresses the issues raised in the notice. The School Division is not required to provide such a response if it already provided the parent with written prior notice.

1. If the Division has not sent WPN to the parent regarding the issues raised by the parent, the Division must, within 10 calendar days of receiving the notice requesting a due process hearing, send the parent WPN that shall include:
 - a. An explanation of why the Division proposed or refused to take the action raised in the notice;
 - b. A description of other options that the Division team considered and the reasons why those options were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the Division used as the basis for the proposed or refused action; and
 - d. A description of the factors that are relevant to the Division's proposal or refusal.
2. Providing the parent with such WPN shall not be construed to preclude the Division from asserting that the parent's due process notice was insufficient where appropriate.

V. Assignment of hearing officer

- A. A hearing officer is appointed to a case from a list maintained by the Supreme Court of Virginia.
- B. Upon a request by the Division, the Supreme Court identifies a hearing officer from its list and provides the name to the Division. If the first person selected is unavailable or disqualified, the Division shall immediately request another name to ensure that a timely appointment is made.

- C. Upon request, the Virginia Department of Education shall share information on qualifications of the hearing officer with the parents and the Division, and either party has five business days to object to the appointment by presenting a request to the hearing officer.
- D. A hearing shall not be conducted by a person who:
 - 1. Has a personal or professional interest which would conflict with that person's objectivity in the hearing;
 - 2. Is an employee of the Virginia Department of Education or the Division that is involved in the education and care of the student. A person otherwise qualified to conduct a hearing is not an employee of either agency solely because he is paid by the agency to serve as a hearing officer.
 - 3. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.
- E. If a hearing officer recuses himself or is otherwise disqualified, the Division shall ensure that another hearing officer is promptly appointed.

VI. Challenging the sufficiency of the notice

- A. A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the content information required for Notice.

- B. If the party receiving the due process notice considers it insufficient, the party notifies the hearing officer in writing, with a copy to the Department of Education and the other party, within 15 calendar days of receiving the notice that the notice does not meet the content requirements.
1. **The 45 day timeline is suspended at this point.**
- C. Within 5 calendar days of receiving the notification regarding the insufficiency of the notice, the hearing officer determines whether the notice meets the content requirements. The hearing officer notifies the parties in writing of his/her determination.
- D. If the hearing officer determines that the notice is sufficient, the 45 day timeline recommences, including the timelines for the Resolution Session. The Resolution Session process is described below.
- E. If the hearing officer determines that the notice is insufficient:
1. The party amends the Notice if the other party consents and has the opportunity to resolve issues through the Resolution Session process, or
 2. The hearing officer permits the party to amend the Notice (not later than 5 calendar days before the hearing occurs).
 3. **The 45 day timeline recommences at the time the party files the amended notice, including the timeline for the resolution session process.**

VII. Resolution Session

- A. Within 7 calendar days of receiving the parents' Notice of a request for a due process hearing, the Division shall convene a meeting of the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the Notice.
- The parents and the Division may agree in writing to waive the Resolution Session, or agree to use the mediation process. If this happens, the 45 day timeline continues to be in place.**
 - If both parties agree to the Resolution Session, the 45 day timeline is suspended and if agreement is reached both parties must agree that the matter has been resolved to each party's satisfaction within 15 calendar days of receipt of the due process notice. Recall that if the Sufficiency of the Notice is challenged, the 45 day timeline is suspended.**
 - The parent and the school division will determine the relevant members of the IEP team to attend the meeting, but the meeting must include a representative of the school division who has decision making authority on behalf of the division.**
 - The team shall not include an attorney of the Division unless an attorney accompanies the parent.
 - During the Resolution Session, the parents of the child discuss their issues in the notice, and the facts that form the basis of the due process request, and Division is provided the opportunity to resolve the issues.

6. If resolution is reached, the Division and the parent shall develop a legally binding agreement that is:
 - a. Signed by both the parent and a representative of the Division who has the authority to bind the Division; and
 - b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.
7. Either party has 3 business days to void the agreement, at which time the 45 day timeline recommences;
8. If the Division has not resolved the due process complaint to the satisfaction of the parents within 30 days of receipt of the notice, the hearing may occur and all of the applicable timelines for a due process hearing will commence.
9. The parties may enter into a confidentiality agreement as a part of the resolution agreement, though there is nothing that requires them to keep the discussion confidential or to make a confidentiality agreement a condition of a parent(s)' participation in the resolution meeting.
10. If the Division is unable to obtain participation of the parent(s) in the resolution session after reasonable efforts have been made and documented, the Division may, at the conclusion of the 30 day calendar period, request that the hearing officer dismiss the parent(s)' due process request.

VIII. Child's status during administrative or judicial proceedings

- A. Except as provided in disciplinary proceedings, during the pendency of any administrative or judicial proceeding, the child must remain in the current educational placement unless the parents of the child and the Division agree otherwise; or
- B. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings; or
- C. If the decision of a hearing officer, following the hearing, agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the Division and the parents for the purposes of maintaining the child's placement during the pendency of any administrative or judicial appeal proceeding; or
- D. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the Division shall be in accordance with state regulations; or
- E. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with state regulations, 8VAC 20-81-150.

- F. If the proceeding involves an application for initial services under Part B of the Individuals with Disabilities Education Act from Part C and child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of services the division will provide those services that are not in dispute between the parties.

IX. Rights of parties in the hearing

- A. Any party to a hearing has the right to:
1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 2. Present evidence and confront, cross examine, and request that the hearing officer compel the attendance of witnesses;
 3. Move that the hearing officer prohibit the introduction of any evidence at the hearing or the raising of additional issues that have not been disclosed to that party at least five business days before the hearing, or in the case of an expedited hearing, two 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.
- B. Additional disclosure of information shall be given as follows:

1. At least five business days prior to a hearing each party shall 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; and
2. A hearing officer may bar any party from raising issues at the due process hearing that were not raised in the due process complaint notice, or that fails to comply with the disclosure requirements from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

C. Parental rights at hearings

1. A parent involved in a hearing must be given the right to:
 - a. Have the child who is the subject of the hearing present; and
 - b. Open the hearing to the public.
2. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

X. Responsibilities of the Virginia Department of Education

The Virginia Department of Education shall:

- A. Maintain and monitor the due process hearing system and establish operational guidelines for its operation;
- B. Ensure that the Division discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

- C. Develop and disseminate a model form to be used by the parents to give notice of the following when filing a request for due process hearing: the name of the child; the address of the residence of the child; the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the parent or parents at the time of the notice;
- D. Ensure that the hearing is conducted by individuals who are impartial and who are not employees of the Virginia Department of Education or the Division providing education or care of the child, or by anyone with a personal or professional interest that would conflict with his objectivity in the case;
- E. Maintain and ensure that the Division maintains a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each officer;
- F. Notify the Supreme Court of the receipt of either the hearing officer's written decision or other conclusion of the case; and
- G. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information.
- H. Review implementation plans filed by the school division pursuant to hearing officer decisions in hearings that have been fully adjudicated; and

- I. Ensure that non-compliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

XI. Responsibilities of the parent. In a due process hearing, the parents shall:

- A. Decide whether the hearing will be open to the public;
- B. Make timely and necessary responses to the hearing officer personally or through counsel or other authorized representatives;
- C. Assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;
- D. Provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
- E. Provide documents and exhibits necessary for the hearing within required timelines; and
- F. Comply with timelines, orders, and requests of the hearing officer.

XII. Responsibilities of the Division. The Division shall:

- A. Maintain a list of the persons serving as hearing officers. This list shall include a statement of the qualifications of each officer;
- B. Provide the parents a form for use to provide notice that they are requesting a due process hearing upon request, and a copy of their procedural safeguards;
- C. Maintain the confidentiality of the completed notice form and its contents;
- D. Ensure that the parent's or parents' right to a hearing is not delayed or denied for failure to complete the notice;

- E. Ensure that a hearing officer is appointed within five business days of a request for a nonexpedited hearing and three business days of a request for an expedited hearing;
- F. Inform the parents at the time the request is made of the availability of mediation;
- G. Inform the parents of any free or low-cost legal and other relevant services if the parents request it, or anytime the parent, parents, or the Division initiates a hearing;
- H. Assist the hearing officer, upon request, in securing the location and recording equipment for the hearing;
- I. Make timely and necessary responses to the hearing officer;
- J. Assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;
- K. Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
- L. Provide documents and exhibits necessary for the hearing within required timelines;
- M. Comply with timelines, order, and requests of the hearing officer;
- N. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and the implementation plan, including mediation communications, except as prohibited by laws or regulations;
- O. Forward all necessary communications to the Virginia Department of Education and parties as required;

- P. Develop and submit to the Department of Education an implementation plan, with a copy to the parent(s) within 45 calendar days of the rendering of a decision that has been fully adjudicated.
1. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer and the parent(s) that a change in placement is appropriate, then the decision and submission of an implementation plan is held in abeyance until the appeal proceedings are completed.
 2. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the division.
 3. The implementation plan must be based on the decision of the hearing officer, include the revised IEP if the decision affects the student's educational program and must contain the name and position of the division's case manager charged with implementing the decision.
- Q. Notify the Virginia Department of Education when the Division is considering an appeal of the hearing officer's decision or when a hearing officer's decision has been appealed to court by either the parents or the Division; and
- R. Forward the record of the due process proceeding to the appropriate court for any case that is appealed.

- S. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the hearing officer's decision.

XIII. Responsibilities of the hearing officer. The hearing officer shall:

- A. Affirm, by accepting appointment, that he has complied with all training requirements, and understands federal law and state standards, interpretation of the courts, and agrees to complete the hearing within the regulatory timelines: 45 school days from the date the Division received or initiated a Notice, if assigned to a nonexpedited due process hearing and 30 school days if assigned to an expedited hearing;
- B. Ensure impartiality, and decline the appointment if the hearing officer is an employee of the Virginia Department of Education or of the Division that is involved in the education or care of the child;
- C. Ensure that the rights of all parties are protected and that the laws and regulations regarding the educational placement or services of the child are followed in the conduct of the hearing and in rendering the decision;
- D. Within five business days of agreeing to serve as the hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing. If the hearing is an expedited hearing, the hearing officer shall complete these responsibilities within two business days of appointment;

- E. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The hearing officer shall send copies of correspondence to the parties and their attorneys;
- F. Upon request by one of the parties conduct a prehearing conference via a telephone conference call or in person unless the hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;
- G. At the prehearing stage, inform the parties of their rights regarding mediation, of their opportunity to settle the case, and at the end of the hearing and upon receiving the decision, of their right to appeal the case directly to either a state or federal court at their discretion;
- H. Determine, when a due process notice also indicates a 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the section 504 dispute.
- I. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;
- J. Ascertain from the parents whether the hearing will be open to the public;
- K. Determine if alternate means of participation such as video conference or conference call will be used;

- L. Ensure that the parties have the right to a written or, at the option of the parents, an electronic verbatim record of the proceedings and that the record is forwarded to the Division for the file after making a decision;
- M. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five school days prior to the hearing.
- N. Ensure that the Division has appointed a surrogate parent in accordance with state regulations when the parent, parents, or guardian is not available or cannot be located;
- O. Ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing;
- P. Not require the parties or their representatives to submit extensive briefs as a condition of rendering a decision, but may permit it upon request;
- Q. Make no presumptions in the case and base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations;
- R. Report findings of fact and decisions in writing to both parties, their attorneys, and the Virginia Department of Education. If the hearing is an expedited hearing, the hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held;
- S. Include in the written findings of a nonexpedited due process hearing, a determination of whether the:
 - 1. Requirements of notice to the parents were satisfied;

2. Child has a disability;
 3. Child needs special education and related services; and
 4. The Division is providing a free appropriate public education;
 - a. Procedural inadequacies can result in a finding that FAPE was not provided only if the inadequacies:
 - (1). Impeded the child's right to FAPE;
 - (2). Significantly impeded the parent's opportunity to participate in the decision making regarding FAPE; or
 - (3). Caused a deprivation of educational benefits.
- T. Maintain an organized and well-documented record and return the official record to the Division upon conclusion of the case;
- U. Determine in a hearing regarding a manifestation determination whether the Division has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the following requirements:
1. The IEP Team first considered, in terms of the behavior subject to disciplinary action, all relevant information, including:
 - a. Evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
 - b. Observations of the child; and
 - c. The child's IEP and placement.
 2. The IEP Team then determined that:
 - a. The behavior was not caused by or had a direct and substantial relationship to the disability; and

- b. The behavior was not the direct result of the Division's failure to implement the IEP.
3. If the IEP Team determined that any of these standards were not met, the behavior must be considered a manifestation of the child's disability.

XIV. Authority of the hearing officer. The hearing officer has the authority to:

- A. Exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five school days prior to the hearing unless the hearing is an expedited hearing, in which case the information must be received and witnesses identified at least two school days prior to the hearing;
- B. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five school days prior to the hearing (or two business days if an expedited hearing) without the consent of the other party;
- C. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence;
 1. The hearing officer, or a party, may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.
 2. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not quash or modify the subpoena after objection;

3. The hearing officer will rule on any party's motion to quash or modify a subpoena. The hearing officer will issue the ruling in writing to all parties with a copy to the Department of Education.
- D. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the hearing officer's rules and with relevant laws and regulations;
- E. Excuse witnesses after they testify to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing;
- F. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the hearing officer determines that the best interests of the child will be served;
- G. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment;

- H. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and should be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The hearing officer may grant such requests for cause, but not for attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties, their attorneys, and to the Virginia Department of Education;
- I. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the hearing officer's orders;
- J. Set guidelines regarding media coverage if the hearing is open to the public;
- K. Enter a disposition as to every issue presented for decision and identify and determine the prevailing party on each issue that is decided;
- L. Order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing is an expedited hearing, and after:
 - 1. Determining whether the Division has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
 - 2. Considering whether the child's current placement is appropriate;

3. Considering whether the Division has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 4. Determining whether the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher meets the following requirements:
 - a. Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
 - b. Includes services and modifications designed to address the behavior so that it does not recur.
- M. In an expedited hearing, determine whether it is dangerous for a child to remain in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of due process proceedings. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the following standards:
1. Determine whether the Division has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
 2. Consider whether the child's current placement is appropriate;

3. Consider whether the Division has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
4. Determine whether the interim alternative educational setting was determined by the IEP Team and meets the following requirements:
 - a. Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP;
 - b. Includes services and modifications designed to address the behavior so that it does not recur; and
 - c. Is for no longer than 45 school days and is repeated if proper operational guidelines are followed. The operational guidelines in M1 through 4 of this subsection may be repeated as necessary.

XV. Timelines for nonexpedited due process hearings

The hearing officer shall:

- A. Render a final written decision, following standard legal practices, within 45 school days after the request for the hearing is received by the Division;
- B. Grant an extension only when it serves the best interests of the child; and
- C. Document in writing within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

XVI. Timelines for expedited due process hearings

The hearing officer shall:

- A. Render a final written decision within 10 school days following the hearing without exceptions or extensions; and
- B. Document in writing within two business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

XVII. Costs of due process hearing and attorney's fees

- A. The costs of an independent educational evaluation ordered by the hearing officer, hearing officer, court reporters, and transcripts are shared equally by the Division and the Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.
- B. The Division is responsible for its own attorneys' fees.
- C. The parents are responsible for their attorneys' fees. If the parents are the prevailing party, they have the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.
- D. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.
- E. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Individuals with Disabilities Education Act and state regulations (8 VAC 20-81-310).

XVIII. Right of Appeal

- A. A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by a party to federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) without regard to the amount in controversy.
- B. On appeal, the court shall receive the record of the administrative proceedings, shall hear additional evidence at the request of a party, shall base its decision on a preponderance of evidence, and shall grant the relief that the court determines to be appropriate.
- C. If the hearing officer's decision is appealed in court, implementation of the hearing officer's order is held in abeyance, except in those cases where the hearing officer has agreed with the child's parents that a change in placement is appropriate in accordance with subsection *V* of this section. In those cases, the hearing officer's order must be implemented while the case is being appealed.
- D. In every case within 45 business days of the final decision of the hearing officer, an implementation plan must be filed by the Division, with copies to the parties, the Virginia Department of Education, and the hearing officer unless the school division has appealed or is considering an appeal of the decision and the decision is not an agreement by the hearing officer with the parents of the child that a change in placement is appropriate as noted in subdivision *C* of this subsection.

- E. If the Division does not file an implementation plan, the Division must notify the Virginia Department of Education within 45 days of the issuance of the decision of the hearing officer that the Division is considering appealing the hearing officer's decision or either the Division or the parents have appealed the hearing officer's decision.
- F. If the hearing officer's decision is not implemented as required by state regulations and these guidelines, a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.

XIX. Special authority of the Virginia Department of Education

- A. The Virginia Department of Education may take action to ensure that the hearing officer:
 - 1. Complies with all training requirements;
 - 2. Conducts the hearing in a manner that protects the rights of all parties;
 - 3. Issues written findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law;
 - 4. Provides reports and the decision in writing to both parties and to the Virginia Department of Education;
 - 5. Does not require the submission of burdensome legal research of case law or legal briefs from parties before rendering a decision; and
 - 6. Complies with timelines as specified in this section.

- B. If the hearing officer does not meet the administrative responsibilities for management of the hearing proceedings in a case, the Virginia Department of Education may take action in the best interest of the child to remove the hearing officer from the case.

- C. The Virginia Department of Education may impose training and assessment requirements for new and continuing hearing officers as part of the specialized training requirements set by the Supreme Court of Virginia and as otherwise determined by the Virginia Department of Education to be necessary. The Virginia Department of Education may develop training and assessment methodology, including academic or alternative means for completing training requirements. The training requirements may include, but not be limited to, the following topics:
 - 1. Knowledge of disabilities and their implications in the education setting;
 - 2. Special education law generally, both federal and state;
 - 3. Other relevant statutory law;
 - 4. Knowledge of special education services and placements, including interim alternative educational placement;
 - 5. Knowledge of special education standards, procedures, and regulations impacting the delivery of educational services to students;
 - 6. Skill development and understanding of characteristics unique to disabilities.

- D. The Virginia Department of Education may establish the number of hearing officers who will be trained and certified to hear special education due process cases.

- E. Any hearing officer who has been suspended or removed pursuant to Rule 4 of the Hearing Officer System Rules of Administration or has withdrawn from the Virginia Supreme Court's hearing officer list shall submit a written petition to the Virginia Department of Education requesting approval to be recertified to hear special education cases.
- F. If a special education complaint asserting errors by a hearing officer is received, the Virginia Department of Education may require the hearing officer to respond to the complaint. If the Virginia Department of Education determines that the complainant's allegations are valid, the Virginia Department of Education may disallow any claim for compensation by the hearing officer for responding to the complaint.
- G. Any hearing officer who exceeds the timelines as prescribed in this section for reasons unrelated to the best interest of the child and not properly documented prior to the mandated timelines shall be required by the Virginia Department of Education to attend specialized training on these requirements before being assigned to another case.

XX. Management and monitoring of the due process hearing system

- A. The Virginia Department of Education shall conduct an analysis of special education hearing officers' decisions and the hearing system procedures that incorporates input from the parties to the hearing. Summary information developed from the analysis will be provided to the Virginia Supreme Court, upon request, and may be utilized by the Supreme Court in its evaluation of hearing officers as required in the Hearing Officer System Rules of Administration. Upon request, the Virginia Department of Education shall provide to the Supreme Court information regarding the hearing officer's participation in training, management of the hearing process, actual administration of any hearings, and a review of any decisions rendered.
- B. Review and analysis of special education hearing officers' decisions
 - 1. Within 30 calendar days of receipt of the special education hearing officer's decision, the Virginia Department of Education shall review the decision relative to:
 - a. Apparent bias to either party;
 - b. Correct use of citations;
 - c. Readability; and
 - d. Other errors, such as incorrect names or conflicting data, but not errors of law which are reserved for appellate review.
 - 2. Procedures
 - a. In conducting its internal review, the Virginia Department of Education may be assisted by external resources.

- b. The Virginia Department of Education may inform the hearing officer in writing of any concerns and may require the hearing officer to issue an error correction or a statement of clarification.

XXI. Nothing in this section prohibits or limits rights under other federal laws or regulations.