



COMMONWEALTH OF VIRGINIA
Department of Education
Division of Special Education and Student Services
Office of Dispute Resolution and Administrative Services

**PROCEDURES FOR THE
EVALUATION OF HEARING OFFICER
MANAGEMENT OF DUE PROCESS HEARING**

Effective Date: April 1, 2006

STATEMENT OF PURPOSE

In accordance with 8 VAC 20-80-76 of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, the Virginia Department of Education (VDOE) is responsible for administering the special education due process hearing system. Included in this responsibility is oversight for the management of all hearings. VDOE, through its Office of Dispute Resolution/Administrative Services (ODR/AS), is also responsible for providing its hearing officers with guidance in managing hearings effectively, efficiently, and within regulated mandates.

ODR/AS has responsibility for assessing each hearing officer's performance in the hearing process. ODR/AS reviews all decisions, correspondences and other due process file information in order to ensure compliance with mandated timelines and other requirements. ODR/AS also incorporates input from the parties to the hearing in its analysis of the hearing system through an evaluation form provided to the parties following the conclusion of the hearing. ODR/AS is now expanding this evaluation process to include observations of pre-hearing conferences and/or hearings.

PROCESS FOR EVALUATING HEARING OFFICER PERFORMANCE

- ODR/AS shall employ retired/active special education hearing officers to serve in the role of evaluator of due process hearing officers.

An evaluator shall serve for a one-year term. Terms may be renewed by agreement of the ODR/AS director and the evaluator.

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If an active special education hearing officer, the evaluator may be retained on the special education hearing officer list maintained by the Supreme Court of Virginia but shall be ineligible to be assigned cases for the period of service as an evaluator. If the evaluator is not currently on the list, service as an evaluator shall not entitle the evaluator to be placed on the special education hearing officer list at the conclusion of any term as an evaluator. During any year of service, an evaluator is precluded from representing clients in special education matters.

The evaluator shall be required to attend all trainings on special education provided by VDOE for special education hearing officers.

The evaluator's role is to advise ODR/AS' director and coordinator of Due Process Services on hearing officers' management of pre-hearing conferences and hearings, as well as to provide the hearing officer feedback on the evaluator's observation.

The coordinator of Due Process Services assigns an evaluator to cases on a rotating basis. The coordinator contacts the evaluator to confirm availability for the assignment, and to ensure that there is no presenting conflict of interest. If the evaluator is unavailable, the coordinator contacts the next evaluator in the rotation. Once an evaluator is confirmed for a case, the coordinator notifies the hearing officer of the assignment so that reasonable scheduling accommodations can be made to allow the evaluator to attend pre-hearing conferences and the hearing. The coordinator provides the evaluator with a copy of the request for the due process hearing. The hearing officer provides the evaluator notice of all hearing and pre-hearing conference dates once being notified of the evaluator's assignment.

Pre-hearing conferences and hearings should not be delayed because of unavailability of an evaluator. ODR/AS will work with the evaluators, and the evaluators with each other, and the hearing officer to ensure that no case is disrupted by an evaluator's unavailability.

- The evaluator shall observe pre-hearing conferences that are either conducted telephonically or with parties present.

The evaluator will attend not more than two (2) days of hearing and two (2) days of pre-hearing conferences in any assigned case. The evaluator must review any mitigating circumstances necessitating a longer observation with the ODR/AS director and obtain the director's authorization to exceed a two-day observation and pre-hearing conferences.

The hearing officer introduces the evaluator during the opening of the due process hearing or pre-hearing conference. The evaluator briefly explains his/her role as observing the hearing officer's management of the hearing process.

The evaluator will complete the attached evaluation form for each hearing/pre-hearing conference attended. The evaluator will review the results of the evaluation with the hearing officer within a reasonable time following the hearing or pre-hearing conference

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(either in person or telephonically). The review shall take place **no more than** five (5) business days following the observation. A copy of the completed evaluation form shall be forwarded to the coordinator of Due Process Services and the hearing officer no later than **10 business days** following the observation.

Concerns discovered during the course of the evaluation regarding the hearing officer's management of the pre-hearing conference and/or hearing shall be addressed by ODR/AS' director and/or coordinator of Due Process Services with the hearing officer.

The evaluator shall discuss the report of the evaluation of the pre-hearing conference and/or hearing with the coordinator of Due Process Services and/or director of ODR/AS. The evaluator may also communicate suggestions for improvement, as well as any useful and/or needed training for the hearing officer.

The evaluator shall fully complete a report of the evaluation on the "*Evaluation of Hearing Officer Management of Due Process Hearing*" form, or *Pre-Hearing Conference Evaluation Form*. No invoice for payment from the evaluator will be processed prior to VDOE's receipt of a complete report of the evaluation.

The utilization of this evaluation process does not preclude ODR/AS' director and/or coordinator of Due Process Services from observing any hearings.

- Concerns of the hearing officer regarding an evaluation process shall be directed to ODR/AS' director or coordinator of Due Process Services.

Compensation for services as an evaluator will be in accordance with the fee schedule determined by VDOE. The evaluator must submit an invoice for payment using the standard invoice provided by ODR/AS for this purpose.

Upon completion of the evaluation process, the evaluator shall forward to ODR/AS the file record of the case, including all correspondence, reports, copies of electronic or telephonic messages, and otherwise file information relative to the pre-hearing conference and/or hearing. All evaluation reports and related correspondences are maintained by ODR/AS in the respective hearing officer's confidential personnel file¹.

- Results of the evaluation may be shared with the Office of the Executive Secretary, Supreme Court of Virginia. Results of the evaluations will be part of the ODR/AS director's annual review and determination of each hearing officer's recertification as a special education hearing officer.

¹ The Virginia Freedom of Information Act (FOIA), at §2.2-3704, requires public records to be open to inspection and copying.. However, §2.2-3705.1 of the *Code of Virginia* exempts personnel records from mandatory disclosure.

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PAYMENT OF EVALUATION COSTS

The VDOE will pay the costs of the evaluations as follows:

- Evaluators will be compensated for observing each hearing at the rate of \$850.00 per day. For pre-hearing conferences, the rate is \$150.00 per day. These are flat rates, regardless of the number of hours necessary to observe the hearing and review the evaluation results with the hearing officer and VDOE.
- Evaluators will be compensated according to state regulations for mileage, meals, and lodging.
- **Administrative Costs:** Evaluators will be compensated for preparation and duplication of the evaluation form, as well as telephonic/electronic communications, at a flat rate of \$75.00 per evaluation.