

[HEADING]

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STUDENT, a minor, by and through
his/her Parent(s), _____

Petitioners,

**PRE-HEARING CONFERENCE
SUMMARY AND ORDER**

- against -

Case No. _____

_____, Hearing Officer

Respondent.

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Petitioner is the parent of _____ (“Student”), a _____-year-old student [with a disability]. On _____, Petitioner filed a Due Process Complaint (“Complaint”) against the _____ pursuant to the Individuals with Disabilities Education Act (“IDEA”). This Hearing Officer was appointed to preside over this case on _____.

On _____, 2010, a pre-hearing conference was held in the above matter. The conference was conducted by telephone from _____ p.m. to _____ p.m. Participating in the conference were: _____, Hearing Officer; _____ for Petitioners; and, _____ for Respondent. The parties discussed the following matters:

1. **Objections to the Appointed Hearing Officer.** Neither party objected to the appointment of the undersigned as hearing officer.

2. **Mediation / Settlement / Attorneys.** Each side is represented by counsel. Neither side expressed an interest in engaging in mediation. [Both sides waived the

mandatory resolution meeting.] [A resolution meeting was held on _____. The parties, however, did not reach an agreement.] The parties are free to enter into settlement discussions and an agreement at any time and nothing in this order should be interpreted as prohibiting any settlement discussions.

It was agreed that the 45-day timeline started to run on _____. The hearing decision is due on _____.

3. **Hearing Dates / Arrangements.** The hearing will be conducted at _____, located at _____, on _____, _____, 2010, at _____ a.m. / p.m. to _____ a.m. / p.m. [A second pre-hearing conference will be conducted on _____, 2010, at _____ a.m. / p.m., at which time the parties should be prepared to discuss _____.] Should any problem arise prior to the hearing that might adversely affect the hearing process, counsel is directed to notify the undersigned and request an immediate pre-hearing conference call.

Inasmuch as this is not a matter involving discipline so as to require an expedited hearing, it will be handled as a regular hearing.

a. **Evidence / Witness Disclosure.** Disclosure will occur on or before _____, _____, 2011 by 5 p.m., and a courtesy copy mailed overnight delivery on the same date (to arrive on the _____), emailed, or sent by facsimile transmission to the Hearing Officer. (*See Hearing Officer contact information below.*) Documents that are emailed or sent by facsimile transmission should be limited to no more than 75 pages.

At least three business days prior to the due process hearing, both parties shall exchange all objections to any portion of the opposing party's five-day-disclosures in writing. At least two business days prior to the due process hearing, the parties shall jointly discuss all objections and attempt in good faith to resolve them. At least one day prior to the due process hearing, each party shall provide this Hearing Officer a joint list of objections that they were unable to resolve. Counsel for each party shall certify in a letter that s/he made good-faith efforts to resolve all objections.

A party's failure to provide all objections in writing three days prior to the hearing may result in a waiver of the objection. A party's failure to attempt to resolve an objection in advance of the due process hearing may result in the objection being sustained.

b. **Exhibit Format.** All exhibits must be marked prior to the hearing date and an exhibits list generated. Parents exhibits should be identified as "P" followed by the exhibit number. Each page of the exhibit should be numbered as well. For example, if the IEP is to be the parents' first exhibit and it consists of seven pages, each page should be marked as follows: P 1-1, P 1-2, P 1-3, etc. The LEA exhibits should be identified as "R" followed by the exhibit number. Again, each page of the exhibit should be numbered as in the example above. Joint exhibits should be identified as "JE" followed by the exhibit number. Each page of the exhibit should also be numbered.

The parties are encouraged to prepare joint exhibits.

c. **Witness List / Witnesses.** The witness list must include the name and title of the witness and a brief, but informative, description of the nature of the

witness' testimony. The Hearing Officer may exclude any irrelevant, immaterial, unreliable or unduly repetitious testimony during the hearing.

Witnesses participating through teleconference on the day of hearing are to be provided with courtesy copies of the proposed evidence packets (i.e., Petitioners and Respondent's) prior to the hearing day. Failure to do so might result in the undersigned excluding the witness(es) from participation in the hearing.

The parties are expected to work cooperatively on scheduling witnesses and/or making witnesses available to one another. Should either party anticipate a problem in gaining a witness' participation, counsel is directed to address it by contacting opposing counsel where appropriate, seeking a subpoena *ad testificandum*, or request an immediate pre-hearing conference call.

d. **Open / Closed Hearing.** Petitioners request that the hearing be closed to the public. The student who is the subject of this appeal will not [may be] be present during the hearing.

All witnesses will be sequestered.

e. **Special Accommodations.** The parties indicated that special accommodations or interpreter services are not necessary for any of the parties, representatives, and/or witnesses.

f. **Pre-Hearing Motions / Requests.** None are anticipated at this time. [Petitioners Respondent] will file a motion to [extend the 45 day time line] [dismiss] [for recusal] [consolidate multiple cases into one hearing]. The parties agreed to the following motion schedule: _____.

The parties agreed that the student's stay-put placement pending resolution of the dispute is _____.

g. **Stipulated Facts.** The parties are encouraged to stipulate to as many facts as can be agreed upon in order to facilitate and expedite the taking of testimony on the day of the hearing. Each party shall provide the Hearing Officer a list of joint stipulations of fact and material admissions three days prior to the due process hearing.¹ Each party shall stipulate and admit only those facts that are material, i.e., "significant to the issue or matter at hand."² Each party's counsel must certify in a letter, submitted at least one day prior to the due process hearing, that s/he has attempted in good faith to stipulate to material facts that are not in dispute.

h. **Burden of Persuasion / Production.** Respondent will proceed first on the day of the hearing and carry the burden of persuasion.

i. **Presentation of Case.** Each party will be given the opportunity to make an opening and closing statement. The parties have agreed that written opening and closing statements are not required. However, the Hearing Officer at his discretion may order written memoranda of law at the close of the hearing on specific issues raised during the hearing.

4. **Issues / Relief Sought / Agreements of the Parties.** The issues are limited to those raised in the Complaint.³ The undersigned has determined that he has the authority to hear the issues listed below and grant the relief sought by Petitioners.

¹ Material stipulations will streamline the presentation of evidence and testimony in the interest of a more efficient due process hearing.

² Black's Law Dictionary, 7th ed. Evidence is material if it has a logical connection to a fact of consequence to the outcome of the case.

³ If other issues are anticipated, Petitioners must seek to amend the complaint as set forth in the IDEA. *See* 34 C.F.R. § 300.508.(3).

Respondent has / has not filed a response to the Complaint [or sent prior written notice to the parent regarding the subject matter contained in the parent's due process complaint].⁴ Accordingly, Respondent has been directed to file a response by 5 p.m. on _____, _____, 2011. Respondent does / does not challenge the sufficiency of the Complaint. Accordingly, Respondent will challenge the sufficiency of the Complaint and will file a motion within the timelines set forth in paragraph "3(f)" above.

The issues and requested relief being presented for determination are as follows:

- a. Issue One
- b. Issue Two

5. **Decision.** Following the due process hearing, this Hearing Officer will mail a written findings of fact and decision to the parties. [Petitioner has elected an electronic findings of fact and decision. Following the due process hearing, this Hearing Officer will issue the findings of fact and decision to the parties via electronic mail.]

6. **Communication with Hearing Officer.** The parties understand that there are to be no *ex parte* communication with the Hearing Officer. Any written communications with the Hearing Officer, whether by mail, electronic mail, or facsimile transmission must be simultaneously copied / delivered to the other party. The Hearing Officer may be reached as follows:

⁴ If the school district has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the school district must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. § 300.508(e).

The parties will be held to the matters agreed upon, ordered, or otherwise set forth above. If either party believes this Hearing Officer in this Order has overlooked or misstated any item, s/he is directed to advise this Hearing Officer of the same within three (3) business days of the date of this Order (with a copy to opposing counsel). The concern will be addressed immediately.

IT IS SO ORDERED.

DATED:

HEARING OFFICER