HO Script – 1st Prehearing – Scheduling Conference

Good morning. My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. I am the hearing officer assigned to DP #\_\_\_\_\_\_\_. My address is :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. My email address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. My telephone number is \_\_\_\_\_\_\_\_\_\_\_\_\_(if you want to give it).

Would the attorney for the school district attorney state your appearance for the record?

This due process hearing concern the child, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Would the parent(s) state their appearance for the record. Is the father present with you today? Do you have the ability to send or receive documents by fax? What is your fax number? Do you have the ability to send or receive documents by email? What is your email address? Are the parents represented by counsel at this time?

{*I am notifying the parents on the record that if that situation changes and you retain an attorney to represent you and your child in this matter, that you immediately notify bo5h me and the school district attorney at to the name, address and telephone number of your counsel. Is that understood?}*

Let me address at the time the role of the Special Education Resolution Center, which will often be referred to as SERC. SERC is functioning in the same role as a court clerk. It is SERC”s responsibility to maintain the official records for this due process hearing. This would be very critical in the event that the case proceeds to hearing and either party should seek an appeal of the decision. Therefore I am notifying each party that they must send a copy of any written pleading or any email message that directly involves this hearing to SERC. The address for SERC is 9726 E. 42nd Street, Suite 203. The telephone number there is (918)270-1849. The fax number is 918- 267-0028. Their website is www.okserc.org. SERC is also available as a resource for either party needing additional information about the procedure of the due process hearing, resolution session, mediation services or questions of that sort.

For our purposes. Let’s discuss communication between the parties. Due to the distances involved, I would prefer that we continue to communicate by email. Is that convenient for the parents? Is that convenient for the school district? To preserved confidentiality, please use generic terms such as parent, school district, etc. rather than the actual names of either of the parties. A related topic that needs to be discussed is ex-parte communication. For the parents benefit, let me explain that ex-parte communication means contact by one of the parties with the hearing officer when the other party in not included. This is strictly prohibited. Therefore I am going to include, as part of my order today, that whenever either of the parties feels it is necessary to communicate with the hearing officer, that the other party receive a copy of the communication at the same time. Do the parents have any questions in that regard? Does the school district have any questions in that regard? Now it is not proper for me as the hearing officer to receive copies of all communication between the parties. I do not need to be and should not be sent copies of e-mails which are attempts by the parties to resolve the dispute between themselves, to arrange the dates and times for the resolution session or mediation appointments, etc. So, in other words, communication intended or directed solely to the other party that does not require any action on my part, need not and should not be forwarded to me so that I can maintain and unbiased position in this matter. Do the parents have any questions in that regard? Does the school district have any questions in that regard?

Let’s turn our attention now to the Due Process Hearing. The complaint was received by all parties on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Has the school district provided the parents with a copy of their procedural safeguards? *{It is a document that sets out your rights and responsibilities and discusses the procedures utilized in a due process hearing. If not, order that it be mailed to the parents today.}*

# Regular Due Process:

**(10 days for response to complaint).** Is the school district on tract to respond to the complaint within 10 calendar days? Has the parent received this document? (name of school attorney), do you anticipate that the school district will object to the sufficiency of the complaint within 15 calendar days? **If NO** – Since the due process complaint has been received without a challenge to its sufficiency, and a respond has been received by the School District, amendments to the complaint will not be permitted without the prior authorization of the opposing party or by a prior written order by the school district or my permission. Do you understand what that means, (name of Parent)? It means that you cannot add new things or different things to the complaint without the permission of the school district or my permission. The school district needs to be able to address your concerns and it is not to be a moving target.

Have the school district and the parents agreed to a date and time for the resolution session? (must be scheduled within 15 days). If the parent is not able to attend at the meeting called within 15 days, then the school must meet anyway and document the parents first non-attendance. {*The purpose of the resolution session is to try and resolve the dispute by agreement and I want to encourage both sides to attend and to fully participate in the process. Please keep an open mind and fully explore all options to try and work our your differences*.}.

If the parents does not intend to bring an attorney to the resolution session , the school district will not be permitted to bring their attorney. So this is another reason by it is critically important that the parents notify everyone if they retain counsel so the attorneys can discuss whether they will be in attendance. My written order today will set forth what needs to occur at the resolution session. It will include who must attend the session and what must be included in the agreement, such as the fact that it is binding on both parties after three business days and can be enforced in district court. If the matter is not fully resolved at the resolutions session, you can continue to negotiate for the remainder of the resolution time period (thirty days from the date of filing) If both parties desire a facilitator to attend the resolution session, please contact SERC and one will be provided at no cost to either party. The parties may continue to meet from time to time after the initial resolution session in an attempt to further explore options for settlement . And both sides are encourage to do so as long as there is any progress being made to settle the dispute. At the end of the resolution time period, the parties are ordered to make a written list of any remaining issues which is to be signed by both parties and forwarded to the hearing officer immediately. Any issues that remain unresolved thirty days after the filing of the complaint or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, will proceed to hearing unless an extension of time is requested and granted. Because this matter involves a child, extensions will not be liberally granted.

I have tentatively set the hearing for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Do the parents have a conflict with that date? Does the school district have a conflict with that date?

The parents need to be aware of the 5 day rule. This rule provides that the parties will have completed any and all evaluations, marked all exhibits /reports, provided a list of all witnesses to be called to testify (with a brief description of their relevant testimony) and set forth what facts the parties will jointly stipulate to be true, all of which is to be provided to the opposing party, the hearing officer, and SERC within 5 business days (7 calendar days) before the hearing.

Keep an extra copy of the marked exhibits for the witnesses at the hearing. If you need to have an subpoena issued, please be advised that all subpoenas for witnesses are issued by the hearing officer. I encourage you to make your requests as soon as you know that you will need a subpoena all requests for subpoenas need to be in writing and they need to be submitted to the hearing officer at least 10 days before the hearing . I will order that all requests for subpoenas be received by me no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(date of 10 days before the hearing). Parents may simply ask the school to produce employees that are currently employed. Subpoenas will be needed to produce former employees. This might be an area where SERC can provide technical assistance to either party.

We will have a prehearing conference again by conference call and at that time we will discuss what issues remain to be decided, how much time to reserve for the hearing, the location of the hearing, etc. I would like to schedule that a few days before the hearing so we can resolve any last minute detains. How about (date)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_? Would that work of the parents? What time would you prefer? Will that work for the school district . Is (time)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ convenient for you?

If either party wishes to request and extension of time, that would also need to be in writing. When you make that request, please advise me whether or not the extension will be agreed to by both sides. If an extension were to be granted, it will change the date of the pretrial conference.

INSERT: any questions you have about the case Issues you might need to clarify.

That is all I have. Before we conclude, do the parents have anything further they wish to discuss at this time? Anything further for the school district? Thank you for our participating today and I will get the scheduling order out to each of you no later than tomorrow.

# Expedited Due Process:

**(No response to the complaint is required)**

**Expediated** due processes are due process hearings with limited scope:

For a parent: The subject of an expediated due process is to appeal a manifestation determination decision after discipline is conducted or to oppose an educational interim placement during the suspension time period. Rules are very strict and limited. The hearing must occur within 20 school days and the resolution session occurs within 7 school days. The period of time to continue to negotiate in a resolution time period is 15 calendar days. **No extensions of the time line are permitted. Please refer to 34 CFR sections, 532, 533 and also 530 and 531.**

Have the school district and the parents agreed to a date and time for the resolution session? {must be scheduled within 7 calendar days}. If the parent is not able to attend at the meeting called within 7 days, then the school must meet anyway and document the parents first non-attendance. {*The purpose of the resolution session is to try and resolve the dispute by agreement and I want to encourage both sides to attend and to fully participate in the process. Please keep an open mind and fully explore all options to try and work our your differences*.}

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The parties can jointly waive resolution and agree to mediation, but the timelines remain in place.

Any issues that remain unresolved fifteen days after the filing of the complaint will proceed to hearing. No extensions of time may be granted.

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That is all I have. Before we conclude, do the parents have anything further they wish to discuss at this time? Anything further for the school district? Thank you for our participating today and I will get the scheduling order out to each of you no later than tomorrow.