

COLORADO DEPARTMENT OF EDUCATION

SPECIAL EDUCATION SERVICES UNIT

Due Process Hearing L2007:114

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**IMPARTIAL HEARING OFFICER'S FINDINGS AND DECISION**

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In the matter of

JEFFERSON COUNTY SCHOOL DISTRICT R-1

Petitioner,

v.

[STUDENT] through his Parents, [PARENT] and [PARENT]

Respondents

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**COVER SHEET**

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THE [STUDENT] through his Parents,

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**I. INTRODUCTORY STATEMENT**

The Colorado Department of Education received the request for a due process hearing from the Jefferson County School District R-1, hereafter the District, on July 9, 2007, requesting a ruling that the District's evaluation of the [STUDENT] was appropriate and therefore the District was not required to pay for an evaluation obtained by the Parents. The Respondent Parents filed a response to that request on July 19, 2007, generally denying that the

District was entitled to the relief requested and affirmatively alleging and requesting that the Impartial Hearing Officer (hereafter IHO) order the District to pay for an Independent Educational Evaluation (hereafter IEE) provided by John Woodward Kirk, Psy.D. (hereafter “Dr. Kirk”).

The parties agreed to extend the 45 days from the date of the receipt of the due process hearing request in which a final decision by the IHO is to be mailed to the parties to and including September 14, 2007. The Due Process Hearing was held on August 29, 2007 at the District’s Offices at 1829 Denver West Drive, Golden, CO.

The Individuals with Disabilities Act (IDEA), 20 U.S.C. §1400 et seq., its implementing regulations, 34 C.F.R. § 300 et seq., and the implementing regulations to the Colorado Exceptional Children’s Educational Act (ECEA), 1 C.C.R. 301-82220-R-6.03(C) confer jurisdiction. The District appears through Caplan and Earnest LLC by Alyssa C. Burghardt and W. Stuart Stiller. The Parents appeared through the Law Offices of Louise Bouzari, LLC by Kate Gerland.

## **II. ISSUES**

The issues in this matter are:

- A. Is the District barred by its delay in requesting a due process hearing from contesting the Parents’ claim for reimbursement for their IEE?
- B. Is the evaluation completed by the District on or about May 2, 2007 appropriate?

### III. FINDINGS OF FACT

1. The [STUDENT] was born [DOB]. At the time of the hearing he was [AGE] and had just begun [GRADE] in the Jefferson County School District R-1.
2. When the [STUDENT] was [AGE], he was evaluated initially by the District's Child Find on 11/9, 11/21, and 11/28/2000. No formal cognitive evaluations were administered at that time. Because the [STUDENT] had a medical diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD") and Bipolar Disorder, he was identified as a child with a disability who required special education and related services in order to benefit from regular education. As such, the [STUDENT] became eligible for services under the IDEA. 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(b)(4) & (9); 1 C.C.R. 301-8 § 2220-R-2.02(1) & (5).
3. As a result of the November, 2000 evaluations, the [STUDENT] has been receiving special education and related services from the District pursuant to an Individualized Education Plan (hereafter IEP) since approximately December 2000.
4. The [STUDENT] was [AGE] for his Triennial Review during October of 2002. The [STUDENT] was administered a *Wechsler Intelligence Scale for Children B* Third Edition. (WISC-III) by Suzanne Girman Farrell, School Psychologist, with the following results: Full Scale IQ - 126, Verbal IQ - 125, and Performance IQ - 123. He scored in the highly gifted range on the Picture Arrangement subtest, which involved sequencing of visual

social stories. He scored in the gifted range on the Similarities subtest (comparing words). In the superior range were knowledge of social conventions (Comprehension), defining words (Vocabulary), and speed of transferring printed designs with paper and pencil (Coding). Visual-motor reasoning (Block Design) and mental math (Arithmetic) were in the high average range, and recall of factual information (Information), attention to visual detail (Picture Completion), and part-to-whole visual problem solving (Object Assembly) were in the average range. The short-term memory subtest (Digit Span) was in the low average range.

5. As a result of the October 2002 Triennial Review, the [STUDENT] was identified as having a perceptual or communicative disorder (“PCD”).

6. The [STUDENT] was evaluated for a Triennial Review on January 26, 2005 by Linda Tobey, Ph.D., when the [STUDENT] was in [GRADE] at [SCHOOL]. On the *Wechsler Intelligence Scale for Children B* Third Edition. (WISC-III), the [STUDENT] earned the following scores: Full-Scale IQ - 116, Verbal IQ - 107, and Performance IQ - 123. The Picture Arrangement, Picture Completion, Information and Object Assembly subtests from the WISC-III were four of his highest scores, but these subtests are no longer on the core battery of the new version of the Wechsler test.

7. On or about February 20, 2007 the [STUDENT]’s IEP team met to conduct its annual review of his IEP.

A. At this meeting the [STUDENT]’s Parents discussed the fact that the [STUDENT] had not made adequate progress on his IEP goals. Goals that they stated had remained largely unchanged and unmet since 2004. According to the

Parents, the team did not consider increasing his services or changing its teaching methodology to help the [STUDENT] reach his goals, but the team proposed reducing his goals. The Parents did not accept this as an appropriate response to the [STUDENT]'s lack of academic progress.

B. At this meeting the Parents stated that they disagreed with the District's 2005 evaluation. In 2005, the District's evaluation determined that the [STUDENT] did not have a PCD, despite finding that he had a full scale IQ of 116 and clear evidence that his academic performance was below grade level. The District's 2005 evaluation contradicted an earlier evaluation by the District, which identified the [STUDENT] as having a PCD. During the subsequent two years, according to the Parents, the [STUDENT]'s academic skills stagnated and his academic struggles exacerbated his emotional and behavioral challenges. Therefore, the Parents requested an IEE.

C. The team discussed the Parent's request. The Parents and the rest of the team agreed that the District's Central Assessment Team (hereafter the "CAT team") conduct a full assessment before pursuing an IEE.

8. The CAT team's evaluation of the [STUDENT] is contained in the [STUDENT]'s IEP which was admitted into evidence as Exhibit 1 which consists of 51 pages.

As part of that evaluation, the [STUDENT] was administered the Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV). The [STUDENT] earned the following

IQ/Index Scores: Verbal Comprehension 108, Perceptual Reasoning 108, Working Memory 80, Processing Speed 75, Full Scale NA, and General Ability Index (GAI).

Regarding the Full Scale IQ it was noted:

The Full-Scale score is a global measure of intellectual functioning. Since the 33-point difference between the [STUDENT]'s highest and lowest Index score was statistically significant, the Full-Scale IQ lacked meaning. The General Ability Index of 110 (75<sup>th</sup> percentile) was calculated from combining the Verbal Comprehension Index and the Perceptual Reasoning Index, both measures of higher-level thinking skills. The GAI should be considered to be the most accurate measurement of the [STUDENT]'s learning potential.

The 75<sup>th</sup> percentile is considered high average.

9. In determining whether or not the [STUDENT] had a PCD the CAT Team concluded as follows:

\*DOCUMENTATION: In order to be eligible for special education services with a Perceptual Communicative Disability, there must be evidence of information processing deficits and, in addition, a significant discrepancy between intellectual potential and academic achievement in reading, mathematics, and/or written language.

Cognitive processing deficits do appear evident at this time in the areas of working memory and processing speed.

The standard scores from achievement testing in reading, math, and/or written language must be equal to or below the standard score cutoff as determined by the regression formula. The [STUDENT] is currently achieving at a level that is commensurate with his measured cognitive abilities. Thus, according to the results of this assessment and Colorado's procedures and regression formula, the [STUDENT] does not meet the criteria for a Perceptual Communicative Disability. However, small group instruction in a structured setting with limited distractions and with implementation of the modifications and accommodations suggested is recommended due to the [STUDENT]'s processing weaknesses and learning needs. (underlining added.)

WISC-IV GAI: 110

REGRESSION CUT-OFF SCORE: 87

BROAD READING: 96

BROAD MATH: 99

BROAD WRITTEN LANGUAGE: 89

10. The Parents initially requested an IEE on February 18, 2007. The Parents and the District agreed to allow the District to reevaluate the [STUDENT] prior to determining the necessity of an IEE.

On or about May 2, 2007 the Parents orally renewed their request for an IEE and by their letter dated May 14, 2007 to the District, they renewed their request for an IEE.

On May 23, 2007 the Parents' attorney reiterated and clarified the request for an IEE.

On June 5, 2007 the District's attorneys sought to resolve the request by offering an evaluation by one of two named neuropsychologists in a letter to the Parents' attorney.

On June 7, 2007 the Parents declined the offered evaluation by the persons named by the District and indicated their intent to engage the services of Dr. Kirk in their letter to the District's attorneys.

On June 14, 2007 the District's attorneys conveyed the same settlement offer as conveyed in the June 5, 2007 letter, again to the Parents' attorney, requesting a response from the attorney and with language clarifying their position.

Between June 20, 2007 and July 9, 2007 there were seven e-mails exchanged between the Parents' attorney and the District's attorney seeking to clarify and resolve the differences between the parties regarding the IEE.

11. The Parents chose Dr. Kirk to provide an IEE. Dr. Kirk obtained a Bachelor of Science degree in psychology from Texas A&M University, a Masters in clinical psychology

from the University of Houston, a Doctor of Psychology from the University of Denver and a Two Year Post-Doctoral Fellowship in Pediatric Neuropsychology at the John Hopkins University School of Medicine.

12. Dr. Kirk evaluated the [STUDENT] on June 27, 2007 and prepared a report consisting of 11 pages which was admitted into evidence as Exhibit 6.

13. Dr. Kirk testified that in his opinion the [STUDENT] has a PCD and that this is important to the [STUDENT] because that classification will increase the IEP team's understanding of the [STUDENT] and thereby will result in additional and more appropriate services to the [STUDENT].

14. Dr. Kirk disputes the accuracy of the District's evaluation because of scoring errors on tests given to the [STUDENT] by the District's psychologist and because that psychologist did not have adequate training.

15. The District's psychologist admitted making scoring errors but testified that those errors did not alter her conclusions as to the child's needs. She further testified that she received training in neuropsychology from the American Board of School Neuropsychology, Inc.

16. Dr. Kirk found that the [STUDENT] has a PCD as follows:

As part of the current evaluation, the [STUDENT] was administered an alternate form of the *GORT-4* and *TOWRE* tests, in addition to tests which measure phonological processing to more

fully assess his reading skills. The [STUDENT] demonstrated more significant reading difficulties on the *GORT-4 (Oral Reading Quotient SS=73)* and *TOWRE (Total Word Reading Efficiency SS=81)*, both of which yielded scores that are significantly discrepant from his GAI. The [STUDENT] was also administered the *TOWL-3*, which is a test that measures spontaneous writing skills. His performance on this test indicated significant writing difficulties, with his performance in the low average range and significantly discrepant from his GAI. Students who have learning disabilities in reading and writing often have core deficits in phonological processing, which include phoneme awareness, real and nonsense word decoding, and rapid naming. The [STUDENT] demonstrated significantly discrepant rapid automatized naming skills, with his performance in the deficient range. These test results, coupled with the [STUDENT]'s persistent history of difficulty with reading and writing skills, indicate that he meets DSM-IV diagnostic criteria for a Reading Disorder and Disorder of Written Expression. Based on this learning disability and the significant discrepancy between current achievement and intellectual testing, the [STUDENT] should be considered for the classification of Perceptual of Communicative Disability in addition to his current classification of Physical Disability.

17. One of the key evaluators for the District was the School Psychologist, Connie Tucker. She administered much of the testing to the [STUDENT] and contributed significantly in its analysis and in the preparation of the District's evaluation. When asked during the hearing if

the [STUDENT] had a learning disability, she stated: “I know that [STUDENT] has processing issues, processing problems, deficits. But according to the criteria that we use in Jefferson County for determining learning disabilities, he did not qualify using the formula that the State has set up. So he has learning needs, especially in written language.”

18. Dr. Kirk testified that the [STUDENT] is currently receiving accommodations in reading and writing because of his physical disabilities of ADHD and Bipolar disorder that are currently recognized by the District. He testified that if the District recognized the [STUDENT]’s specific learning disabilities in reading and math that would open the door to specific remediation in those areas which the [STUDENT] has been denied by the District’s evaluation. He further testified that, “So he is getting older. And we know that there is a developmental window - - and in the field of neuropsychology we use the term “plasticity”; meaning the fact that when you’re young and your brain is continuing to develop at a very rapid rate, that is a prime time opportunity to learn language. And along with learning language is learning how to read and write.

And as he gets older and his brain continues to develop, that window will be closing in the sense that he will be not able to benefit as much as he gets older in learning how to read and write. And so, therefore, I would be very concerned if he were not getting some type of reading and writing remediation in addition to accommodations and modifications given the fact that he’s going into the sixth grade.”

19. In preparing the [STUDENT]’s evaluation, the District’s evaluators believed that the State of Colorado required the use of a strict discrepancy between intellectual ability and achievement

which was calculated by the use of a mathematical formula for determining whether the [STUDENT] had a specific learning disability.

#### **IV DISCUSSION AND CONCLUSIONS**

##### **A. Is the District barred by its delay in requesting a due process hearing from contesting the Parents' claim for reimbursement for their IEE?**

The controlling regulation states in relevant part as follows:

34 C.F.R. § 300.502 Independent educational evaluation

(b)(2) If a parent requests an independent educational evaluation at public expense, the public agency must without unnecessary delay, either

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate...

(4) ...However, the public agency...may not unreasonably delay...filing a due process complaint to request a due process hearing to defend the public evaluation.

It is clear that the District cannot unreasonably delay in requesting a hearing. The regulation is silent as to how much time the District is allowed.

The Parents initially requested an IEE on February 18, 2007. The IHO concludes that the Parents agreed to not pursue that request until May 14, 2007. It should be noted that the Parents claim to have orally renewed their request for an IEE on May 2, 2007. Because the IHO is unsure as to the details regarding that request, the IHO has decided to use the May 14, 2007 date. Therefore for the purposes of this analysis, the request for the IEE was effective as of May 14,

2007. The request for a due process hearing was received by the Colorado Department of Education on July 9, 2007. Therefore 8 weeks or 56 days elapsed from the day of the request for an IEE and the request for a due process hearing. Though there was no evidence presented regarding the beginning of the summer recess, the IHO concludes from the general practice of Colorado school districts, that the summer recess began approximately 3 weeks after the request for an IEE.

During the period between the request for an IEE and the request for a hearing there were settlement negotiations between the parties that is evidenced by several letters and e-mails. Furthermore, there was no evidence that the delay harmed the [STUDENT] or adversely affected the Parents in their ability to obtain the evaluation from Dr. Kirk or otherwise advocate for the [STUDENT] or conduct their own affairs.

Regarding the hearing officer's decision, Congress stated as follows:

20 U.S.C. § 1415(f)(3)(E)

(E) DECISION OF HEARING OFFICER-

(i) IN GENERAL- Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) PROCEDURAL ISSUES- In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate education only if the procedural inadequacies - -

(I) impeded the child's right to a free appropriate public education;

- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

Because there was no evidence that the delay impeded the child's right to an education, to educational benefits or impeded the Parents' participation in the decision making process, the IHO concludes that the District is not barred from contesting the Parent's claim to reimbursement for the IEE that they obtained.

**B. Is the evaluation completed by the District on or about May 2, 2007 appropriate?**

The controlling regulation states in relevant part that:

34 C.F.R. § 300.502(b) Parent right to evaluation at public expense . . .

(2) If a parent requests an independent evaluation at public expense, the public agency must, without unnecessary delay, . . .

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate . . .

To determine if the evaluation of the [STUDENT] by the District was appropriate, it is necessary to determine whether or not that evaluation complied with the requirements for such evaluations found at 20 U.S.C. § 1414(b) and 34 C.F.R. § 300.304 et seq.

Of all the evaluation requirements, the Parents contend that the following were not met:  
34 C.F.R. § 300.304(c)(6)

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

and,

34 C.F.R. § 300.305(a)(2)(iv)

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

and, 34 C.F.R. § 300.307

The fundamental question to be answered is whether or not the District's evaluators had all the information they needed to properly assist the IEP team in constructing an appropriate educational program for this child.

The District's evaluators, because of the "discrepancy model" omitted considering the body of knowledge regarding specific learning disabilities for this child. The Individuals with Disabilities Education Act (IDEA) recognizes learning disabilities as an important category of

disability affecting children [see for example 20 U.S.C. § 1401(30)]. The Federal Department of Education enacted the following regulation to protect children from being excluded from receiving special educational services for the learning disabled because of the “discrepancy model.”

**§ 300.307 Specific learning disabilities.**

(a) *General.* A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State---

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);

Regarding the appropriateness of using the “discrepancy model” the District’s director of special education, Barbara Blanchard, was asked about the debate regarding the “discrepancy model” at the federal level. She responded, “As I understand it, that’s been under great discussion around the discrepancy model. Part of what we’re waiting on to hear from the State is whether or not the State has adopted that exactly as the Federal Government has mandated. And I know it’s up for discussion at every legislature model in different states. We are awaiting a decision from Colorado, and until then all of the directors have been advised to continue with the existing criteria as it stands.” (underlining added) and “That it may or may not be used as a way to determine eligibility. Prior to the new authorization it was determined

that it would be the model for determining disability, and now it's under discussion whether that practice will continue or if there might be an alternative means of determining eligibility.”

The evaluations of the [STUDENT] have consistently found that he has (1) a processing disorder (2) is significantly delayed in reading and writing and (3) there is a significant discrepancy between intellectual performance and academic skills. The foregoing are the hallmarks of a learning disability which is also known as a Perceptual Communicative Disability (hereafter “PCD”). Dr. Kirk who conducted the IEE emphasized that the [STUDENT] did in fact suffer from a specific learning disability or a PCD. Dr. Kirk testified that determining that the [STUDENT] had a specific learning disability or PCD was very important because it would focus attention on the [STUDENT]’s primary academic needs and because of his age, now is the critical time to meet those needs in the development of his brain. Specifically, Dr. Kirk indicated that the finding of a PCD would result in the [STUDENT]’s having additional academic needs in writing and reading with modifications in his special education to allow him to receive an appropriate education.

The District’s evaluation stated in part, “The standard scores from achievement testing in reading, math, and/or written language must be equal to or below the standard score cutoff

as determined by the regression formula. . . Thus, according to the results of this assessment and Colorado’s procedures and regression formula, the [STUDENT] does not meet the criteria for a Perceptual Communicative Disability.”

As quoted above, 34 C.F.R. § 300.307 specifically requires that a State may not require the use of a severe discrepancy formula between intellectual ability and achievement. The District’s evaluators along with the above quoted passage make it clear that in the evaluators’ analysis of this [STUDENT] that Colorado required the use of a severe discrepancy formula. This federal prohibition on using a strict or severe mathematical discrepancy formula is particularly appropriate in this case since there were opposite results between the District’s evaluation and the IEE which could have resulted from the date of testing because at different ages, the child is compared with a different peer group, scoring errors, evaluator qualifications, etc.

The District’s evaluation was improperly limited to only recommending an educational program based on accommodating physical disabilities (ADHD & Bipolar disorder) by wrongfully excluding the consideration of a specific learning disability by its improper reliance on the discrepancy formula.

Therefore, because the District’s evaluators believed that they were precluded by a Colorado state rule from finding that the [STUDENT] had a specific learning disability or PCD, the IHO concludes that the District’s evaluation was not sufficiently comprehensive to

identify all of the child's special education and related services needs as required by 34 C.F.R. § 300.304(c)(6). Likewise, because the District's evaluators believed that they were required by the state of Colorado to use the precise mathematical outcome of the discrepancy formula, the District's evaluation could not adequately determine whether additions or modifications to the special education and related services were needed because of a cognitive learning disability to enable the child to meet the goals set out in the IEP as required by 34 C.F.R. § 300.305(a)(2)(iv). Therefore, it is likely that the [STUDENT] will be deprived of educational benefit because of the District's evaluation which improperly precluded consideration of the likelihood that the [STUDENT] has a specific learning disability.

## **V. DECISION**

Based upon the above findings and conclusions, it is the decision of the Impartial Hearing Officer that:

1. The District's evaluation is not appropriate.
2. The District shall reimburse the Parents for the cost of the independent educational evaluation submitted by Dr. Kirk.

## VI. APPEAL RIGHTS

Enclosed with this decision, please find a copy of your appeal rights under the ECEA, 1 CCR 301-8 2220-R-6.03(9) through (14).

Dated in Fort Collins, Colorado this 14th day of September, 2007.

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Gordon F. Esplin  
Impartial Hearing Officer  
P. O. Box 1067  
Fort Collins, CO 80522-1067  
970-484-2685

## CERTIFICATE OF SERVICE

I certify that on September 14, 2007, I sent a copy of the foregoing Impartial Hearing Officer's Findings and Decision by certified United States mail to:

Alyssa C. Burghardt  
Caplan and Earnest, LLC  
1800 Broadway, Suite 200  
Boulder, CO 80302

Kate Gerland  
The Offices of Louise Bouzari  
7887 East Belleview, Suite 1100  
Englewood, CO 80111

Jennifer Rodriguez  
Special Education Services Unit  
Colorado Department of Education  
201 E. Colfax Avenue  
Denver, CO 80203-1704

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Gordon F. Esplin

- 6.03(8) Individuals described by the following criteria shall not be eligible as hearing officers:
- 6.03(8)(a) Officers and employees of the State Board of Education.
  - 6.03(8)(b) Officers and employees of school districts and administrative units.
  - 6.03(8)(c) Any person having a personal or professional interest, including persons involved with the care of the child, which would conflict with his or her objectivity in a hearing.
  - 6.03(8)(d) Parents of children with disabilities from birth to 21.
- 6.03(9) Right to appeal decision of impartial hearing officer.
- Either party may obtain state level review of the decision of the impartial hearing officer including a decision rendered in an expedited due process hearing. The state level review shall be conducted on behalf of the Commissioner of Education by an administrative law judge of the Colorado State Government, General Support Services, Division of Administrative Hearings.
- 6.03(10) Procedure for appealing decision of impartial hearing officer.
- 6.03(10)(a) Any party who seeks to appeal the decision of an impartial hearing officer shall file with or mail to the Division of Administrative Hearings within 30 days after receipt of the impartial hearing officer's decision:
    - 6.03(10)(a)(i) A notice of appeal.
    - 6.03(10)(a)(ii) A designation of the transcript. A party may designate a portion of the tape recorded record or arrange for a transcript of the tape recorded record.
  - 6.03(10)(b) Simultaneously with mailing or filing the notice of appeal and designation of transcript with the Division of Administrative Hearings, the appealing party shall mail copies of these documents to the Department of Education and to all other parties in the proceeding before the impartial hearing officer at their last known addresses.
 

Within five days of receipt of a notice of appeal, any other party may file a cross appeal.
  - 6.03(10)(c) The notice of appeal shall contain the following:
    - 6.03(10)(c)(i) The caption of the case, including case number and names of all parties.
    - 6.03(10)(c)(ii) The party or parties initiating the appeal.
    - 6.03(10)(c)(iii) A brief description of the nature of the case and the order being appealed.
    - 6.03(10)(c)(iv) A list of the issues to be raised on appeal.
    - 6.03(10)(c)(v) A copy of the findings of fact and decision of the impartial hearing officer being appealed.

- 6.03(10)(c)(vi) A certificate of service showing the date the copy of the notice of appeal was mailed to the Department of Education and to all parties in the proceeding before the impartial hearing officer. All subsequent documents and pleadings filed with the Division of Administrative Hearings shall similarly contain a certificate of service showing that a copy was mailed to all parties.
- 6.03(10)(d) A notice of cross appeal shall contain those items listed in 6.03(10)(c)(i-iv) above along with a certificate of service.
- 6.03(10)(e) At the time the notice of appeal is filed or mailed, the appealing party shall also file with or mail to the Division of Administrative Hearings either a statement that no transcript is necessary for the appeal and a review of the tape recorded record is sufficient or a designation of all portions of the transcript necessary for resolution of the appeal. No transcript is required if the issues on appeal are limited to pure questions of law.
- 6.03(10)(f) Within five days after the receipt of the notice of appeal and designation of transcript or tape recording, the other party may file with the Division of Administrative Hearings a designation of any additional portions of the transcript which the party believes are necessary for resolution of the appeal.
- 6.03(10)(g) Whichever party appeals the decision shall insure that such transcript is filed with the Division of Administrative Hearings within 15 days of the date the notice of appeal is mailed or filed.
- 6.03(10)(g)(i) Whichever party appeals the decision shall, simultaneously with filing or mailing the notice of appeal and designation of record, contact the court reporter and order the transcript or arrange for the transcription of a tape recorded record or submit the entire tape recorded record.
- 6.03(10)(g)(ii) Immediately upon filing any additional designations pursuant to Section 6.03(10)(f) of these Rules, any party submitting designations shall order from the court reporter the transcript or arrange for transcription in the case of a tape recorded record and shall insure that such transcript is filed with the Division of Administrative Hearings within 15 days, or submit the entire tape recording.
- 6.03(10)(g)(iii) A party requesting a written transcript is responsible for paying for it. A party requesting parts of a written transcript by filing an additional designation is responsible to pay for those portions of the transcript. Parent(s) shall not be required to pay for the cost of a copy of the tape recorded record for an appeal. The transcript or portions thereof shall be made available to any party at reasonable times for inspection or copying at the copier's expense.

- 6.03(10)(h) Upon receipt of the notice of appeal, the administrative law judge assigned to hear the appeal shall direct the impartial hearing officer to certify and transmit to the administrative law judge, within seven days, all pleadings and documents filed with the impartial hearing officer, all exhibits and the decision of the impartial hearing officer.
- 6.03(11) State level review procedures.
  - 6.03(11)(a) Unless otherwise ordered by the administrative law judge, briefs shall be filed and oral argument held within 20 days after the filing or mailing of the notice of appeal.
  - 6.03(11)(b) In conducting a state level review, the administrative law judge shall:
    - 6.03(11)(b)(i) Examine the transcript and certified record received from the impartial hearing officer.
    - 6.03(11)(b)(ii) Seek or accept additional evidence, if needed.
    - 6.03(11)(b)(iii) Afford the parties an opportunity for oral or written argument, or both, if appropriate, at a time and place reasonably convenient to the parties.
    - 6.03(11)(b)(iv) Determine and assure that the procedure at the hearing before the impartial hearing officer was in accordance with the requirements of due process.
    - 6.03(11)(b)(v) Make a final and independent decision and mail such to all parties within 30 days after the request for a review is received.
  - 6.03(11)(c) The administrative law judge may grant specific extensions of any of the timelines, at the request of either party, once a timely appeal has been received.
  - 6.03(11)(d) In connection with the state level review, the parties shall have the following rights:
    - 6.03(11)(d)(i) To be accompanied and advised by counsel and by individuals with special knowledge with respect to the problems of children with disabilities.
    - 6.03(11)(d)(ii) If further evidence is to be taken, to present evidence and confront, cross-examine, and compel the attendance of witnesses.
    - 6.03(11)(d)(iii) To prohibit the introduction of any evidence through witnesses or documents at the hearing if the witness has not been identified or the document has not been disclosed to that party at least five days before the hearing.
    - 6.03(11)(d)(iv) To obtain a written or electronic verbatim record of the hearing.

- 6.03(11)(d)(v) To obtain a written determination upon state level review, including a written, or at the option of the parents, electronic copy, of the findings of fact and a decision.
- 6.03(12) The decision made upon a state level review shall be final except that either party has the right to bring civil action in an appropriate court of law, either federal or state. In any civil action brought under this section, the court receives the records of the administrative proceedings from the hearing officer, hears additional evidence at the request of a party, bases its decision on the preponderance of the evidence, and grants the relief that the court determines to be appropriate.
- 6.03(13) Attorneys' fees.
- In any administrative proceeding brought under C.R.S. 22-20-101, et seq., the impartial hearing officer or the administrative law judge may not award reasonable attorneys' fees as part of the cost to the parent(s) or guardian of a child with disabilities who is the prevailing party. Such fees may only be awarded by the court in a civil action brought under these Rules.
- 6.03(14) Child's status during proceedings
- 6.03(14)(a) During the pendency of any due process hearing or appeal, unless the administrative unit and the parents agree otherwise, the child shall remain in his or her current educational placement.
- 6.03(14)(b) If the decision of a hearing officer in a due process hearing, or an administrative law judge in an appeal, agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the administrative unit and the parents for purposes of paragraph (a) above.
- 6.03(14)(c) If a parent requests a hearing or an appeal of a disciplinary action; or to challenge the interim alternative educational setting; or the manifestation determination; the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period for the interim alternative educational placement, whichever comes first, unless the parent and the administrative unit agree otherwise.