

**3525.4110 PREHEARING CONFERENCE.**

Subpart 1. **Generally.** A prehearing conference must be held within five business days of the date the department appoints the hearing officer. The hearing officer will initiate the prehearing conference which may be conducted by telephone or in person at a location within the district. The hearing officer will have a written verbatim record of the prehearing conference created which must be made available to both parties if either party requests the record.

Subp. 2. **Purpose.** The hearing officer has the following duties at a prehearing conference:

A. The hearing officer must establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition including, but not limited to:

- (1) informing the parties of their rights should the dispute proceed;
- (2) ensuring parents have been provided access to or copies of all education records and ensuring all required notices, information on the pupil's educational progress, and any information requested by the hearing officer has been shared between the parties with copies provided to the hearing officer;
- (3) determining the necessity for participation of appropriate districts, issuing orders to join agencies not already participating and consolidating cases pursuant to part 3525.4350;
- (4) determining the amount of time parties will have to present their cases by balancing the due process rights of the parties with the need for administrative efficiency and limited public resources; and
- (5) requiring and assisting the parties in establishing lists of written exhibits and witnesses necessary for each party to make its case, such as responding to requests to hearing officers to compel the attendance of witnesses, determining the necessity of telephone testimony, and stipulating to undisputed facts. A hearing officer may permit a witness to testify via telephone if such a procedure would not prejudice either party.

B. The hearing officer must clearly identify the questions the hearing officer must answer to resolve the dispute and eliminate claims and complaints that are frivolous or beyond a statute of limitations period. If necessary, the hearing officer must assist the parties in identifying the issues for hearing.

C. The hearing officer must set a scheduling order for the hearing and for any additional prehearing activities including requests for extensions to the 45-day timeline in which to dispose of the matter. A hearing officer may only grant an extension for a period of up to 30 calendar days if the requesting party shows good cause on the record. Extensions

may last longer than 30 calendar days if both parties agree and the hearing officer approves. All written orders granting or denying motions must be filed with the department. All orders granting or denying motions to extend the 45-day timeline must be in writing. The hearing officer may require an independent education evaluation be conducted at district expense.

D. The hearing officer must determine if the hearing may be disposed of without an evidentiary hearing and set the schedule and procedure accordingly. The hearing officer may dispose of any issue without an evidentiary hearing if there are no material facts in dispute. The hearing officer may facilitate a settlement, if possible, including suggesting the parties participate in mediation or another alternative dispute resolution option.

Subp. 3. **Hearing officer authority.** The hearing officer has the authority to take any actions necessary to ensure the compliance with all requirements of law and may dismiss the matter, with or without prejudice, if the party requesting the hearing fails to provide information required or ordered by the hearing officer.

Subp. 4. **Subpoenas.** Parties may request subpoenas for witnesses from the hearing officer. A subpoena must include a statement that federal law gives parties to a special education due process hearing the right to compel the attendance of witnesses. A hearing officer may refuse to issue a subpoena for a proposed witness who is to offer evidence the hearing officer determines will be incompetent, irrelevant, immaterial, or unduly repetitious.

**Statutory Authority:** *L 2003 1Sp9 art 3 s 19*

**History:** *28 SR 1292*

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