

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2602(b)(11)) (2009 Supp.), hereby gives notice of the adoption as final of section E-3030 in Chapter 30 (Special Education Policy) of Title 5-E (Education, Original Title 5) of the District of Columbia Municipal Regulations (DCMR). The rule is being adopted in substantially the same form as proposed on October 16, 2009, with the addition of minor conforming language revisions, and shall be effective on the date of the publication of this notice in the *D.C. Register*.

Section E-3030 was published as a proposed rulemaking in the *D.C. Register* for public comment on May 29, 2009 (56 DCR 4208); discussed at two public hearings in August 2009 (notice of the public hearings was published in the *D.C. Register* on July 31, 2009 (56 DCR 6002)); and revised and republished as a proposed rulemaking in the *D.C. Register* for public comment on October 16, 2009 (56 DCR 8199).

The rule sets forth the procedures regarding special education resolution meetings and due process hearings and decisions following the filing of an administrative due process complaint, as required by the Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773; 20 U.S.C. §1400 *et seq.*) (IDEA). Under the IDEA, a local education agency (LEA) or a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or relating to the provision of a free and appropriate public education to the child. The IDEA mandates that the parties convene a resolution meeting to resolve the complaint, unless waived by the parties or the parties engage in mediation. The IDEA also requires a timeline for an administrative hearing if the complaint is not otherwise resolved.

Section E-3030 of Title 5 of the DCMR is amended to read as follows:

E-3030 RESOLUTION MEETING, DUE PROCESS HEARING, AND FINAL DECISION PROCEDURE

E-3030.1 Resolution Meeting. Within fifteen (15) days after receiving notice of a parent's due process complaint, and prior to the initiation of a due process hearing, the local education agency (LEA) shall convene a resolution meeting with the parent and the relevant member(s) of the Individualized Education Program (IEP) team who have specific knowledge of the facts identified in the due process complaint. The LEA shall not be required to convene a resolution meeting if the parent and the LEA agree in writing to waive the meeting or agree to use the mediation process described in

section E-3028. The resolution meeting shall meet the following standards:

- (a) The meeting shall include a representative of the LEA who has decision making authority on behalf of the LEA;
- (b) The meeting may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
- (c) The purpose of the meeting shall be for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has an opportunity to resolve the dispute that forms the basis of the due process complaint.

- E-3030.2 Relevant Team Members. The parent and the LEA shall determine the relevant members of the IEP team to attend the resolution meeting.
- E-3030.3 Resolution Period. If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days after the receipt of the due process complaint, the due process hearing may occur.
- E-3030.4 Except as provided in section E-3030.8, the timeline for issuing a final decision under section E-3030.11 shall begin at the expiration of the thirty (30) day period identified in section E-3030.3.
- E-3030.5 Except where the LEA and the parent have jointly agreed to waive the resolution process or to use mediation, when a parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that a hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request shall include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. The reasonable measures shall be documented using the procedures in section E-3026.4. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.
- E-3030.6 If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable measures have been made and documented using the procedures in section E-3026.4, the LEA may, at the conclusion of the thirty (30) day period, request that a hearing officer dismiss the parent's due process complaint. Any such request shall include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. The reasonable measures shall be documented using the procedures in section E- 3026.4. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.
- E-3030.7 If the LEA fails to hold the resolution meeting specified in section

E-3030.1 within fifteen (15) days after receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

E-3030.8 Adjustments to Thirty (30) Day Resolution Period. The forty-five (45) day timeline for the due process hearing in section E-3030.11 shall start on the day after any one (1) of the following events occurs:

- (a) The LEA and the parent agree in writing to waive the resolution meeting;
- (b) The mediation or resolution meeting starts but, before the end of the thirty (30) day period, the LEA and parent agree in writing that no agreement is possible; or
- (c) The parent and the LEA agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but the parent or LEA later withdraws from the mediation process.

E-3030.9 Written Settlement Agreement. If a resolution to the dispute is reached at the meeting described in section E-3030.1, the parent and the LEA shall execute a legally binding agreement that:

- (a) Is signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and
- (b) Contains a provision stating that it shall be enforceable in any state court of competent jurisdiction or in a District Court of the United States.

E-3030.10 Agreement Review Period. If the LEA and parent execute an agreement pursuant to section E-3030.9, either party may void such agreement within three (3) business days after the agreement's execution. The party who voids the agreement shall provide written notice to all other parties to the agreement.

E-3030.11 Due Process Hearing. Not later than forty-five (45) days after the expiration of the thirty (30) day resolution period or any adjusted time period described in section E-3030.8:

- (a) A final decision shall be reached in the hearing; and
- (b) A copy of the decision shall be:
 - (1) Mailed to each of the parties; or
 - (2) Transmitted electronically or by facsimile to each of the parties if all of the parties to the due process complaint consent to such electronic or facsimile transmission.

E-3030.12 Extension of timeline. An impartial hearing officer may, for good cause shown, grant specific extensions of time beyond the periods set forth in section 3030.11 at the request of either party.

- E-3030.13 Hearing Officer Determination (HOD). The HOD shall be in writing. The hearing officer shall include the following in the HOD:
- (a) The identity of the parties;
 - (b) The identity of the student, which shall include the student's name, student identification (ID) number, date of birth, and attending school;
 - (c) The case number;
 - (d) Findings of fact and conclusions of law, separately stated;
 - (e) The final determination;
 - (f) What must be done by each party, where applicable, to carry out the decision, including the establishment of timelines for each step or action, and by whom;
 - (g) Any appeal rights; and
 - (h) The hearing officer's signature, which must be dated and which may be designated by electronic signature.
- E-3030.14 Burden of Proof. The burden of proof shall be the responsibility of the party seeking relief;. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.
- E-3030.15 Publication of HODs. After deleting personally identifiable information from hearing decisions, the Student Hearing Office of the District of Columbia shall transmit the findings and decisions to the State Education Agency Advisory Panel and make the findings and decisions available to the public.