Indiana Department of Education

Office of Special Education/Due Process Team

November 2015

Procedures Manual

Introduction

In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.[1]

"Allan was left as an infant on the steps of an institution for persons with mental retardation in the late 1940s. By age 35, he had become blind and was frequently observed sitting in a corner of the room, slapping his heavily callused face as he rocked back and forth humming to himself. In the late 1970s, Allan was assessed properly for the first time. To the dismay of his examiners, he was found to be of average intelligence; further review of his records revealed that by observing fellow residents of the institution, he had learned self-injurious behavior that caused his total loss of vision. Although the institution began a special program to teach Allan to be more independent, a major portion of his life was lost because of a lack of appropriate assessments and effective interventions."[2]

"Unfortunately, Allan's history was repeated in the life experiences of tens of thousands of individuals with disabilities who lacked support from the IDEA. Inaccurate tests led to inappropriate labeling and ineffective education for most children with disabilities. Providing appropriate education to students from diverse cultural, racial, and ethnic backgrounds was especially challenging. Further, most families were not afforded the opportunity to be involved in planning or placement decisions regarding their child, and resources were not available to enable children with significant disabilities to live at home and receive an education at neighborhood schools in their community."[3]

Fast forward forty years. "Hector is a charming, outgoing, very active, six-year-old Hispanic child who lives with his family and attends his neighborhood school in Arizona. Early in 1st grade, Hector participated in a new behavioral program to address his sudden mood swings and frequent arguments and fights—both during class and on the playground. His teacher taught Hector specific social skills to improve his competence in such areas as answering questions,

[1] *Brown v. Board of Education*, 347 U.S. 483 (1954)

[2] *History: Twenty-Five Years of Progress in Educating Children with Disabilities through IDEA*. 2000. www2.ed.gov/offices/osers/osep

[3] *History: Twenty-Five Years of Progress in Educating Children with Disabilities through IDEA*. 2000. www2.ed.gov/offices/osers/osep

controlling his anger, and getting along with others. While working in a small cooperative group with three other students, Hector was able to observe firsthand other children who behaved properly at school."[4]

"By the end of 1st grade, Hector's behavior had changed dramatically. Hector was appropriately engaged and worked hard to complete his academic assignments each day. His behavior on the playground improved as well. Rather than respond impetuously, Hector kept his temper and played cooperatively with the other children. No longer viewed as a disruptive student, Hector and his family now look forward to a bright future with realistic hopes for continued success and high achievement in 2nd grade and beyond."[5]

Improving educational results for children with disabilities requires a continued focus on the full implementation of the IDEA to ensure that each student's educational placement and services are determined on an individual basis, according to the unique needs of each child, and are provided in the least restrictive environment.[6] Independent hearing officers play a discrete and important role in implementing the IDEA. May you move forward in your role as an IHO, inspired by the unique capacities of all children to learn, to grow, and to succeed.

[4] *History: Twenty-Five Years of Progress in Educating Children with Disabilities through IDEA*. 2000. www2.ed.gov/offices/osers/osep

[5] *History: Twenty-Five Years of Progress in Educating Children with Disabilities through IDEA*. 2000. www2.ed.gov/offices/osers/osep

[6] *History: Twenty-Five Years of Progress in Educating Children with Disabilities through IDEA*. 2000. www2.ed.gov/offices/osers/osep

Reauthorization

When the IDEA was reauthorized in 2004, Congress found that "parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways." 20 U.S.C. §1400(c)(8). Toward this end, the reauthorization provides that a party may not have a hearing until the party files a notice that meets the requirements of 20 USC §1415(b)(7)(A)(ii), 511 IAC 7-45-3(b), and 34 CFR §300.508(b). If the receiving party believes the request for hearing is not sufficient, the party may so notify the independent hearing officer (IHO) and the other party. The receiving party is also required to file a response to the hearing request. Further, if the parent is the party requesting the hearing, the school is required to conduct a resolution meeting with the parent in an effort to resolve the parent's concerns without the need for a hearing. These changes require the parties to be more forthcoming up front as to the nature of their concerns about the student and encourage the parties to meet and discuss the issues in an effort to reach resolution in a more informal manner and in a less costly and time-consuming manner before the parties get to a hearing.

The following procedures, consistent with Article 7 (511 IAC 7) and the Administrative Orders and Procedures Act (I.C. 4-21.5-3), have been developed to help parties navigate the process and to encourage all parties to work together for the best interests of the child. These procedures are not legal authority and are not to be cited as justification for any ruling or action taken by an IHO.

I. Initial Pleadings

A. Request for Due Process Hearing

The hearing process begins with the filing of a request for due process hearing. A parent, the school, or the Indiana Department of Education (IDOE) may file a request for a due process hearing when there is a dispute regarding: a student's identification and eligibility for special education and related services; the appropriateness of the educational evaluation or the student's proposed or current level of special education services or placement; or any other dispute involving the provision of a free appropriate public education (FAPE) for the student.

34 CFR §300.507(a); 511 IAC 7-45-3(a).

Contents of the request for hearing

The request for a due process hearing must:

- Be in writing and signed.
- Include student's name and address; or, in the case of a homeless student, available contact information for the student.
- Include the name of school the student attends.
- Include 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
- Include a proposed resolution of the problem to the extent known and available to the party at the time.

511 IAC 7-45-3(b); 34 CFR §300.508(b).

Format and Content of Request for Hearing

Instructions and a sample format for for filing a request for a due process hearing can be found at:

https://www.in.gov/doe/files/request-special-education-due-process-hearing.pdf

A party is not required to use the format provided, but the information described above must be included in any request for a due process hearing.

The **request should not include** any other motions, requests for discovery, or any other pleading or argument made in anticipation of arguments expected to be filed by the opposing party. Any other motions or preliminary pleadings must be filed separately.

Service

It is the responsibility of the party filing the request for a due process hearing to serve a copy of the request on the other party and to file a copy with the Office of Special Education (OSE), Indiana Department of Education (IDOE). The request for a due process hearing should be served by mail or personal delivery. If the request is sent by FAX, a hard copy must also to be mailed, and postmarked the same day, to the opposing party and the IDOE. Because the timelines for the opposing party to file a response, notice of insufficiency, and for the school to conduct the resolution session (if required) begin upon receipt of the request by the other party, it is strongly recommended that the party filing the request for a due process hearing serve the opposing party by certified mail, return receipt requested, or by personal delivery, so that a record of receipt can be made. **Neither the request for hearing nor any other information about the student should ever be sent by email.**

An initial request for hearing should never be sent directly to an IHO. The request must be sent to the opposing party and the IDOE. The IDOE will appoint an IHO and provide the IHO with a copy of the request for hearing. Should an IHO receive a request for hearing directly from a party before being appointed to that particular case, the IHO should securely destroy the request for hearing to ensure that personally identifiable information about the child is not further disclosed, and notify the party sending the request of the destruction.

Timelines

The timelines begin upon the date the party receiving the request for the due process hearing is served with the request. The OSE will notify the IHO of the date the request for due process hearing was received by the OSE, and the IHO may presume that the receiving party received the request on the same date the request was received by

the OSE. Either party may provide proof of the date of service to the IHO to establish a different date of service.

1. Appointment of IHO

   The OSE maintains an IHO rotation list. Upon receipt of a due process complaint, the OSE will assign the hearing to the next IHO on the list after confirming availability and the lack of a conflict of interest.

2. Notice to the Parties

   Once an IHO has been assigned, the OSE will send notification letters and a copy of the request for hearing to the IHO and the parties. The OSE will also include a summary of the timelines for conducting the hearing. However, **it is the responsibility of the IHO to determine timelines,** which may differ from those initially set forth by the OSE.

B. Preliminary Scheduling Order

Within two business days of receiving the notice of appointment, the IHO will issue a preliminary scheduling order notifying the parties of the specific timelines for filing the response, notice of insufficiency, and the commencement of the forty-five (45) day timeline for conducting the hearing, and issuing the decision. A sample preliminary scheduling order is included in Appendix A.

C. Response

Within 10 calendar days of receiving the hearing request, the party receiving the request for hearing must send a response to the other party that specifically addresses the issues raised in the due process hearing request. A copy of the response must also be sent to the

IHO. **No extensions of time are permitted.** The IHO has no authority to extend the time for party to file a response.
511 IAC 7-45-5; 34 CFR §300.508(e) & (f).

If the party receiving the request for hearing is the school, and the school has not sent written notice in accordance with 511 IAC 7-40-4(e) or 511 IAC 7-42-7 (34 CFR §300.503), then the school must send a response to the parent that includes the following:

1. An explanation of why the school proposed or refused to take the action raised in the due process hearing request.
2. A description of the following:
   A. Other options considered by the case conference committee (CCC) and the reasons why those options were rejected.
   B. Each:
      i. Evaluation;
      ii. Procedure;
      iii. Assessment;
      iv. Record; or
      v. Report;

      the school used as the basis for the proposed or refused action.
   C. Other factors that are relevant to the school's proposed or refused action.

511 IAC 7-45-5(b); 34 CFR §300.507(e).

A response by the school under 511 IAC 7-45-5(b) or 34 CFR §300.507(e) does not preclude the school from asserting, when appropriate, that the parent's hearing request was insufficient. 511 IAC 7-45-5(c); 34 CFR §300.507(e)(2).

D. Sufficiency

The due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 calendar days of receipt of the due process complaint, that the receiving party believes

the due process complaint does not meet the requirements of 511 IAC 7-45-3(b) and 34 CFR §300.508(b). The notice of insufficiency must identify how the request is insufficient. **No extensions of time are permitted.**
511 IAC 7-45-4(b); 34 CFR §300.508(d)(1).

Within 5 calendar days of receipt of notification of insufficiency, the hearing officer must make a determination **on the face of the due process hearing request** of whether it meets the requirements.
511 IAC 7-45-4(c); 34 CFR §300.508(d)(2).

There is no right of a party to file a response to the notice of insufficiency, nor can a party supplement its hearing request to avoid an IHO from determining the sufficiency of the request. The IHO must rule on the face of the hearing request.

If the IHO deems the hearing request is not sufficient, the IHO must identify how the request is insufficient so that the filing party can amend the due process hearing request if appropriate.
34 CFR §300.508(d)(2); 511 IAC 7-45-4(c).

Sufficiency v. Specificity

Some parties object to the specificity rather than sufficiency. This leads to confusion. Some parties appear to use these terms interchangeably. Sufficiency is what is required by the IDEA and Article 7. Specificity appears to be more related to discovery concerns rather than the sufficiency of a request for a hearing. An objection to specificity should not be used to object to the sufficiency of the hearing request. If a party objects to specificity, the IHO is not obligated to consider the objection as a notice of insufficiency and is not required to rule on the objection or motion within 5 days. If the IHO deems the hearing request to be sufficient, the responding party can utilize the discovery processes to obtain more specific information.

E. Amended Due Process Complaint

A party may amend its hearing request *only* if:

The IHO grants permission, or

The other party consents in writing and is given the opportunity to resolve the due process complaint through a resolution meeting.

511 IAC 7-45-4(d); 34 CFR §300.508(d)(3).

If amended, the timelines for the resolution meeting begin again.

511 IAC 7-45-4(e); 34 CFR §300.508(d)(4).

II. Resolution Meeting

A. Purpose

The purpose of the resolution meeting is for the parent to discuss the request for due process hearing and facts that form the basis of the request so that the school has the opportunity to resolve the dispute that is the basis of the request.
511 IAC 7-45-6(c); 34 CFR §300.510(a)(2).

The purpose of the resolution process is to attempt to achieve a prompt resolution of the parent's due process complaint as early as possible at the local level and to avoid the need for a more costly, adversarial, and time consuming due process proceeding. Thus, the IDEA's due process procedures emphasize prompt and early resolution of disputes between parents and public agencies through informal mechanisms at the local level without resorting to the more formal and costly due process hearing procedures and potential for civil litigation.
Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B), 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A C-1. (Appendix H).

B. Timeline

Within fifteen calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing, the school must convene a meeting with the parent and relevant members of the CCC who have specific knowledge of the facts identified in the hearing request. A resolution meeting is not required if the hearing was requested by the school.
511 IAC 7-45-6(a); 34 CFR §300.510(a)(1); *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-2. (Appendix H).

C. No Extension of Time (EOT) for Resolution Meeting

There is no provision that permits an IHO to grant an EOT for the parties to conduct a resolution session. Nor, for that matter, can the school or IDOE extend the timelines to take into account periods of school breaks. *Letter to Anderson*, 110 LRP 70096 (OSEP November 10, 2010). (Appendix H).

D. Participants

The participants in the resolution meeting are the parents and relevant members of the CCC who have specific knowledge of the facts identified in the due process hearing request, as determined by the parents and the public agency. The participants must include a representative of the public agency who has decision-making authority on behalf of the public agency, and may not include an attorney for the public agency unless the parent is accompanied by an attorney. 511 IAC 7-45-6(a) & (e); 34 CFR §300.510(a).

E. Waiver of Resolution Meeting

The resolution meeting need not be held if the parents and the public agency agree in writing to waive the meeting. 511 IAC 7-45-6(d)(1); 34 CFR §300.510(a)(3)(i).

F. Mediation in Lieu of Resolution Meeting

The resolution meeting need not be held if the parents and the public agency agree to use the mediation process described in 511 IAC 7-45-2. (511 IAC 7-45-6(d)(1); 34 CFR §300.510(a)(3)(i)). If the parties agree to use an outside mediation service or provider, the school is still required to conduct a resolution meeting as the outside mediation is not the process described in 511 IAC 7-45-2.

G. EOT for Mediation

Mediation does not extend the thirty (30) day resolution process in 511 IAC 7-45-6(f) unless the parties agree in writing to extend the process. (511 IAC 7-45-6(d)).
If the parties agree in writing to continue the mediation process beyond the end of the 30-day resolution period that began when the due process complaint was received, the 45-day due process hearing timeline does not begin until one of the parties withdraws from the mediation process or the parties agree in writing that no agreement can be reached through mediation. 34 CFR §300.510(c)(2) and (3). *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-24 (Appendix H). If the parties agree in writing to continue the mediation process beyond the end of the 30-day resolution period, the IHO must enter an order indicating the 45-day due process hearing timeline will not begin until the parties agree in writing that no agreement can be reached or one of the parties withdraws from mediation. The order should specify a time within which the mediation must be conducted. Failure to comply with the order may result in dismissal of the due process hearing. A sample order is included in Appendix A. **If the parties use an outside mediation service or provider rather than the mediation process described in 511 IAC 7-45-2, the 30 day resolution period cannot be extended.**

H. Parent Failure to Participate

If the parent fails to participate in the resolution meeting, the timelines for conducting the hearing will be delayed until the meeting is held.

If the parent refuses to participate after reasonable efforts have been made, the school may request that the IHO dismiss the parent's due process hearing request at the expiration of the thirty (30) day resolution period.
511 IAC 7-45-6(i); 34 CFR §300.510(b)(4).

I. School Failure to Conduct or Participate

If the school fails to hold or participate in the resolution meeting within fifteen (15) days of receiving the parent's due process hearing request, the parent may seek the intervention of the IHO to begin the forty-five (45) calendar day due process hearing timeline.
511 IAC 7-45-6(j); 34 CFR §300.510(b)(5).

If a party fails to participate in the resolution meeting and neither party seeks the intervention of the IHO to adjust the 30-day resolution period, the 45-day timeline for the due process hearing would remain in effect beginning at the end of the 30-day resolution period. 34 CFR §§300.510(b)(2) & 300.515(a); *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232 (OSEP 2013), Q/A D-14. (Appendix H).

J. Confidentiality

Unlike Mediation, the IDEA and its implementing regulations do not prohibit or require discussions that occur during a resolution meeting to remain confidential. Neither a school nor a parent may require a confidentiality agreement as a precondition to engage in a resolution meeting. Similarly, an IHO may not require the parties execute a confidentiality agreement prior to participating in a resolution meeting. There is no requirement under the IDEA or Article 7 requiring parties to a resolution meeting to keep the discussions that occur in those meetings confidential, including prohibiting the introduction of those discussions at any subsequent due process hearing or civil proceeding. There is also nothing in the IDEA or its implementing regulations that would prohibit the parties from entering into a confidentiality agreement as part of their resolution agreement resolving the dispute that gave rise to the parent's request for due process hearing. However, absent an enforceable agreement by the parties requiring that these discussions remain confidential, either party may introduce information discussed during the resolution meeting at a due process hearing or civil proceeding when

presenting evidence and confronting or cross-examining witnesses consistent with 34 CFR §300.512(a)(2). *Analysis of Comments and Changes*, 71 FR 46704 (August 14, 2006); *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-16, 17 & 18. (Appendix H).

K. Resolution Agreement

If agreement is reached, the parties execute a legally binding agreement that is signed by both parties. Because most settlement agreements contain confidentiality clauses, the IHO generally should not request a copy of the agreement. The agreement is enforceable in any state court with jurisdiction or a federal district court. The parties may also seek enforcement through a state complaint. Either party may void the agreement by notifying the other party in writing within 3 business days. (511 IAC 7-45-6(k), (l), & (m); 34 CFR §300.510(d) & (e)). If agreement is reached, the parent should either withdraw the hearing request or request that the IHO dismiss the matter. If the parent fails to do so, the school may request that the IHO dismiss the matter. If the IHO receives a request to dismiss from the school, unless the motion to dismiss was filed jointly, the IHO should give the parent an opportunity to respond.

III. Prehearing Conference(s)

The IHO may, on the IHO's own motion, and shall, on the motion of a party, conduct a prehearing conference. The IHO may deny a motion for a prehearing conference if the IHO has previously conducted a prehearing conference in the proceeding. I.C. 4-21.5-3-18(a). The prehearing conference may be conducted in person, or by telephone or video conference. I.C. 4-21.5-3-19(b). An initial prehearing conference should not be held until after the expiration of the 15 day time period for conducting a resolution meeting in hearings requested by the parent.

A. Purpose

The prehearing conference may deal with such matters as:

1. Resolution of the issues when the IHO has received a motion for summary judgment.
2. Exploration of settlement possibilities.
3. Preparation of stipulations.
4. Clarification of issues.
5. Rulings on identify and limitation of the number of witnesses.
6. Objections to proffers of evidence.
7. A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.
8. The order of presentation of evidence and cross-examination.
9. Rulings regarding issuance of subpoenas, discovery orders, and protective orders.
10. Such other matters as will promote the orderly and prompt conduct of the hearing.

I.C. 4-21.5-3-19(c).

B. Notice

The notice of prehearing conference (PHC) must include the following:

1. The names and mailing addresses of the parties and other persons to whom notice is being given by the IHO.

2. The name, official title, and mailing address of any counsel or employee who has been designated to appear for a party and a telephone number through which the counsel or employee may be reached.
3. The official cause number, the name of the proceeding, and a general description of the subject matter.
4. A statement of the time, place, and nature of the prehearing conference, including telephone numbers if the prehearing conference is conducted by telephone.
5. A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held.
6. The name, title, and mailing address of the IHO and a telephone number through which information concerning hearing schedules and procedures may be obtained.
7. A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under I.C. 4-21.5-3-24. A sample notice of PHC is included in Appendix A.

C. During the prehearing conference, the IHO may address any of the following:

1. Identification of the parties and their representatives.
2. Mailing addresses, fax numbers and other contact and service information.
3. Advise parties of their rights, including the right to:
    a. Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to special education or the problems of students with disabilities.
    b. Be represented by an individual who is not an attorney as permitted by I.C. 4-21.5-3-15(b).
    c. Present evidence and:
        i. Confront,
        i. Cross-examine; and
        ii. Compel the attendance of;

        witnesses.

d. Conduct discovery in accordance with I.C. 4-21.4-3, Indiana Rules of Trial Procedures (T.R. 26 – 37), and 511 IAC 7-45-7.
e. Prohibit the introduction of any evidence that has not been disclosed at least 5 business days prior to the hearing.
f. Separation of witnesses who are not parties to the dispute.
g. Obtain a written, or at the option of the parents, an electronic verbatim transcript of the hearing.
h. Obtain a written, or at the option of the parents, electronic findings of fact and decision.
i. Be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English. An interpreter will also be provided if required by a witness under the same circumstances.

511 IAC 7-45-7(d).

4. Additional rights of parents include the right to:
   a. Have the student attend the hearing.
   b. Have the hearing open or closed to the public.
   c. Inspect and review, prior to the hearing, any records pertaining to the student maintained by the school, its agents, or employees, including all tests and reports upon which the proposed action may be based.
   d. Recover reasonable attorney's fees if a court determines the parent ultimately prevailed at the:
      i. Due process hearing; or
      ii. Judicial review.
   e. Obtain a written or electronic verbatim transcript of the proceedings at no cost.
   f. Obtain a written or electronic findings of fact and decisions at no cost.

511 IAC 7-45-7(e).

5. Framing the issues.

   Framing the issues is the responsibility of the IHO, and is crucial for determining the course of the hearing. 511 IAC 7-45-7(f)(3).

6. Scheduling – maintaining timelines.

a. Resolution meeting/resolution period.
b. Hearing date(s).
c. Decision deadline.
d. Discovery issues and deadlines.
e. Disclosure of witness list and exhibits.

7. Witness identification and order of presentation. If the parent intends to call school employees as witnesses, the parent needs to provide sufficient notice to the school of the date and time for the testimony so the school can provide for a substitute if necessary.
8. Need for subpoenas.
9. Ruling on Motions
10. *Ex Parte* Communications
11. Procedural Versus Substantive Issues
12. Final Prehearing Immediately Prior to Hearing

D. The IHO **shall** issue a prehearing order incorporating the matters determined at the prehearing conference. I.C. 4-21.5-3-19(c).

IV. Discovery

A. Because all due process hearings involve issues concerning the provision of a free appropriate public education to a student with a disability, the parties should be encouraged to freely disclose all relevant records and documents concerning the student's education, disability, and how the disability affects educational performance, need for special education and related services, and placement decisions without the need to resort to formal discovery procedures.

B. Student Educational Records

The school must comply with a request from a parent or student of legal age to inspect and review the educational record before any meeting regarding an individualized educational program (IEP), an interim alternative educational setting (IAES), or a manifestation determination. The school must also comply with a request **to inspect and review** the educational record **prior to a resolution meeting, a due process hearing, or an expedited due process hearing**. 511 IAC 7-38-1(g); 34 CFR §300.613. The right to inspect and review educational records includes the right to receive a copy of the student's educational record from the school for use in a pending due process hearing. 511 IAC 7-38-1(d)(4). However, this does not mean that the school must provide a copy of the student's educational record prior to the resolution meeting. The parent, or parent's attorney, bears the responsibility to review the record prior to the hearing request and prior to the resolution meeting. The school must provide a copy of the student's educational record at least 5 business days prior to the hearing unless the IHO designates some other time.

C. Discovery in due process hearings is governed by 511 IAC 7-45-7 as well as the AOPA and the Indiana Rules of Trial Procedure. 511 IAC 7-45-7(d). A party is entitled to use the discovery provisions of Indiana Trial Rules 26 through 37 in an administrative hearing that is subject to judicial review. TR 28(F). See Appendix E for Trial Rules 26 through 37.

D. Because the timelines under the IDEA and Article 7 are so short, a party seeking discovery will need to start the discovery procedures promptly. Failing to do so will require that a party seek the intervention of the IHO to either shorten the timelines for the other party to respond to discovery, or to request an extension of time. The IHO has the discretion to deny such requests if a party has not been diligent. The IHO also has discretion to limit the scope of discovery to ensure the discovery is related to the issues raised and is not overly burdensome, oppressive, or conducted for improper purposes.

E. The discovery methods include:

1. Depositions upon oral examination – TR 30.
2. Deposition of witnesses upon written questions – TR 31.
3. Interrogatories – TR 33.
4. Production of documents – TR 34.
5. Physical and mental examination – TR 35.
6. Requests for admission – TR 36.

F. Protective orders.

The IHO has discretion to issue protective orders to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense. The protective order may include, but is not limited to, one or more of the following:

1. That discovery not be had.
2. That discovery may be had only on specified terms and conditions, which may include a designated time and place.
3. That discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
4. That certain matters not be inquired into, or that the scope of discovery be limited to certain matters.
5. Other protections within the sound discretion of the IHO.

TR 26(C).

G. Informal Resolution of Discovery Disputes

Before seeking the intervention of the IHO to compel discovery, a party shall make a reasonable effort to reach agreement with the opposing party concerning the matter which is the subject of the request and include in the motion a statement showing that the attorney has made a reasonable effort to reach agreement with the opposing party. The IHO may deny a discovery motion filed by a party who has failed to comply with this requirement. TR 26(F).

H. Failure to comply with discovery orders: Sanctions – IC 4-21.5-3-8 (AOPA)

The AOPA at IC 4-21.5-3-8 specifically allows for the imposition of sanctions. Before imposing sanctions, the IHO must provide notice and an opportunity to be heard. *Indpls. Public Schools* (Ind. SEA 729-93, Aug. 1, 1994), 21 IDELR 423, 21 LRP 2871. (Appendix I). (Decision of the BSEA affirming the decision of IHO James Roth, but amending the order on sanctions directing that Petitioner's attorney rather than Petitioner be responsible for the sanction.)

I. Failure to make or cooperate in discovery: Sanctions –TR 37.

If a party fails to obey an order to provide or permit discovery, the IHO may make such orders in regard to the failure as are just, including but not limited to the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order.
2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

TR 37(B).

Exhaustion of administrative remedies requires that a party first seek a discovery order from the administrative agency before seeking an order from the court compelling discovery. *State v. Frye*, 161 Ind.App. 247, 315 N.E.2d 399 (1974). Whether to impose the sanction of dismissal for refusal to comply with discovery orders is a matter for the trial court's discretion or the administrative agency in proceedings before it. *Drew v. Quantum Sys.*, 661 N.E.2d 594 (Ind.App. 1996). A party seeking a protective order must first attempt to obtain the order from the administrative agency before seeking a protective order from the court. *Riley v. Heritage Prods., Inc.*, 803 N.E.2d 1185 (Ind.App. 2004).

V. Motions

At appropriate stages, the IHO shall give the parties full opportunity to file pleadings, motions, and objections. I.C. 4-21.5-3-17. The IHO shall rule on all prehearing motions before the start of the hearing and all orders shall be provided in writing to the parties. Other than an objection to the sufficiency of the request for hearing, if a party files a motion, the IHO should allow the opposing party an opportunity to respond before ruling on the motion. During the course of the hearing or during prehearing proceedings, if an IHO takes a motion or objection under advisement, the ruling on the motion or objection shall be made prior to the close of the hearing and shall be made on the record or in writing such that the parties have notice of the ruling prior to the close of the hearing. If a party files a written motion, the IHO must issue a written order addressing the motion. Oral motions made during a prehearing conference must be addressed in the written prehearing order. Oral motions made during the hearing may be addressed through an oral order on the record or addressed in the written hearing decision.

Such motions may include, but are not limited to:

A. Motion to Disqualify – a request to disqualify an IHO, typically if a party believes the IHO is subject to disqualification under I.C. 4-21.5-3-10 or I.C. 4-21.5-3-12, or if such is necessary to eliminate the effect of an *ex parte* communication.

B. Motion to Strike – a request to amend by deleting one or more words.

C. Motion to Compel Discovery – a request to force the opposing party to respond to a discovery request.

D. Motion to Dismiss – a request that the IHO dismiss the case or one or more issues because of settlement, voluntary withdrawal, or a procedural defect.

E. Motion for Summary Judgment – a request for judgment without a hearing because there are no genuine issues of material fat to be decided by the IHO, and the party is entitled to

judgment as a matter of law. A motion for summary judgment must be served at least 5 days before any hearing on the motion. The opposing party may submit opposing affidavits before the day of the hearing. The IHO shall grant the judgment if the pleadings, depositions, answers to interrogatories, and admissions on file show that a genuine issue as to any material fact does not exist and the moving party is entitled to judgment as a matter of law. I.C. 4-21.5-3-23.

F. Motion for Protective Order – request that the IHO protect the party from abusive action by the other party, usually related to discovery.

G. Motion in Limine – a pretrial request that certain inadmissible evidence not be referred to or offered at hearing, typically when a party believes that the mere mention of the evidence would be highly prejudicial and could not be remedied by an instruction to the jury.

H. Motion for Stay-Put Order – a request to determine the placement of a student during the due process hearing or appeal of disciplinary action pursuant to 511 IAC 7-44-8 or 511 IAC 7-45-7(s)-(u).

VI. Disclosure of Witnesses and Evidence

A. Exchange Witness List and Evidence – 5-Day Rule

1. A party to a due process hearing has the right to prohibit the introduction of any evidence at the hearing that was not disclosed at least 5 business days prior to the hearing. 511 IAC 7-45-7(d)(5); 34 CFR §300.512(a)(3). The parties must, therefore, exchange exhibits and witness and exhibit lists at least a week before the hearing. The witness and exhibit **list** should also be provided to the IHO. **However, exhibits are not to be submitted to the IHO prior to the hearing.**
2. At least 5 business days prior to the 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. A hearing officer *may* bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without consent of the other party. 511 IAC 7-45-7(h); 34 CFR §300.512(b).

B. Order of Witnesses

The IHO may require the parties to provide the IHO with a list of the order in which witnesses will be called, including the approximate time. This is important as schools may need to schedule substitutes or otherwise schedule to cover classes if a teacher is being asked to testify. It is within the IHO's discretion to permit witnesses to be called out of order to accommodate schedules and to permit witnesses to testify by telephone or videoconference or other electronic means.

C. Subpoenas for Witnesses

Subpoenas are often required for non-party witnesses to ensure their attendance or to enable the witness to be excused from work. The IHO should inquire whether subpoenas are required for the attendance of witnesses. Schools may agree to make their employees available without a subpoena provided the parent provides notice as to when the employee will be needed. The IHO may require counsel to prepare the subpoena for IHO signature. The IHO may prepare the subpoena for *pro se* parties.

D. Evaluations

Evaluations that were conducted by either party and considered by the student's CCC are part of the student's education record. Any evaluation conducted by a party in preparation for the hearing or that has not been provided to the other party must be disclosed as set forth above in section VI.(A)(2).

E. Expert Witnesses

An expert witness is one who is qualified by knowledge, skill, experience, training or education to provide technical or specialized opinion about the evidence or a fact issue. The IHO has the discretion to determine whether a witness qualifies as an expert, and to determine the areas of expertise. *Expert Witnesses in Impartial Hearings Under the Individuals with Disabilities Education Act*, Perry A. Zirkel, © 2014, Lehigh University Special Education Law Symposium. (Appendix J). If a school psychologist is testifying only about his/her own evaluation or observations rather than opinion as to other matters not within the psychologist's direct observation and knowledge, then the psychologist is testifying as a witness with first-hank knowledge and not as an expert witness.

VII. Hearing

The IHO shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts. I.C. 4-21.5-3-25(b). The IHO may, after a prehearing order is issued under I.C. 4-21.5-3-19, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding. I.C. 4-21.5-3-25(d).

A. Final Prehearing Conference

A final prehearing conference should be conducted on the morning of the first day of the hearing. The purpose of the final prehearing conference is to ensure that all parties understand the hearing procedures and how the hearing will be conducted. The following may also be addressed:

1. Pending Motions

   The IHO should address any pending motions.

2. Separation of Witnesses/Presence of Party Representative

   Parities to due process hearings have a right to a separation of witnesses who are not parties. If requested, the IHO must order a separation of witnesses. A separation of witnesses order does not apply to a party, even if the party may be called upon to testify. A school is entitled to have a school representative, in addition to the school's attorney, remain during the hearing. If a special education cooperative or interlocal is also named as a party, the cooperative or interlocal is also entitled to have a representative remain during the hearing.

3. Witnesses

   Any special arrangements or considerations for witnesses may be addressed during the prehearing conference, such as testifying by telephone, joint witnesses, or calling witnesses out of order.

4. Any other concerns of the party.
5. Any other matters the IHO needs to address.

B. Recording

The IHO shall have the hearing recorded and a transcript prepared at the school's expense. The parent has the right to designate whether the parent would like an electronic or paper copy of the transcript. The parent can obtain the copy of the transcript from the DOE as set forth in section XI. H. (*Miscellaneous – Obtaining the Transcript or Record from the DOE*).

C. Burden of Persuasion

The party requesting the hearing has the burden of proof, and presents its case first.

D. Opening Statements

The IHO may permit the parties to make short opening statements. The parties should be reminded that opening statements are not evidence and that only the testimony of witnesses, documentary evidence, and any stipulations of the parties will be considered in rendering the decision.

E. Witnesses

All testimony must be given under oath or affirmation. The IHO may ask the court reporter to administer the oath or the IHO may administer the oath.

F. Interpreter Oath – I.C. 4-21.5-3-16

A person who cannot speak or understand the English language, or who, because of hearing, speaking, or other impairment, has difficulty communicating with other persons and who is a party or witness in the hearing is entitled to an interpreter to assist the person throughout the proceeding. Every interpreter for another person in a proceeding shall take the following oath:

"Do you affirm, under penalties of perjury, that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (her), the questions that may be asked him (her), and the answers that he (she) shall give to the questions, relative to the cause no under consideration before this hearing officer?"

G. Order of Questioning

1. Direct Examination – questioning of the witness by the party who called the witness to testify.
2. Cross-Examination – questioning of the witness by the party opposed to the party who called the witness to testify. Typically the cross-examiner is allowed to ask

leading questions, but is traditionally limited to matters covered on direct examination and to credibility issues. Sometimes an individual is on the witness list for both parties. When that is the case, the parties may agree that the cross-examiner may also conduct direct examination so the witness will not need to be called to testify later. Whether to permit this is within the discretion of the IHO. However, leading questions should not be permitted during what is, in essence, direct examination.

3. IHO – questioning by the IHO for clarification. Generally any questioning by the IHO should be limited to matters requiring clarification and not to elicit new testimony. It is not the role of the IHO to make, or refute, a case for a party. Care should be taken so the IHO is not perceived as advocating for a party.

H. Evidentiary Considerations – I.C. 4-21.5-3-26

Evidence must be relevant and material. All testimony must be under oath or affirmation. Documentary evidence may be in the form of a copy or excerpt. Upon request, parties shall be given the opportunity to compare the copy with the original if available. A party offering an excerpt may be required to produce the entire document if there are questions as to the context in which the excerpt appeared.

1. Exhibits

   All exhibits should be clearly numbered and labeled to identify the party submitting the exhibit. (E.g.: P-1, P-2, etc. (for parent or petitioner) and R-1, R-2, etc. or S-1, S-2, etc. (for respondent or school)). A party to a due process hearing has the right to prohibit the introduction of any evidence at the hearing that was not disclosed at least 5 business days prior to the hearing. 511 IAC 7-45-7(d)(5); 34 CFR §300.512(a)(3).

2. Relevant/Redundant

   Upon proper objection, the IHO shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts. In the absence of an objection, the IHO may exclude objectionable evidence. I.C. 4-21.5-3-26(a).

3. Hearsay

   The IHO may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does

not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence. I.C. 4-21.5-3-26(a).

4. Official Notice may be taken of the following:
   (a) Any fact that could be judicially noticed in the courts. (See I.R.E 201, Appendix F).
   (b) The record of other proceedings before the agency.
   (c) Technical or scientific matters within the agency's specialized knowledge.
   (d) Codes or standards that have been adopted by an agency of the United States or this state.

   IC 4-21.5-3-26(f).

   Parties must be notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under IC 4-21.5-3-26(f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and date, and afforded an opportunity to contest and rebut the facts or material noticed. IC 4-21.5-3-26(g).

I. Ruling

The IHO should rule on motions and objections at the time they are made. There may be times, however, when additional information is needed and the IHO takes the matter under advisement. The IHO must still rule on the motion or objection in a timely manner.

J. Closing Statements

At the conclusion of the hearing the IHO may permit the parties or their representatives to make closing statements. Closing statements give the parties an opportunity to summarize the evidence and make a legal argument for the party's position. Closing statements are not made under oath, are not considered testimony or evidence, and are not subject to cross examination. The IHO should impose and enforce a time limit for closing statements. Closing statements are not required, and may be waived by a party.

K. Post-Hearing Briefs

Post-hearing briefs may be submitted by the parties at the discretion of the IHO. The submission of post-hearing briefs should not, however, be used to delay the issuance of the final decision in the case. The IHO should not require the parties file post-hearing

briefs unless there is a particularly complex legal issue that needs to be briefed to provide the IHO a legal analysis to aid in reaching a decision. In that event, the IHO should clearly indicate to the parties the issue or issues to be briefed. Because preparing post-hearing briefs raises the costs to the parties, such briefs should not be required as a general rule.

L. Proposed Findings

The IHO may allow the parties a designated amount of time after the conclusion of the hearing to submit proposed findings. I.C. 4-21.5-3-27(f). However, the IHO should not require this. If a party requests the opportunity to submit proposed findings, it is within the IHO's discretion to permit such submission provided that it is done within the time proscribed for the issuance of the final decision, or the party specifically requests an extension of time, which is granted, without the IHO requesting that the party ask for an extension of time.

M. Request for Expedited Transcript

Should a party request an expedited transcript, the party requesting the expedited transcript is responsible making the arrangements with the court reporter for obtaining the expedited transcript and for paying the court reporter the fees associated with providing the expedited transcript. A parent is entitled to a copy of the transcript at no cost from the Indiana Department of Education. 511 IAC 7-45-7(o). There is no right to receive a transcript at no cost from the court reporter, from the IHO, or from any other entity or party. To receive a transcript at no cost, the parent (or the parent's attorney) will need to make a request, in writing, to the Indiana Department of Education after the conclusion of the hearing. After the hearing record has been received, the IDOE will provide a copy of the transcript to the parent.

VIII. Written decision – 511 IAC 7-45-7(j)

A. Timelines

If the hearing is requested by the parent, the IHO's written decision must be issued within 45 calendar days after the 30 day resolution period in 511 IAC 7-45-6(f), or one of the events in specified in 511 IAC 7-45-6(f)(1) through (3). 511 IAC 7-45-7(b). If the hearing is requested by the school, the IHO's written decision must be issued within 45 calendar days after the request for hearing was received by the parent. 511 IAC 7-45-7(a).

B. Service of Decision

The IHO shall mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. 511 IAC 7-45-7(m). The IHO should identify the hearing number on the return receipt and have the return receipt sent to the OSE to the attention of Kim Payton.

C. Content – 511 IAC 7-45-7(j)

The decision of the IHO shall be based solely upon the oral and written evidence presented at the hearing. 511 IAC 7-45-7(k). Oral and written statements and arguments of the attorneys or representatives are not evidence and cannot be used to establish the facts in the matter before the IHO. An IHO may not find that a student was denied a FAPE based upon procedural violations alone *unless* the procedural inadequacies: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the student; or (3) caused a deprivation of educational benefit. 511 IAC 7-45-7(k).

1. Findings of Fact

The order must include separately stated findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. I.C. 4-21.5-3-27(b). Findings of fact must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in the proceeding. Findings must be based upon the kind of evidence that is substantial and reliable. The IHO's experience, technical competence, and specialized knowledge may be used in evaluating evidence. I.C. 4-21.5-3.27 (d).

2. Conclusions of Law – Findings of Ultimate Fact

   Conclusions of law (or findings of ultimate fact as used in AOPA) must be accompanied by a concise statement of the underlying basic facts of record to support the findings.

3. Orders

   All orders issued must be directly related to the issues in the hearing and supported by the findings of fact and conclusions of law.

4. Notice of Right to Seek Judicial Review

   The IHO's decision must include a notice that a party may seek judicial review of the decision and orders by filing a petition for judicial review in a civil court with jurisdiction within thirty (30) calendar days after receipt of the IHO's decision. 511 IAC 7-45-7(j)(3).

5. Notice Concerning Action for Attorney Fees

   The IHO's decision must include a notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the IHO's decision if no request for judicial review is filed. 511 IAC 7-45-7(j)(4).

D. Modification of Final Order

Although I.C. 4-21.5-3-31 provides that an agency has jurisdiction to modify a final order before the earlier of 30 days or a court assumes jurisdiction, there is no provision in Article 7 or the IDEA that would similarly extend the 45 day timeline for issuing a final decision in a one-tier state. Clerical mistakes or other errors resulting from oversight or omission in a final order may be corrected provided the corrections do not substantively modify the IHO's decision. Any such modifications of the final order do not toll the period in which a party may file a petition for judicial review. I.C. 4-21.5-3-31(e).

Under 34 CFR §300.514(a), a decision made in a due process hearing conducted by the SEA is final, except that a party aggrieved by that decision may appeal the decision by bringing a civil action in a court of competent jurisdiction under 34 CFR §300.516. Once a final decision has been issued, no motion for reconsideration is permissible. Motions for reconsideration of interim orders are permitted. A party may request correction of technical or typographical errors when the correction does not change the outcome of the

hearing or substance of the final hearing decision. This type of request does not constitute a request for reconsideration. *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232 (OSEP 2013), Q/A C-25. (Appendix H).

IX. Dismissal and Default

A. Dismissal

Dismissal most often occurs when the petitioner withdraws the request for hearing or requests dismissal because the parties have reached an agreement or have agreed to utilize an alternative means of dispute resolution. Dismissal may also occur as a sanction for the petitioner's failure to prosecute the case, comply with discovery or other orders, or as a sanction for delay or contumacious conduct. Dismissal may either be without or with prejudice. Before ordering an involuntary dismissal, the IHO should warn the party of the possibility of dismissal if nonconforming behavior continues.

1. Without prejudice

   Dismissal without prejudice means that the petitioner has not forfeited or lost any rights and may request another hearing concerning the same issues. (Petitioner should be aware of any applicable statute of limitations if contemplating refiling concerning the same issues.)

2. With prejudice

   Dismissal with prejudice is as conclusive of the rights of the parties as if the action had proceeded to final judgment adverse to the petitioner. The petitioner is foreclosed from refiling another request for hearing concerning the same issues and same parties. Dismissal with prejudice occurs most often as a result of the parties reaching a settlement agreement. In that case, dismissal with prejudice is part of the agreement of the parties and the IHO may dismiss with prejudice. If the parent is not represented by counsel, the IHO should ensure that the parent understands what it means to agree to a dismissal with prejudice.

B. Default judgment – I.C. 4-21.5-3-24

If a party fails to file a required responsive pleading or fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding, the IHO may serve upon the parties written notice of a proposed default or dismissal order, including a statement of the grounds.

X. Expedited Hearings – 511 IAC 7-45-10

A. An expedited due process hearing will be conducted in the following situations:
   1. The parent requests a hearing because the parent disagrees with:
      a. a determination that the student's behavior was not a manifestation of the student's disability; or
      b. the public agency's decision regarding the student's disciplinary change of placement under 511 IAC 7-44-3.
   2. The public agency requests an expedited hearing because the public agency maintains that it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student's placement in an interim alternative educational setting.

B. The same rules for conducting a due process hearing apply to expedited hearings except that:
   1. the expedited hearing must occur within 20 instructional days of the date the request was received by the school and result in a determination within 10 instructional days after the hearing;
   2. a resolution meeting must occur within 7 calendar days of the date the hearing request was received by the school unless the parties agree in writing to waive the resolution meeting or to use mediation under 511 IAC 7-45-2;
   3. the hearing may proceed if the parties have not resolved the matter within 15 days of receipt of the hearing request;
   4. the IHO shall not grant any extensions of time; and
   5. the requirements of sufficiency under 511 IAC 7-45-4 are not applicable.

C. At any time after the initiation of an expedited due process hearing the parties may agree to waive the requirements of the expedited process and proceed under 511 IAC 7-45-3 through 8.

XI. Miscellaneous

A. *Ex Parte* Communications – I.C. 4-21.5-3-11; I.C. 4-21.5-3-33; I.C. 4-21.5-3-36; I.C. 4-21.5-3-37

During the pendency of a proceeding, an IHO may not communicate with any party regarding any issue in the proceeding. Should an IHO receive an *ex parte* communication in violation of I.C. 4-21.5-3-11, the IHO shall place on the record all written communication received, all written responses to the communication, and a memorandum stating the substance of all oral communication received, all responses made, and the identify of each individual from whom the IHO received an *ex parte* communication. A violation is subject to the sanctions set forth in I.C. 4-21.5-3-36 & 37.

B. Corresponding Via Email

No personally identifiable student information is to be sent or received via email communications. An IHO may communicate with parties or attorneys via email only on procedural or scheduling matters, and only if both parties have agreed to this method of communication. A party cannot be compelled to accept service of notices by email. Neither the subject of the email or the body of the email, including any attachments, can contain the name of the student or any other information concerning a student. If email is used for scheduling or to address other procedural matters, all email communications must be sent so all parties or their attorneys (no *ex parte* emails). The IHO must print all email communications and include them in the record of the proceedings.

C. Filing by Facsimile (FAX)

Pleadings or other documents submitted by facsimile will be considered filed on the date sent by facsimile provided they are sent prior to the close of business as identified by the IHO. Pleadings sent after the close of business will be considered filed on the next business day. Because documents sent by facsimile are sometimes difficult to read, a party should send a hard copy by mail.

D. Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C 1232g; 34 CFR Part 99, provides in part that a student's educational record is confidential. Similar requirements are included in Article 7 and the IDEA. Disclosures of student information from a school or a parent are made for the purpose of resolving a dispute through the

hearing process. An IHO must keep all student information confidential. The written decision is not to include a student's name or the name of the student's parents or other information that would make the student easily identifiable. At the conclusion of a hearing, the IHO must submit the official record of the proceedings to the IDOE. The IHO shall not retain copies of exhibits or other documents containing personally identifiable student information.

E. Ensuring Civility

The IHO has the discretion and authority to maintain order and civility throughout the proceedings. The IHO may require a party or a party's representative to sign a statement as to the appropriate standard of conduct expected in the proceedings. An IHO may impose sanctions on a party or a party's representative who continues to disregard orders or engage in contumacious behavior, up to and including dismissal. *Edward S. and Virginia S. v. West Noble School Corporation*, 63 IDELR 34 (N.D. Ind. 2014). (Appendix I).

F. Controlling Timelines and Proceedings

The IHO has the responsibility to maintain timelines pursuant to the requirements of the IDEA and Article 7. The IHO has discretion and authority to control the proceedings.

G. Providing Record to the DOE

Upon the conclusion hearing and after the decision has been issued and sent to the parties, the IHO must ensure that the record of the proceedings are organized. The IHO must certify the record and submit the record to the DOE.

H. Obtaining the Transcript or Record from the DOE

After the conclusion of the hearing, a parent may obtain an electronic or paper copy of the transcript (as specified by the parent during the prehearing conference) upon submitting a written request to the DOE. If a party requests a copy of the transcript directly from the court reporter, the party does so at its own expense. If the IHO is aware of such a request, the IHO should advise the party that if the party requests a transcript from the court reporter, the party will be responsible for the cost. A party may obtain a copy without cost from the DOE after the conclusion of the hearing.