



# COVID-19 Procedural Updates to Dispute Resolution

*July 6, 2020*

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As part of the state's response to the COVID-19 outbreak in the United States, the Kentucky Department of Education's (KDE) Office of Special Education and Early Learning (OSEEL) is updating its guidance regarding dispute resolution processes available under the Individuals with Disabilities Education Act (IDEA).

## *Effective Date*

This guidance is effective from March 16, 2020, until further notice. All provisions contained in the IDEA remain in effect.

## *Procedural Updates*

In the event of a prolonged temporary transition of OSEEL to fully remote telework, the following provisions will come into effect to provide continuation of services for those parties involved in the dispute resolution process.

## **Document Submission: Case Filings, Pleadings, Settlement Agreements**

### *Intake – Initial Case Filing*

While transitioned to fully remote telework status, the OSEEL will continue to accept documents and submissions from all parties in both hard copy and electronic formats. These documents may be provided by fax to (502) 564-6470 or via email as attachments. Electronic documents require a signature.

While it is not best practice to send personally identifiable information (PII) over email, there are steps that can be taken to protect PII. Some of these are listed below:

1. Obtain signed parent permission prior to sending documents containing PII.
2. Password protect any documents containing PII prior to sending them through email.
3. Do not send passwords in the same email with the protected document. Always call the parent or, less ideally, send the password in a separate email.
4. Use encryption software to encrypt the document or the email.
5. The videoconference tool Microsoft Teams, which is provided by KDE to school districts, includes security standards required by KDE. This software also can transfer documents to videoconference participants. Of course, proper use by district staff to ensure district computers are connected to a secure network and only authorized participants join the video conference is a local district responsibility.



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Hard copies (documents in any physical format) of documents will be accepted; however, the Division of IDEA Monitoring and Results (DIMR) within the OSEEL will only process mail on Tuesdays and Thursdays while fully remote telework is in place.

Should an impartial hearing officer (IHO) require a five-day disclosure in hard copy format, methods for submission of such documents shall be devised between the parties and the assigned IHO.

## ***Provision of Documents***

Districts must continue to upload documents in a secure fashion to maintain compliance with the Family Educational Rights and Protection Act (FERPA). Documents previously provided by the KDE in hard copy shall be provided in electronic format, either as attachments to e-mail or through a secure direct link.

Regarding those documents for which a hard copy has been requested, provision in the format of choice will be provided upon transition from fully remote telework to normal office operations.

## **Meetings**

KDE is unavailable to host in-person meetings. Below, please find guidance for continued provision of services for each type of dispute resolution meeting.

### ***Prehearing Conferences***

Prehearing conferences shall be scheduled and held in a remote manner agreeable to all parties and the IHO, and in compliance with IDEA regulations. Should a party wish to have the prehearing conference recorded, a request can be submitted to KDE to be fulfilled at its discretion. KDE will not transcribe any audio recordings of proceedings made using outside recording devices (such as cell phone recordings, personal recorders or similar devices).

### ***Due Process Hearings***

Remotely recorded teleconferencing is available for any scheduled due process hearings. Provision of a conference phone number and access code shall be made to parties by the IHO assigned to the case. Should parties not wish to pursue this option, cases must either be continued or voluntarily dismissed (and, if desired, refiled), to comply with IDEA guidelines.



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## *Mediation*

Remote teleconferencing is available for mediations. Should the mediation be scheduled to take place in a location offsite, it may continue as scheduled provided the arrangement is agreeable to all parties and the assigned mediator. All Kentucky school districts have video teleconferencing software through Microsoft Teams that is provided by KDE. If the preference is not to rely on the school district for use of the video teleconferencing software, please contact KDE to plan for use of its video teleconferencing software to conduct mediation via video teleconference or by telephone.

## **IDEA Formal Complaints**

Absent agreement by the parties, a state may be able to extend the 60-day timeline for complaint resolution if exceptional circumstances exist with respect to a particular complaint. Although it previously has been advised that unavailability of staff is not an exceptional circumstance that would warrant an extension of the 60-day complaint resolution timeline, the COVID-19 pandemic could be deemed an exceptional circumstance if a large number of state education agency (SEA) staff are unavailable or absent for an extended period of time. Teleworking does not meet the criteria for an extension due to exceptional circumstances. Extension requests must be approved by the DIMR director and will be individually reviewed to determine if an exceptional circumstance is present.



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## Questions?

If you have any questions pertaining to the dispute resolution process, contact KDE via the contact information provided below.

<b>KDE Contact</b>	<b>Contact Information</b>	<b>Responsibilities</b>
Todd Allen	(502) 564-4474 <a href="mailto:todd.allen@education.ky.gov">todd.allen@education.ky.gov</a>	Office of Legal Services
Carol Ann Morrison	(502) 564-4970, ext. 4123 <a href="mailto:Carol.morrison@education.ky.gov">Carol.morrison@education.ky.gov</a>	Director, DIMR
Brian Lovell	(502) 564-4970, ext. 4536 <a href="mailto:Brian.lovell@education.ky.gov">Brian.lovell@education.ky.gov</a>	IDEA Formal Complaints

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