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**IMPORTANT UPDATE FOR HEARING OFFICERS**

2 messages

**Jones, Kathryn** <kathryn.jones@doe.virginia.gov>

Thu, Sep 3, 2020 at 12:34 PM

To: Patricia Haymes &lt;patricia.haymes@doe.virginia.gov&gt;, "Hollins, Samantha" &lt;samantha.hollins@doe.virginia.gov&gt;, Sheila Gray &lt;sheila.gray@doe.virginia.gov&gt;

Bcc: hallie.bereny@doe.virginia.gov

**Please read the following *time-sensitive* correspondence that I have been asked to send to you on behalf of Patricia Haymes, Director of the Office of Dispute Resolution and Administrative Services.**

Dear Special Education Hearing Officers,

As you may be aware, the Office of Special Education Programs at the US Department of Education (USED) conducted an on-site monitoring visit at the Virginia Department of Education (VDOE) in 2019.

Their visit resulted in a finding of noncompliance in several areas. I have attached a copy of OSEP's June 23, 2020 letter so that you may read it in full.

Please read the following information carefully and note that you are required to:

1. Read the updated version of *Managing the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers* (see attached); and
2. Read the updated Due Process Policies and Procedures (see attached).

**No later than September 15, 2020. You are required to certify to VDOE's Office of Dispute Resolution and Administrative Services that you have completed these tasks.**

**With regard to due process complaints and hearings, OSEP concluded that:**

1. The State is not exercising its general supervisory and monitoring responsibilities in accordance with 20 U.S.C. §§ 1412(a)(11)(A) and 1416(a) and 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2) with regard to the following:

- a. VDOE does not ensure and document that LEAs track the implementation of the timelines for the resolution process for due process complaints filed by parents in 34 C.F.R. § 300.510 and for calculating the beginning and expiration of the 45- day due process hearing decision timeline in 34 C.F.R. § 300.515(a), unless under 34 C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of a party to the hearing; and
- b. VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(c)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(c)(2) in order to properly track due process hearing decision timelines.

2. Consequently, OSEP concludes that the State does not have procedures and practices that are reasonably designed to ensure a timely resolution process for due process complaints filed by parents or the timely adjudication of due process complaints that result in due process hearings, or a timely resolution process for expedited due process complaints, and the timely adjudication of expedited due process hearings.

3. Because the State does not have a mechanism to reliably determine the date on which the 45-day due process hearing timeline in 34 C.F.R. § 300.515(a) commences, the State is unable to report valid and reliable data on the adjudication of due process complaints as required under Section 618(a)(1)(F) of IDEA.
4. Because the State does not have a mechanism for reliably determining whether expedited hearing timelines are met, the State is unable to report valid and reliable data on expedited due process hearings in accordance with Section 618(a) of IDEA.

**As a result, OSEP issued the following Required Actions/Next Steps:**

Within 90 days of the date of this letter, the State must:

1. Submit documentation demonstrating that the State has revised its dispute resolution procedures and practices and is implementing those revisions, to ensure that:
  - a. The State has a mechanism for tracking the timelines for the resolution process required under 34 C.F.R. § 300.510 to determine when: resolution meetings occur; the 30-day resolution period or the adjusted resolution period has concluded; and the 45-day hearing timeline commences;
  - b. The State has a mechanism for tracking the timelines for resolution meetings and the resolution period for expedited due process complaints in 34 C.F.R. § 300.532(c)(3) and for determining whether expedited due process hearings and determinations in those hearings occur within the timelines required in 34 C.F.R. § 300.532(c)(2); and
  - c. Hearing officers are receiving appropriate training allowing them to apply and track the resolution period timelines for all due process hearings.
2. Submit documentation demonstrating that the State has reviewed its due process hearing data collection processes and revised them, as necessary, to ensure that, consistent with the information set forth above, it will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA Section 618 dispute resolution data submission for due process hearings conducted pursuant to 34 C.F.R. §§ 300.511–300.515 and for expedited due process hearings conducted pursuant to 34 C.F.R. § 300.532 for the School Year 2020–2021 data collection. The reporting year for this data collection is July 1, 2020 through June 30, 2021.
3. Submit a copy of the notification to be issued to all hearing officers, LEAs, parent advocacy groups, and other interested parties advising them that the State has revised and is implementing procedures for tracking the timeliness of the resolution process and fully adjudicated due process hearing decisions to be consistent with the required actions described above.

**VDOE Response**

VDOE maintains that hearing officers have been trained to, and do, track timelines, as well as any changes to timelines, via Pre-Hearing Reports and/or Orders that are provided to VDOE. Further, hearing officers are required to inquire regarding the status of resolution and VDOE monitors ensure that hearing officers make such inquiries. Any changes to timelines must be clearly stated in the record. VDOE strongly disagrees with USED's conclusion that VDOE does not have mechanisms in place for accurately ensuring compliance with timelines and maintains that such conclusions are based on misunderstandings of fact regarding VDOE's process.

However, VDOE has acknowledged that USED would prefer for all of this information to be clearly stated in the final decision for fully adjudicated cases and to be tracked in a database-like manner. Although VDOE maintains that has accurately and reliably tracked information pertaining to both expedited and non-expedited cases, VDOE has no objection to streamlining the practices and procedures to ensure a clear record and to streamline the monitoring process or to providing training to hearing officers to assist in their issuance of timely decisions.

In response to USED's letter and the required actions stated therein, VDOE has reviewed its dispute resolution procedures and practices and has made several changes/additions/clarifications to ensure that timelines are appropriately monitored.

First, due process procedures have been updated to reflect that hearing officers must require parties to confirm when a resolution meeting occurs so that it may be documented on the record, with copy to VDOE. Hearing officers will be required to delineate the end of the 30-day resolution period, any adjustments to the 30-day period, and the first day of the 45-day period on the record, with copy to VDOE. Fully adjudicated decisions will be required to include a procedural history section that includes all relevant timeline information, including whether and when a resolution meeting occurred.

Hearing officers will be required to provide VDOE with a case closure report that outlines case timelines, including but not limited to resolution meeting and resolution period information, and any continuances or extensions of any period. VDOE has prepared a Case Closure Report for hearing officers that can be found in the appendix of VDOE's updated guidance document for hearing officers: *Managing the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers*.

For expedited cases, hearing officers must outline the case timeline and decision due date in a Pre-Hearing Report or Order, with copy to VDOE; the report should include the hearing officer's factual findings regarding which days are "school days" for purposes of calculating expedited timelines (this determination is often relevant during the summer and when holidays fall during the relevant period).

VDOE has updated the document *Managing the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers* with emphasis on documenting adjustments to the 30-day resolution period and 45-day period in non-expedited cases, documenting when and whether a resolution meeting occurred, and on clearly documenting how the expedited timeline was calculated (including documenting days determined to be "school days").

VDOE began tracking the date of resolution meetings and whether the meetings were timely at the beginning of the 2019-2020 school year. VDOE will continue to track this data. Of relevance to this letter, VDOE will continue tracking: Resolution meeting due date (7 days in expedited cases, 15 days in non-expedited cases), Original resolution period end date (15 days in expedited cases, 30 days in non-expedited cases), Adjusted end of resolution period (if applicable), First day of 45 day period (adjusted as necessary), Resolution meeting held (yes/no), Date of Resolution Meeting, Written Agreement Reached at Resolution meeting (yes/no), Resolution Meeting Timely (yes/no), Original Decision Due Date (45 days from end of final resolution period for non-expedited cases). For expedited cases, this will be case specific and based on hearing officer Orders calculating filing date, school days, hearing date, and decision date), Continued Decision Due Date (non-expedited cases in which a continuance to the 45-day period was granted), Date Final Decision Issued, Whether the final Decision was within the original timeline, whether the final Decision was within the extended timeline (note that there are no continuances in expedited cases). Hearing officers, your prompt submission of Pre-Hearing Reports and Orders and Case Closure reports are key to our ability to accurately and timely track these factors.

VDOE has updated *Managing the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers* with consideration to the changes to the procedures and to provide guidance on following the procedures and managing the timeline and resolution period in both expedited and non-expedited cases. **Hearing Officers are required to certify that they have thoroughly read the updated procedures and guidance document to qualify for recertification to hear special education cases no later than September 15, 2020. VDOE will also include training on these matters at its annual training in September 2020.**

VDOE has revised and is implementing procedures for tracking the timeliness of the resolution process and fully adjudicated due process hearing decisions to be consistent with USED's required actions. VDOE is still in conversations with USED about developing our final Corrective Action Plan based on the monitoring visit so we may follow up with you based on additional specifics or items discussed with OSEP. We appreciate all of your hard work and please do feel free to contact us regarding ideas or feedback about these updates.

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Attachments:

*Monitoring the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers* (2020) (We have attached this in both pdf and word so that you may easily copy from the sample forms in the Appendix)

Due Process Policies and Procedures (2020) (pdf)

USED/OSEP Monitoring Letter (pdf)





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**4 attachments**

-  **DP Policies and Procedures 2020.pdf**  
401K
-  **Managing the Timeline in Due Process Hearings 2020.docx**  
210K
-  **OSEP Monitoring Letter.pdf**  
371K
-  **Managing the Timeline in Due Process Hearings 2020.pdf**  
954K

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**Jones, Kathryn** <kathryn.jones@doe.virginia.gov>  
To: Hallie Bereny <hallie.bereny@doe.virginia.gov>

Fri, Feb 18, 2022 at 11:22 AM

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