

## TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to adopt the rules cited as 26 NCAC 03 .0601-.0622.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.oah.nc.gov/hearings-division>

**Proposed Effective Date:** December 1, 2025

**Public Hearing:**

**Date:** August 26, 2025

**Time:** 10:00 A.M.

**Location:** RRC Commission Room, 1711 New Hope Church Road, Raleigh, NC 27609.

**Reason for Proposed Action:** OAH seeks to adopt Section .0600 to govern the process of special education complaints arising under the federal Individual with Disabilities Education Act (IDEA) (codified at 20 U.S.C. 1400, et seq.), its supporting regulations in the CFR (34 CFR Part 300), and Article 9 of Chapter 115C of the North Carolina General Statutes.

*This is a reposting of rules that were originally published in Volume 40, Issue 02 on July 15, 2025.*

**Comments may be submitted to:** Brian Liebman, 1711 New Hope Church Road, Raleigh, NC 27609; email [brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

**Comment period ends:** September 30, 2025

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

### CHAPTER 03 - HEARINGS DIVISION

#### SECTION .0600 – SPECIAL EDUCATION COMPLAINT PROCESS

##### 26 NCAC 03 .0601 GENERAL

(a) Applicability to Special Education Complaints. This Subchapter applies to special education Complaints filed in the Office of Administrative Hearings (OAH) pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA)(20 U.S.C. 1400, et seq.), its supporting regulations (34 CFR Part 300), and Article 9 of Chapter 115C of the North Carolina General Statutes. The rules in this Section supplement other OAH rules in this Chapter for the purpose of adjudicating special education Complaints. In the event of a conflict with other OAH rules, the rules in this Section shall take precedence.

(b) Waiver of Rules. The presiding administrative law judge (ALJ) may waive the rules of this Section to promote the interests of justice or judicial economy. All waiver requests shall be by motion. In determining whether to grant a waiver, the presiding administrative law judge shall consider the following factors:

- (1) the necessity of the waiver;
- (2) the party's responsibility for the conditions creating the need for the waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the potential harm to the party if the waiver is not granted.

(c) The provisions of 34 CFR Part 300 are hereby incorporated by reference, including all subsequent amendments and editions. 34 CFR Part 300 is available online at no cost at <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300>

*History Note: Authority G.S. 7A-751; 150B-21.6; 150B-22.1; 150B-29.*

## 26 NCAC 03 .0602 DEFINITIONS

As used in this Section, the following terms have the meanings indicated:

- (1) "Administrative law judge (ALJ)" means the judge assigned to preside over the contested case, as defined in G.S. 150B-2(1), and with the powers and duties outlined in G.S. 150B-33 and Rule .0105 of this Chapter.
- (2) "Adult student" means a child with a disability, aged 18 years or older, to whom all rights granted to the student's parents have been transferred per 20 U.S.C. 1415(m) and G.S. 115C-109.2.
- (3) "Business day" is defined in 34 CFR 300.11.
- (4) "Certificate of Service" means a mandatory document that shall accompany all documents filed in the record to prove that the opposing party has been served, as defined by Item (47) of this Rule.
- (5) "Child with a disability" is defined by 34 CFR 300.8.
- (6) "CMS" means the electronic case management system used by OAH for filing documents.
- (7) "Complaint" means a petition for a contested case hearing filed with OAH pursuant to 20 U.S.C. 1415(b)(7)(A), G.S. 115C-109.6, 34 CFR 300.503, and 34 CFR 300.508.
  - (a) "Regular FAPE Complaint" means a Complaint filed for a contested case hearing on issues including:
    - (i) Identification of a student with disabilities;
    - (ii) Evaluation of a student with disabilities;
    - (iii) Educational placement for a student with disabilities; or
    - (iv) Other denial of the provision of a free and appropriate public education.
  - (b) "Expedited FAPE Complaint" means a Complaint filed for a contested case hearing on issues including:
    - (i) Manifestation determination review (MDR);
    - (ii) Other issues related to a change in placement due to a disciplinary suspension of more than 10 days;
    - (iii) An interim alternative educational placement of at least 45 days whether related to a disciplinary matter but due to behaviors resulting from the student's disability; or
    - (iv) At the discretion of the administrative law judge, for cases involving a breach of a mediation agreement.
- (8) "Date-stamped copy" means a copy of a document sent by another party, on which the receiving party has noted the date the document was received, either through a date-stamp or other written confirmation including the date.
- (9) "Day" means calendar day unless otherwise specified as a "business day" or "school day."
- (10) "DPI" means the North Carolina Department of Public Instruction.
- (11) "Due Process Hearing Coordinator" means the person designated by the State Board of Education at DPI to receive electronic copies of Complaints, motions, notices, and communications from OAH and the parties regarding special education Complaint hearings.
- (12) "Education records" include any documentation pertaining to the student's education, excluding generic communications disseminated to the entire school body. This includes:
  - (a) Special education file;
  - (b) Cumulative folder;
  - (c) Written correspondence (including emails) to and from school staff, parents, and others regarding the student's educational needs or services;
  - (d) Report cards and transcripts;
  - (e) Progress monitoring of IEP goals and related services;
  - (f) Documentation of service delivery, including related service provider logs;
  - (g) Documentation of work samples used for progress monitoring;
  - (h) Documentation of the implementation of accommodations; and
  - (i) Any information provided by parents to the school, including medical and independent evaluations obtained by the parents.
- (13) "E-filing" means electronic filing as defined and governed by Rules .0501 and .0502 of this Chapter.
- (14) "Extraordinary cause" means circumstances beyond a party's control that could not have been anticipated.
- (15) "Evidentiary hearing" means a legal proceeding where parties present evidence, including witness testimony, documents, and records, to the administrative law judge who evaluates the evidence to determine whether a student has received a free and appropriate public education.
- (16) "File" is defined by Rule .0102(2) of this Chapter.
- (17) "Five-day evaluation disclosure rule" means the requirement in 20 U.S.C. 1415(f)(2) and 34 CFR 300.512(b) to disclose evaluations and recommendations based on those evaluations at least five business days before a hearing.
- (18) "Five-day evidence exchange rule" means the requirement in 34 CFR 300.512(a)(3) to exchange evidence, witness lists, and stipulations at least five business days before a hearing.
- (19) "Formal discovery" is defined in Article 5 of G.S. 1A-1, including Rules 26 (generally), 27 (depositions), 33 (interrogatories), 34 (production of documents and entry upon land for inspection), 35 (physical/mental exams), and 36 (requests for admission). The mandatory document exchange and disclosures in Items (17) and (18) of this Rule, and Rule .0617 of this Section are not formal discovery.
- (20) "Free Appropriate Public Education (FAPE)" is defined by 34 CFR 300.17.
- (21) "Good cause" is defined in Rule .0118(a)(1) and (2) of this Chapter.
- (22) "Hearing Period" means the timeframe after the end of the Resolution Period until the issuance of a Final Decision, or other disposition of the case such as a voluntary dismissal, during which the Complaint is formally processed and

- all procedures are handled, leading to a Final Decision or voluntary dismissal, including legal motions and the evidentiary hearing.
- (23) "Individualized Education Program (IEP)" is defined by 34 CFR 300.22.
- (24) "Individuals With Disabilities Education Improvement Act of 2004 (IDEA)" is codified in 20 U.S.C. 1400 et seq. (2004), as amended.
- (25) "Lay advocate" means an individual not licensed by the State Bar of North Carolina, but who possesses special knowledge or training regarding the issues faced by children with disabilities.
- (26) "Local education agency (LEA)" is defined by G.S. 115C-106.3(11) and may also be referred to as the "school board," "public agency," or "Public School Unit (PSU)." For consistency, the LEA shall be referred to as the PSU in the rules of this Section.
- (27) "Manifestation determination review (MDR)" means the process of determining whether a child's conduct was a manifestation of the child's disability, as described in 20 U.S.C. 1415(k)(1)(E).
- (28) "DPI Mediation" means mediations conducted by a DPI mediator pursuant to G.S. 115C-109.4 and includes mediations held before or during the pendency of a special education Complaint.
- (29) "Mediation Request Form" means a form provided by DPI in which the parties request the appointment of a mediator by DPI.
- (30) "Notice of Insufficiency" is defined by 20 U.S.C. 1415(c)(2)(A) and 34 CFR 300.508(d).
- (31) "OAH" or "Tribunal" means the hearings division of the North Carolina Office of Administrative Hearings, including the Clerk's Office and the administrative law judge assigned to preside over a special education contested case.
- (32) "Parent" is defined by 20 U.S.C. 1401(23) and 34 CFR 300.30.
- (33) "Party" means the named individuals or groups engaged in DPI Mediation, the resolution process, or the hearing process, who have an interest in the outcome of a special education Complaint (excluding attorneys or lay advocates).
- (34) "Petitioner" means the party filing the Complaint, which may be a parent, individual with educational decision-making rights, or a PSU. Unless specified otherwise in the rules of this Section, "Petitioner" means a parent Petitioner
- (35) "Prior Written Notice" is as defined at 20 U.S.C. 1415(c)(1).
- (36) "Prehearing Conference" means an informal meeting conducted by the administrative law judge with the parties to address issues in preparation for the hearing, as outlined in Rule .0108 of this Chapter.
- (37) "Public agency" is defined by 34 CFR 300.33.
- (38) "Public School Unit (PSU)" is defined by G.S. 115C-5(7a).
- (39) "Record of the administrative proceeding" means the same as the Official Record defined by G.S. 150B-37.
- (40) "Resolution Form" means a form filed with OAH reporting the parties' decisions about whether to proceed to resolution, waive resolution for DPI Mediation, or not participate in a Resolution Session.
- (41) "Resolution Period" means the period following the initiation of the contested case, during which the parties may attempt to resolve the issues. The Resolution Period for a Regular FAPE Complaint is 30 calendar days from Respondent's receipt of the Complaint. The Resolution Period for an Expedited FAPE Complaint is 15 calendar days from filing with OAH.
- (42) "Resolution Session" is described in 20 U.S.C. 1415(f)(1)(B).
- (43) "Resolution process" means the process described in 34 CFR 300.510.
- (44) "Respondent" means the party against whom the Complaint is filed, usually a PSU or SEA, but it may also be a parent of a child with a disability or an adult student. Unless specified otherwise in the rules of this Section, "Respondent" means a PSU or SEA.
- (45) "Response to Complaint" means the response the Respondent is required to file within 10 calendar days of receiving a Regular FAPE Complaint if Respondent has not previously provided Petitioner with Prior Written Notice per 20 U.S.C. 1415(c)(2)(b).
- (46) "School day" means any day that children attend school for instructional purposes, including partial days.
- (47) "Serve" or "Service" means to simultaneously provide a copy of any document filed with OAH to the opposing party and the Due Process Hearing Coordinator, as outlined in Rule .0102(a)(3) of this Chapter.
- (48) "Settlement Conference" means another IDEA mediation process available after a DPI Mediation as defined by Item (29) of this Rule has failed. A Settlement Conference shall be governed by Rules .0107 and .0611 of this Chapter.
- (49) "State Education Agency (SEA)" is defined by 34 CFR 300.41 and is also referred to as the State Board of Education.
- (50) "Transcript" means a written document created by a court reporter that captures everything said during the hearing.

*History Note: Authority G.S. 7A-751; 115C-109.5; 150B-22.1; 20 U.S.C. 1415(k)(4)(B); 34 CFR 300.507.*

## **26 NCAC 03 .0603 FILING OF COMPLAINT AND SERVICE OF DOCUMENTS**

(a) Initiating the Complaint Process. To begin the Complaint process, the Petitioner shall file the Complaint with OAH in accordance with Rule .0101(b) of this Chapter.

### (b) Service of Complaint:

- (1) Service to Opposing Party. Petitioner shall serve the opposing party with a copy of the Complaint. If the Respondent is a Public School Unit (PSU) or State Education Agency (SEA), Petitioner shall serve either the superintendent or the exceptional children director of the PSU or SEA;
- (2) Service to the Due Process Hearing Coordinator. Petitioner shall serve a copy of the Complaint and all subsequent filings on the DPI's Due Process Hearing Coordinator;
- (3) Certificate of Service. Petitioner shall simultaneously file a Certificate of Service as evidence that the Complaint has been served on both the opposing party and the Due Process Hearing Coordinator.

(c) Service by Electronic Mail. The three-day period for service under G.S. 1A-1, Rule 6(e) does not apply to service by e-filing or electronic mail.

(d) No Additional Mailing Requirement for E-Filers. E-filers are not required to send an additional copy of the document to OAH, as specified in Rule .0101(b) of this Chapter.

(e) Certificate of Service Required. All subsequent documents, notices, and orders filed in the case shall include a Certificate of Service, confirming service to both the parties and the Due Process Hearing Coordinator.

(f) Form Requirements. All documents filed with the Office of Administrative Hearings shall comply with the form requirements outlined in G.S. 1A-1, Rule 10, and, if filed electronically, with the requirements in Section .0500 of this Chapter.

*History Note: Authority G.S. 7A-751; 115C-109.6; 150B-22.1.*

## **26 NCAC 03 .0604 CONTENTS OF A COMPLAINT**

(a) Complaint Contents. A Regular FAPE Complaint and an Expedited FAPE Complaint shall comply with 34 CFR 300.508(b) and the rules of this Section. A Petitioner may, but is not required to use, the model Complaint forms developed by the State Board of Education in accordance with G.S. 115C-107.2(d). In addition, the Petitioner shall file and serve a separate document that includes:

- (1) A clear delineation of the contested issue or issues, separate from general background information.
- (2) If applicable, the names and last known contact information of any person who may be subject to joinder as a party under G.S. 1A-1, Rule 19, including noncustodial parents and any individual or entity with educational decision-making authority for the minor child.

(b) Non-Parent Filing on Behalf of a Student. When a non-parent files and serves a Complaint on behalf of a student, the Petitioner shall include a court order from the General Court of Justice or another signed and notarized document from the child's parents, legal guardians, or another authorized representative, granting the Petitioner legal authority to act on the child's behalf.

(c) Parent Filing on Behalf of an Adult Student. When a parent files and serves a Complaint on behalf of an adult student, the parent shall include proof of guardianship, power of attorney, or another written document granting him or her legal authority to act on the adult student's behalf.

*History Note: Authority G.S. 7A-751; 115C-109.6; 150B-23; 1A-1, Rule 19(c).*

## **26 NCAC 03 .0605 REGULAR FAPE COMPLAINT PROCESS**

In a Regular FAPE Complaint, the Petitioner, the Respondent, and OAH shall adhere to the following procedures after the Complaint is filed:

- (1) Notice of Contested Case and Assignment. Within two business days of receiving the Complaint, the Clerk's Office shall serve the Notice of Contested Case and Assignment (the "First Notice") to the parties and the Due Process Hearing Coordinator.
- (2) Acknowledgment of Complaint Receipt. Within one business day of receiving the Complaint from the Petitioner, the PSU or the designated agency representative shall electronically transmit a date-stamped copy of the Complaint to OAH and the Due Process Hearing Coordinator.
- (3) Notice of Mandatory Statutory Deadlines. Within one business day of receiving the date-stamped copy of the Complaint, the Clerk's Office shall serve the parties with a Notice of Mandatory Statutory Deadlines for the Resolution Period and Hearing Period (the "Second Notice").
- (4) Failure to Acknowledge Receipt of Complaint. If the PSU fails to acknowledge receipt of the Complaint as required in Item (2) of this Rule within seven business days of the filing of the Complaint, the Clerk's Office shall file a Notice of Complaint, attach the Complaint, and serve a copy on the PSU. The timelines outlined in the rules of this Section and IDEA shall begin within three business days after service of the Notice of Complaint.
- (5) Alternative Evidence of Service. If the Petitioner provides evidence of the date of service (e.g., certified mail, tracking information with address, signed affidavit, or other method), the presiding administrative law judge may adjust the Resolution Period and Hearing Period accordingly.
- (6) Scheduling Order. Within five business days of the issuance of the Second Notice by the Clerk's Office, the presiding administrative law judge shall issue a Scheduling Order for the Hearing Period to the parties.
- (7) Scheduling of Evidentiary and Motion Hearings. The administrative law judge shall schedule the evidentiary hearing in accordance with G.S. 115C-109.6(d). Virtual evidentiary hearings may only be scheduled with the consent of both parties and in accordance with Rule .0120(g) of this Chapter. A motion hearing may be scheduled virtually at the discretion of the administrative law judge.
- (8) Federal Timelines Compliance. To ensure compliance with the federal timelines set out in 34 CFR 300.515(a), the administrative law judge shall:
  - (a) Schedule a hearing date within 15 calendar days after conclusion of the Resolution Period. To the extent possible, the hearing shall be held on consecutive business days.
  - (b) Set deadlines for the Prehearing Conference, five-day evaluation disclosures, five-day evidence exchanges, filing of admitted exhibits, Proposed Final Decisions, and issuance of the Final Decision.

*History Note: Authority: G.S. 7A-751; 115C-109.6; 150B-33(b).*

## **26 NCAC 03 .0606 EXPEDITED FAPE COMPLAINT PROCESS**

The Expedited FAPE Complaint process follows the same procedures contained in Rule .0605 of this Section, except as stated below. The Petitioner, the Respondent, and OAH shall adhere to the following procedures with respect to an Expedited FAPE Complaint:

- (1) Expedited Deadlines. The timelines for scheduling the hearing, the Resolution Period, and the issuance of the Final Decision shall comply with expedited deadlines in 20 U.S.C. 1415(k)(4)(B) and 34 CFR 300.532(c).
- (2) Failure to Acknowledge Receipt of Expedited Complaint. If the Respondent fails to electronically transmit a date-stamped copy of the Expedited FAPE Complaint to OAH within three business days of the filing, the Clerk's Office shall serve Respondent with a Notice of Expedited FAPE Complaint with the attached Complaint.
- (3) Notice of Expedited Contested Case. The Notice of Expedited Contested Case Assignment shall include the expedited deadlines as required by 34 CFR 300.532(c).
- (4) Order Setting Expedited Deadlines. Within one business day of acknowledgement or service by the Clerk's Office on the Respondent, the administrative law judge shall issue an Order Setting Expedited Deadlines for the adjudication of the case.
- (5) Prehearing Conference. The administrative law judge shall conduct a Prehearing Conference at least three business days before the expedited evidentiary hearing, and the parties shall comply with Rule .0615 of this Section in preparing the Proposed Prehearing Conference Order.
- (6) Filing of Exhibits and Proposed Final Decisions. The parties shall file their admitted exhibits and Proposed Final Decisions within five business days after the last day of the hearing.
- (7) Issuance of Final Decision. The Final Decision shall be issued within 10 school days after the last day of the hearing.

*History Note:* Authority G.S. 7A-751; 115C-109.6; 150B-33(b); 20 U.S.C. 1415(k)(4)(B).

## **26 NCAC 03 .0607 PROCEDURES FOR BIFURCATION OF ISSUES**

(a) Bifurcation of Regular FAPE Complaint and Expedited FAPE Complaint Issues. An administrative law judge, either on his or her own motion or upon the motion of a party, shall bifurcate the issues related to a Regular FAPE Complaint and an Expedited FAPE Complaint when they are combined in a single Complaint. In the event of bifurcation:

- (1) Issues related to the Expedited FAPE Complaint shall be adjudicated following the expedited resolution and hearing process as described in Rule .0606.
- (2) Issues related to the Regular FAPE Complaint shall be adjudicated following the regular resolution and hearing process in Rule .0605.

(b) Bifurcation of Other Issues in a Regular FAPE Complaint. A party may request bifurcation of other issues in a Regular FAPE Complaint either by mutual agreement, stipulation, or by filing a Motion to Bifurcate with OAH.

(c) If either party files a motion to bifurcate, the opposing party shall have five business days from the service of the motion to file a response.

*History Note:* Authority G.S. 7A-751(a); 115C-109.6; 150B-33.

## **26 NCAC 03 .0608 CONSOLIDATION OF REGULAR FAPE COMPLAINTS**

(a) Consent and Approval for Consolidation. With the consent of all parties and the approval of the Chief administrative law judge, multiple Regular FAPE Complaints shall be consolidated in accordance with Rule .0111 of this Chapter. However, consolidation shall not be used in lieu of amending a Complaint or to delay the hearing process.

(b) Scheduling After Consolidation. After consolidation, the parties shall confer with the presiding administrative law judge regarding the scheduling of the evidentiary hearing and adjustment of applicable timelines. A revised Consent Scheduling Order shall be issued, including the revised timeline for the issuance of the Final Decision.

*History Note:* Authority G.S. 7A-751, 150B-33(b).

## **26 NCAC 03 .0609 RESPONSE TO COMPLAINT, EXTENSIONS OF DEADLINE FOR THE RESPONSE**

(a) Response Deadline. The opposing party shall file a Response to Complaint within 10 days of service of a Regular FAPE Complaint, unless the opposing party has previously provided Petitioner with a Prior Written Notice regarding the allegations.

(b) Extension of Response Deadline An administrative law judge may grant a motion for an extension of time to extend the response deadline for good cause or by mutual consent. In either case, the response deadline for a Regular FAPE Complaint shall initially be extended by no more than 10 days. The administrative law judge shall not grant any further extensions without the consent of both parties.

(c) Response to Expedited FAPE Complaint. No response is required to an Expedited FAPE Complaint.

(d) Impact on Notice of Insufficiency. An extension of the response deadline shall not affect the deadline for the filing of a Notice of Insufficiency.

*History Note:* Authority G.S. 7A-751; 150B-33(b).

## **26 NCAC 03 .0610 REQUESTS FROM PARTIES**

(a) Motion Requirements. In addition to the requirements of Rule .0115 of this Chapter, any request for the administrative law judge to enter an order or act on behalf of any party shall be made in writing, through a motion filed in the record. With the administrative law judge's permission, an oral motion may be made on record during the hearing, and the opposing party shall be given an opportunity to respond before a ruling is made.

(b) Motion Content. A motion shall clearly state the reasons for the desired action and specify whether a hearing on the motion is being requested. A motion shall be decided without oral argument, unless a hearing is requested by either party. The administrative law judge has discretion to deny the request for a hearing if he or she finds a hearing would not aid in the decision-making process.

(c) Pre-filing Communication. Before filing a motion, the moving party shall inform the opposing party about the basis of the motion. The parties shall attempt to resolve the need for the motion. If the parties are unable to reach resolution, the moving party shall include a statement in the motion to that effect.

(d) Response to Motion. Regardless of whether the administrative law judge requests a response to the motion, a response may be filed within 10 days of service. Replies to responses and sur-replies shall not be filed without prior approval from the administrative law judge; otherwise, they shall be stricken from the record.

(e) Supporting Documentation. Upon filing, the motion and response shall include all supporting documentation, legal memoranda, and a proposed order.

*History Note:* Authority G.S. 7A-751; 150B-33(3a).

## **26 NCAC 03 .0611 OPTIONS FOR SETTLEMENT OF COMPLAINT**

(a) Within the applicable timelines during the Resolution Period and Hearing Period for a Regular or Expedited FAPE Complaint, the parties may choose to participate in the following options:

- (1) a Resolution Session,
- (2) DPI Mediation, and
- (3) if DPI Mediation is unsuccessful, a Settlement Conference

(b) Waiver of Resolution Session for DPI Mediation. If the parties agree to waive the Resolution Session in accordance with 34 CFR 300.506 and G.S. 115C-109.4 and participate in DPI Mediation, the Respondent shall file a Resolution Form noticing this decision.

(c) Request for DPI Mediation. If the parties agree to continue settlement negotiations after a Resolution Session or waive the Resolution Session to participate in DPI Mediation, they shall request the appointment of a DPI mediator through DPI's Due Process Hearing Coordinator and file a Mediation Request Form with both DPI's Due Process Hearing Coordinator and OAH.

(d) Notice of Mediation Date. Within 10 days of requesting the appointment of a DPI mediator, the parties shall file with OAH a Notice of Mediation Date or a Status Report if the mediation date has not yet been scheduled

(e) Status Report After Resolution Session or DPI Mediation. Within three days of the completion of a Resolution Session or DPI Mediation, the parties shall file with OAH a Status Report detailing the results.

(f) Request for Settlement Conference. After DPI Mediation has been attempted, the parties may file a joint motion requesting the appointment of an administrative law judge to hold a Settlement Conference pursuant to Rule .0107 of this Chapter.

(g) Report of Settlement Conference. Within three days of the completion of a Settlement Conference, the settlement administrative law judge shall file a Report of Settlement Conference.

(h) Enforceability of Written Agreements. A party may seek enforcement, through OAH, of a written agreement resulting from a resolution meeting, DPI Mediation, or Settlement Conference. This mechanism is not mandatory and cannot delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction, or a federal district court.

*History Note:* Authority G.S. 7A-751; 115C-107.2(d); 115C-109.4(h)(4); 34 CFR 300.537.

## **26 NCAC 03 .0612 EXTENSION OF THE RESOLUTION PERIOD**

(a) No Extension in Expedited FAPE Complaints. No extension of the Resolution Period in an Expedited FAPE Complaint shall be allowed.

(b) Joint Motion for 30-Day Extension. Before the Resolution Period expires, the parties may jointly file a motion for a 30-day extension of the Resolution Period for a Regular FAPE Complaint. The administrative law judge shall grant further extensions for only the following reasons:

- (1) Finalization of a settlement agreement.
- (2) School board approval of a settlement agreement.
- (3) Additional time to obtain all necessary signatures.

(c) Impact of DPI Mediation or Settlement Conference on Resolution Period. The use of DPI Mediation or a Settlement Conference shall not affect the 30-day Resolution Period unless the administrative law judge grants a joint motion to extend the Resolution Period.

(d) Motion to Continue Hearing and Extension of Resolution Periods. If the parties jointly move for a continuance of the hearing deadline before the Resolution Period expires for settlement purposes, the motion shall be treated as a motion to extend the Resolution Period, which shall automatically extend the hearing deadlines.

(e) Extension Order Requirements. If an extension of the Resolution Period is granted, the administrative law judge shall specify:

- (1) the specific time period for the extension,
- (2) the end date of the Resolution Period,
- (3) the start date of the 45-day Hearing Period, and
- (4) the deadline for issuance of the Final Decision.

*History Note:* Authority G.S. 7A-751; 150B-33(b).

## **26 NCAC 03 .0613 CONTINUANCE OF HEARING PERIOD**

(a) Expedited FAPE Complaints. No continuance of the hearing deadline shall be allowed for an Expedited FAPE Complaint.

(b) Motion for Continuance. After the Resolution Period ends and during the 45-day Hearing Period, either party may file a motion for a continuance of the hearing for good cause. However, the administrative law judge shall grant a further continuance only upon finding extraordinary cause exists.

(c) Motion Requirements. A motion to continue the Hearing Period shall include a Proposed Consent Scheduling Order, which sets deadlines for the following:

- (1) Expert witness designations.
- (2) Dispositive motions.
- (3) Prehearing Conference.
- (4) Court Reporter Contract.
- (5) Five-day evaluation disclosure and five-day evidence exchange.
- (6) Filing of admitted exhibits.
- (7) Proposed Final Decisions.
- (8) Final Decision issuance.

(d) Mediation or Settlement Conference Continuances. If continuance is requested and granted due to DPI Mediation or a Settlement Conference, the parties shall file the notices and Status Reports as required by Rules .0611 and .0612 of this Section.

*History Note:* Authority G.S. 7A-751; 150B-33(b).

#### **26 NCAC 03 .0614 AMENDMENT OF COMPLAINT**

(a) Allowable Amendments. Amendment of a Complaint shall only be allowed as prescribed by 20 U.S.C. 1415(c)(2)(E) and 34 CFR 300.508(d)(3).

(b) Motion for Leave to Amend. The administrative law judge shall decide a motion for leave to amend a Complaint without response unless, within three business days of receipt of the motion, the Respondent files a response or files notice that it intends to respond. In its response, the Respondent shall demonstrate how the amendment of the Complaint would be prejudicial.

(c) Effect of Amendment on Pending Motions and Notices. Once an amended Complaint is filed, all pending motions and notices shall be considered moot.

(d) Resetting of Timelines. The filing of an amended Complaint shall reset the timelines for the Resolution Period and Hearing Period, and the administrative law judge shall issue an Amended Scheduling Order.

*History Note:* Authority G.S. 7A-751; 150B-33(b).

#### **26 NCAC 03 .0615 PREHEARING CONFERENCE**

(a) Except as provided below, the Prehearing Conference shall be governed by Rule .0108 of this Chapter, and by Rule 7 of the North Carolina General Rules of Practice for the Superior and District Courts.

(b) Purpose and Requirements. A Prehearing Conference shall be held at least once before the evidentiary hearing to:

- (1) finalize the issues to be litigated;
- (2) establish the length of the hearing and the number of witnesses;
- (3) determine time limitations for each party's case;
- (4) discuss remaining matters not previously resolved; and
- (5) draft the Prehearing Conference Order.

(c) Timing of the Prehearing Conference.

- (1) The Prehearing Conference shall be held within two weeks prior to a Regular FAPE Complaint hearing;
- (2) The Prehearing Conference shall be held five business days prior to an Expedited FAPE Complaint hearing.

*History Note:* Authority G.S. 7A-751; 150B-33(b).

#### **26 NCAC 03 .0616 RESERVED FOR FUTURE CODIFICATION**

#### **26 NCAC 03 .0617 MANDATORY PRODUCTION OF EDUCATION RECORDS, DISCLOSURES, AND EVIDENCE**

Regardless of whether the parent or the PSU is the Petitioner or the Respondent, the following governs the exchange of education records, disclosures and evidence:

- (1) Provision of Education Records by PSU. Within 10 calendar days of service of a Regular FAPE Complaint, and five calendar days of an Expedited FAPE Complaint, the PSU shall provide the parent with copies of the student's education records as defined in Rule .0602(12) of this Section.
- (2) Progress Monitoring and Email Communication Records. If all the progress monitoring and email communication records cannot be accessed within the timelines specified in Item (1) of this Rule, the PSU shall provide any accessible progress monitoring and email communication records. Any remaining records shall be provided at least 48 hours before a Resolution Session or DPI Mediation, if the Resolution Session is waived.
- (3) Provision of Education Records by Parent. Within 10 days of service of a Regular FAPE Complaint, or five days of an Expedited FAPE Complaint, the parent shall provide the PSU with copies of:
  - (a) independent educational evaluations,
  - (b) private school records,
  - (c) service records for private related service providers, and
  - (d) reimbursement documentation, or written releases for these records.

If the parent cannot obtain these records within the timelines specified in this Item, he or she shall provide them at least 48 hours before the Resolution Session or DPI Mediation, if resolution is waived.

- (4) Five-Day Evaluation Disclosure and Five-Day Evidence Exchange: The parties shall comply with the five-day evaluation disclosure and five-day evidence exchange requirements unless mutually agreed otherwise. If the parties agree to shorten either the five-day evaluation disclosure or the five-day evidence exchange period, they waive objections to timeliness and the introduction of the applicable disclosures.

- (5) Failure to Produce Required Documents: If either party fails to produce the records required by Items (1) through (4) of this Rule within the requisite time periods, the opposing party may file a motion to compel or a motion to exclude. If granted, the administrative law judge may exclude the records or impose sanctions, including attorney's fees, as allowed by G.S. 115C-109.6(j), G.S. 1A-1, Rule 37, and Rule .0114 of this Chapter.

*History Note:* Authority G.S. 7A-751; 150B-33(b); 34 CFR 300.613.

## **26 NCAC 03 .0618 FORMAL DISCOVERY LIMITATIONS**

Beyond the mandatory disclosures required in Rule .0617 of this Section, formal discovery is available under the following conditions:

- (1) Mutual Agreement or Administrative Law Judge Approval. Formal discovery shall occur if the parties mutually agree to it, if it aligns with expert witness disclosures as outlined in Item (5) of this Rule, or if the administrative law judge grants prior approval.
- (2) Exhaustion of Informal Discovery. Informal means of obtaining materials shall be exhausted before formal discovery is sought.
- (3) Motion for Discovery Approval. If informal means are not productive, the party seeking discovery shall file for a motion requesting approval for formal discovery. The motion shall contain the following:
  - (a) The reasons for the requested discovery.
  - (b) Any prior attempts to obtain the material.
  - (c) The unavailability of other means to obtain the material.
  - (d) A proposed discovery scheduling order which shall complete discovery within the deadlines set by the IDEA.
- (4) Depositions of Minor or Incompetent Adult Children. Depositions of minor children or incompetent adult children require prior approval and are subject to conditions imposed by the administrative law judge.
- (5) Expert Witness Disclosure. Expert witness facts and opinions shall be obtained in accordance with G.S. 1A-1, Rule 26(a)(4). However, the deadlines for written report disclosures are as follows:
  - (a) Regular FAPE Complaints. Written reports shall be disclosed at least 15 days before the hearing.
  - (b) Expedited FAPE Complaints. Written reports shall be disclosed at least five business days before the hearing.
  - (c) Contradictory or Rebuttal Expert Evidence. Contradictory or rebuttal expert evidence is due within 10 days after the opposing party's disclosure for a Regular FAPE Complaint and three days after the opposing party's disclosure for an Expedited FAPE Complaint. These deadlines may be altered by mutual agreement or order.
- (6) Deposition Time Limitation. Depositions shall be limited to seven hours on record.
- (7) Noncompliance and Sanctions. Noncompliance with discovery deadlines or orders may result in sanctions, including attorney's fees, under G.S. 1A-1, Rule 37 and Rules .0112 and .0114 of this Chapter.

*History Note:* Authority G.S. 7A-751; 150B-33(b).

## **26 NCAC 03 .0619 TRANSCRIPT REQUIREMENTS**

(a) Petitioner's Court Reporter Contract. At least five business days before the hearing, the Petitioner shall contract with a court reporter and file the OAH Court Reporter Contract for a special education hearing.

(b) Court Reporter Fees and Transcript Costs. DPI shall pay the court reporter's appearance fee, expenses, and the costs for the Petitioner's and OAH's non-expedited transcripts.

(c) Transcript Requests and Delivery. Transcript requests shall be made before the hearing adjourns. The court reporter shall provide the transcripts to the parties and submit the original transcript to OAH within 15 business days following the last day of the hearing.

*History Note:* Authority G.S. 7A-761; 150B-37(b); 20 U.S.C. 1415(h)(3); 34 CFR 300-512(c)(3).

## **26 NCAC 03 .0620 PROPOSED FINAL DECISIONS**

Each Proposed Final Decision shall contain citations to exhibits and transcripts that support factual allegations. Citations shall refer to the specific date-stamped page numbers in the exhibits and the volume, page, and line numbers of the transcripts.

- (1) Submission Deadline. Within 30 days of receipt of the hearing transcripts, or as otherwise ordered by the administrative law judge, each party shall submit a Proposed Final Decision.
- (2) Transcript Citation. The proper citation format for transcripts is: [volume number: page number: line numbers]. Note: for example, T vol 2 p 35:2-5.
- (3) Exhibit Labeling. The proper labeling and citations to exhibits are as follows:
  - (a) Petitioner's Exhibits. Petitioner's exhibits shall be marked as: Pet'r Ex. 1, Pet'r Ex. 2, etc.
  - (b) Respondent's Exhibits. Respondent's exhibits shall be marked as: Resp't Ex. 1, Resp't Ex. 2, etc.
  - (c) Stipulations of Fact. Stipulations of fact shall be marked as: Stip. 1, Stip. 2, etc.
  - (d) Stipulated Exhibits. Stipulated exhibits shall be marked as: Stip. Ex. 1, Stip. Ex. 2, etc.
  - (e) Joint Exhibits. Joint exhibits shall be marked as: Jt Ex. 1, Jt Ex. 2, etc.
- (4) Offers of Proof. Offers of Proof shall be marked as follows: Petitioner's offers: Pet'r Offer 1, Pet'r Offer 2, etc. and Respondent's offers: Resp't Offer 1, Resp't Offer 2, etc.
- (5) Conclusions of Law Citation Requirements. Each Proposed Final Decision shall include conclusions of law with citations to legal authorities, in accordance with The Bluebook: A Uniform System of Citation (21st Edition). The Bluebook citation system is incorporated by reference, including any subsequent amendments or editions. The Bluebook may be purchased at <https://www.legalbluebook.com/> for forty-six dollars (\$46.00).



*History Note:*     *Authority G.S. 7A-751; 150B-29(b).*

**26 NCAC 03 .0621            FINAL DECISION**

(a) Issuance Deadline. OAH shall issue the Final Decision separately to the parties or their attorneys on or before the deadline established in the final scheduling order, unless an extension is granted upon joint request of the parties.

(b) Appeal Information. The Final Decision shall include information on the judicial review process and advise the party seeking judicial review to file a copy of the Petition for Judicial Review in Superior Court or a copy of the Federal Complaint in the Federal District Court with the OAH.

(c) Redacted Version. Within 14 days of the issuance of the Final Decision, each party may file a redacted version of the Final Decision, indicating proposed redactions.

(d) Redacted Final Decision Filing. Within 30 days of the issuance of the Final Decision, a Redacted Final Decision shall be filed and published on the OAH website. The Redacted Final Decision shall conform to 34 CFR 300.32 and 34 CFR 99.3.

*History Note:*     *Authority G.S. 7A-751; 150B-33(b); 150B-34.*

**26 NCAC 03 .0622            JUDICIAL REVIEW**

(a) Civil Action. Any party aggrieved by the Final Decision may bring a civil action in any State court of competent jurisdiction or federal district court of the United States.

(b) Filing in State Court. After filing a civil action in a State reviewing court, the aggrieved party shall file a copy of the petition for review with OAH within 10 days of initiating the review. The Clerk's Office shall forward the record of the administrative proceeding to the State court in accordance with G.S. 150B-37 and G.S. 150B-47.

(c) Filing in Federal District Court. After filing a civil action in federal district court, the aggrieved party shall file a copy of the federal district court complaint with OAH. Within the timeframe specified by the federal court, the parties are responsible for preparing the administrative record in compliance with Article IV of the North Carolina Rules of Appellate Procedure or as otherwise ordered by the federal district court judge. Once completed, the Clerk's office shall review and certify the record of the administrative proceedings, and the parties shall forward the record to the federal district court.

*History Note:*     *Authority G.S. 7A-751; 150B-34; 150B-37; 150B-43; 150B-47.*