

PREHEARING CONFERENCE – SUBJECTS TO BE CONSIDERED

The following matters will be discussed / reviewed during the prehearing conference (not necessarily in the order listed below):

1. If the parent is not represented by an attorney, does the parent plan to retain an attorney before the due process hearing? (If so, the parent or new attorney must immediately advise the hearing officer and opposing attorney of the attorney's appearance in the case.)

If not represented by an attorney, did the parent receive a list of sources to contact to obtain assistance in understanding IDEA, including rights regarding a hearing and possible legal representation?
2. When did the resolution meeting process conclude? Who was present for each party? Was an agreement reached between the parties? What was the agreement reached by the parties, if any? Was it written and signed by the parties? Are the parties willing to pursue/considering pursuing mediation or further settlement discussions? When did/does the 20/45-day deadline start running?
3. What are the specific issues to be determined (e.g., what aspects of the IEP are alleged to be inappropriate) and what is the proposed relief (e.g., what type/amount of compensatory education is sought)? During the prehearing conference the hearing officer may require the parties to provide further clarification/specificity of their claims, defenses and requested relief.
4. Did the Respondent file a response? If not, how will the Respondent's failure to file the required response be addressed?
5. Are there any admissions of fact or stipulations? Did the parties reach an agreement on any of the claims in the complaint, whether at the resolution meeting or thereafter?
6. What witnesses does each party contemplate calling at the hearing and how much time will be needed to hear them all? (Attorneys/parties are expected to give their witness list some meaningful thought prior to the prehearing conference to allow the hearing officer to make an informed decision on how much time each party will be given to present its case.) What additional time, if any, should be scheduled to deal with unanticipated problems/delays?
7. Confirm when and where will the hearing be held (i.e., date(s) and times).
8. Is any continuance of the 45-day timeline anticipated? If so, what is the compelling reason or specific showing of substantial hardship the hearing

officer should consider? How might an extension of the 45-day timeline be avoided?

9. What is the due date for the five-day disclosures, witness lists (including a name, role/position, address, phone number, and general thrust of the testimony), and evaluations/written recommendations that may be introduced during the course of the due process hearing?

Note: (1) Each party's disclosures must separately identify those witnesses whom, and exhibits which, the party expects to present/offer and those whom/which the party may call/offer if the need arises; (2) the disclosures must designate witnesses expected to be presented by telephone, if permitted in the discretion of the hearing officer; (3) copies of all proposed exhibits shall be appropriately marked (i.e., for parents, as P-1, etc.; for HIDEOE, as SD-1, etc.; and, Joint as J-1, etc.) (each page of the proposed exhibit should be numbered as well, e.g., P-1-1, P-1-2, etc.); (4) the hearing officer may direct each party to file with the hearing officer a copy of the proposed evidence binder with the exhibits divided by tabs by the disclosure date, in such manner as the hearing officer directs; (5) in their five-day disclosures, each party must provide a curriculum vitae for all proposed expert witnesses; (6) for the hearing, each party must have available four sets of exhibit books, i.e., one for each party, one for witnesses, and one for the hearing officer (unless directed otherwise).

Hearing officers may direct the parties to submit joint exhibits.

10. Does either party anticipate having a problem accessing or obtaining witnesses or records (i.e., the need to compel witnesses or the production of documents)? The requesting party should be prepared to explain the relevance of the witness testimony or records requested.

If yes, the party that refuses to produce the witness or records should be prepared to explain why it will not voluntarily ensure the appearance of the witness or production of the documents.

Will the HIDEOE make current employees voluntarily available at the due process hearing?

11. Does either party anticipate any witness scheduling or other logistical problems? How does the party propose to resolve them?
12. Do the parties anticipate any motions/requests or other disputes that should be addressed during the prehearing conference? If so, how will they be addressed, i.e., the dates on which motions/requests must be filed and the timeline for decisions on the motions?

13. Any other matters that the hearing officer deems appropriate or the parties want to discuss.

NOTE: The following matters will also be addressed:

- Whether the Parent opts for a hearing to be open or closed.
- Whether either party requires interpreter services, the translation of documents or other accommodations.
- Confirm that the Petitioner shall proceed first at the hearing.
- Confirm that the Petitioner shall carry the burden of persuasion.
- Confirm that the parties shall be prepared to present oral closing argument, unless leave is granted by the hearing officer to allow for post-hearing, written submissions.
- Whether the Parent elects to be provided with written or electronic findings of fact and decisions.

DIRECTIVE: The parties are directed that if any problem or dispute arises between the time of the prehearing conference and the time the decision is issued and the parties are unable to mutually resolve the dispute, there by necessitating the involvement of the hearing officer, they shall immediately contact the hearing officer. The hearing officer shall address the matter by scheduling a telephone conference call or in such other manner as is deemed appropriate under the circumstances.