



STATE OF VERMONT
DEPARTMENT OF EDUCATION
120 State Street
Montpelier, VT 05620-2501

To: Parents of Students with Disabilities

From: Karin Edwards, Director of Student Support Services

Date: September 28, 2006

Re: Vermont's New Special Education Due Process System

The Vermont Department of Education's new special education due process system went into effect on August 24, 2006, with the adoption of the revised Vermont Special Education rules. The changes to due process were made in response to comments from school and parent representatives wanting to improve the current system in Vermont.

The new due process system promotes the use of mediation and the new federal "resolution session" as a chance for the parent and the school to work out their disagreement without having to go to a hearing. (Mediation is a meeting between the parent and the school with a neutral third person there to assist the parties in resolving the dispute for themselves. Resolution is a session where the parent and the school meet and to try to resolve the problems without a third party.) If the parent and the school are not able to resolve their issues in mediation or a resolution session, the new system shortens the time frame for completing a due process hearing, which will also help to contain costs for parents and schools. The way that the time frame is shortened is by sharing a lot of information and focusing the issues before the hearing is actually held. This all adds up to a fair and faster resolution of problems that may be impacting your child's education.

The purpose of this memo is to summarize the major changes to the due process system. Please note that this memo only highlights some of the key parts of the new due process rules and is not a complete description of the due process requirements under state and federal laws. Before filing for a due process hearing, please be sure to carefully review Vermont's Special Education Rules and related provisions on mediation for a full explanation of what you need to know about filing a due process complaint. These rules are attached as [Appendix A](#).

This memo provides information on the following:

1. How Long Do Parents Have to File a Due Process Complaint
2. Filing a Due Process Complaint

3. What Can You Expect When You Have the Initial Telephone Conference Call with the Hearing Officer and the School
4. What Happens if the School Did Not Provide Prior Written Notice Regarding an Issue Raised in the Complaint
5. What Happens if the School Challenges the Sufficiency of Your Complaint
6. Preparing for the Pre-hearing Conference
7. Last Steps for Disclosing Information Prior to the Hearing
8. What Happens if the Parties Reach Agreement Prior to the Hearing
9. What to Expect At and Following the Hearing

1. How Long Do Parents Have to File a Due Process Complaint

- Parents can request a due process hearing within two years of the date on which the problem occurred. If you were not informed of your rights or the school district misrepresented that it had resolved the problem, the two year timeline may not apply.
- When parents take their child out of the public school and enroll their child in another educational placement (without approval of the IEP team) and want the school district to reimburse them for that placement, they have 90 days from the date of placement to file a due process complaint.

2. Filing a Due Process Complaint

- Fill out a complaint form. A model due process complaint form is attached as [Appendix B](#), or you may download the form at http://www.state.vt.us/educ/new/html/pgm_sped/forms.html#due_process.
- You may file a complaint on any matters regarding a problem about one or more of the following:
 - the identification,
 - evaluation,
 - placement of your child or
 - provision of a free appropriate public education.
- Be sure to fill out the form completely. Taking care in completing the form is very important because the school district may challenge you on the sufficiency of your complaint. A school may make such a challenge if it does not think the complaint provides enough information. If the hearing officer agrees with the school, you may be

allowed to amend (add the needed information about the original problem(s) raised) to your complaint but this will effect the timeline for scheduling a hearing. Be sure your complaint includes a full description of the nature of the problem as it relates to the proposed, or refused initiation or change. Also be sure to include any known facts relating to the problem and a proposed resolution of the problem to the extent known and available to you at the time.

- You must send the complaint form and any attachments to the Commissioner of the Department of Education at 120 State Street, Montpelier, VT 05620-2501.
- You must also provide a copy of the complaint and attachments to the special education coordinator or superintendent of your school.
- If you have any questions about filling out the complaint form or the due process procedures you may call: the Vermont Parent Information Center at (800) 639-7170; the Disability Law Project at (802) 863-2881 or 1 800-747-5022; or the Department of Education's legal administrator at (802) 828-3136. Someone will help you with your questions as well as direct you to other organizations that may also provide information and assistance to parents at no cost.
- Make sure that you are prepared to take action on your complaint when you file. Important steps that you, the school, and the hearing officer will need to take will happen soon after you file.

3. What Can You Expect When You Have the Initial Telephone Conference Call with the Hearing Officer and the School

- An initial conference call with the hearing officer, parents and the school is now a requirement of Vermont's due process system.
- Soon after receiving the complaint, the DOE legal administrator will contact the parents and the special education administrator to schedule an initial telephone conference call. The initial telephone conference call will take place no later than four days after the DOE receives the complaint. If represented by an attorney, the parents and the school district will need to determine their attorney's availability for the initial call. If the DOE legal administrator is unable to reach you directly by phone or e-mail, she will go ahead and pick a time and date for the initial telephone conference call and notify you as described below. (Tip: When you fill in the complaint form, provide as many options that are available to contact you.)
- Within two days of receiving your complaint, the DOE legal administrator will send a letter to you and the school to confirm the time and date for the initial telephone conference.
- On the conference call, the hearing officer will explain the options for the parents and the school to use a resolution session or mediation to resolve disputes. The hearing officer will also ask you and the school whether you agree to hold a resolution session meeting or go to mediation.

- If you and the school district agree to hold a resolution session, the hearing officer will request a date, time, and location for this meeting while on the call.
- If you and the school district choose to go to mediation instead, the hearing officer will identify a date by which the mediation must occur. (After the phone call, the hearing officer will notify the DOE legal administrator to initiate the mediation scheduling process.)
- When you and the school decide to use a resolution session or mediation, there will be a 30-day “resolution period” to give the parent and the school time to resolve the complaint between themselves. While on the call, the hearing officer will identify the date by which the resolution period ends and the date by which the 45-day timeline to issue the due process decision will begin. The hearing officer will set the dates, within the 45-day timeline, for the pre-hearing conference, exchange of information, and the due process hearing in the event that mediation or resolution session is unsuccessful.
- You and the school may waive your right to a resolution session and decide you don’t want to try mediation either. In this case, the 45-day due process timeline will begin much sooner. In this case, the hearing officer will ask the parent and the school to confirm in writing their decision to waive by a certain date and schedule the dates for the pre-hearing conference, deadlines for exchange of information, the hearing and the date by which the hearing officer’s decision will be sent to the parent and the school.
- The hearing officer will explain options if the parent or the school is considering the use of expert witnesses, including the use of affidavits.
- The hearing officer will follow up the initial telephone conference call with a scheduling order mailed to you and the school district. The scheduling order will list all the deadlines and appointments for all events that need to occur. See [Appendix C](#) for sample timelines.

4. What Happens if the School Did Not Provide Prior Written Notice Regarding an Issue Raised in the Complaint

- The school is required to have already shared with the parent the explanation of why it proposed or refused to take the action raised in the parent’s complaint, and will have provided supporting information. The DOE “Form 7” usually accomplishes this notice to the parent.
- If the school did not adequately provide this notice to the parents, the school must do so within 10 days of the receipt of the complaint.

5. What Happens if the School Challenges the Sufficiency of Your Complaint

- When the school district believes that the parents’ due process complaint does not meet the requirements of the law, it has 15 days to challenge the sufficiency of the complaint. The school must notify the hearing officer and the parent in writing.
- After receiving written notice from the school, the hearing officer has up to 5 days to determine whether the parent’s due process complaint meets the requirements of the law.

The hearing officer will notify the parent and the school in writing whether the complaint is sufficient to move forward.

- If the hearing officer determines that your complaint is not sufficient, the complaint may not move forward, unless the parent and the school agree in writing to an amendment or the hearing officer decides to allow an amendment. If a due process complaint is amended, the timelines for the resolution session and the resolution period start from the beginning.¹

6. Preparing for the Pre-hearing Conference

- The pre-hearing conference is a new and very important step in the due process system. It is a face-to-face meeting with the hearing officer, parents, and the school. Plan to be available for four hours. The purpose of the pre-hearing conference is to review specific information that will be discussed at the due process hearing before the hearing takes place. (As will be described below, in most instances, each party will have one day to present its case at the actual hearing.)
- Certain steps need to occur prior to the pre-hearing conference:
 - No later than three days before the pre-hearing conference, the parents must provide the hearing officer and the school district with a detailed written statement describing the issues to be addressed in the hearing, including any violations regarding the special education process. This is not a time to raise new issues but rather the parent's chance to provide a more in-depth explanation of the issues raised in the original complaint.
 - No later than one day before the pre-hearing conference, the school district must give the parent and the hearing officer a written statement describing their defense against the due process complaint which you filed.
 - Tip: Because of the tight turnaround time between the schools filing of defenses and the hearing, you may want to talk about exchanging these documents earlier than the deadlines discussed above and in rule.
- At the pre-hearing conference, the parent and the school must be prepared to provide the hearing officer with the following information:
 - A preliminary list of the witnesses that each party plans to call and a summary of the testimony expected from each witness and a statement of facts regarding the complaint.
 - The parent and the school must provide a statement of facts that are not disputed.

¹ A discrepancy between the new federal regulation 34 C.F.R. 300.508(d)(4) and the new language in VSBE Rule 2365.1.6.5(d) exists and the state rule will need to be amended to be consistent with the federal language. In the interim, the hearing officers will apply the federal language. In so far as the state rule could be construed as extending the statute of limitations pursuant to VSBE Rule 2365.1.6.1, it cannot be interpreted that way.

- In addition, the school district is required to give the other party and the hearing officer a binder with relevant portions of the student's file that it will introduce at the hearing.
- After the pre-hearing conference, the hearing officer will issue a pre-hearing order describing:
 - A clear and specific identification of the issue to be heard at the hearing;
 - Rulings regarding any motions heard at the pre-hearing conference by the parent and the school district;
 - Any decisions made about the order in which evidence will be presented; and
 - Decisions about any other related matters.

7. Last Steps for Disclosing Information Prior to the Hearing

- Testimony may be presented in the form of an "affidavit" which can save time at the hearing. An affidavit is a signed, written statement providing the testimony of a witness. Keep in mind that the affidavit must be submitted in advance and witnesses will have to be available for cross examination, unless the parent and the school agree otherwise. Testimony may be in person or by phone, as agreed by the parties and the hearing officer.
- No later than five business days before the hearing, all evidence, any additions to the witness list, and/or any additions to the core exhibits must be sent to the school district. (The school will be sending you the information too.) This includes:
 - a final witness list with a brief description of their testimony
 - copies of evidence, including evaluations and recommendations
 - all other documents to be used as evidence
- If neither party objects, these exhibits may be shared with the hearing officer two days before the hearing. Sharing information in advance with the hearing officer can help him/her to be better prepared for the hearing and manage the hearing more efficiently.

8. What Happens if You Reach Agreement Before the Hearing

- If you and the school reach an agreement prior to the hearing, the school must inform the hearing officer in writing. This letter must include a written statement signed by the parent and the school and include a request to cancel the hearing and to dismiss the case with prejudice. "Dismissal with prejudice" means that the hearing officer order is a final resolution of the issues raised in the complaint and the person filing the complaint cannot raise these same issues regarding the incidents described in the complaint in a new complaint.

- A legally binding written settlement agreement, whether reached through a resolution session, mediation, or other type of negotiation between the parent and the school, is enforceable in state or federal court.

9. What to Expect At and Following the Hearing

- The parent and the school each have one day to present their case, including questioning any witnesses, unless the hearing officer determines that more time is necessary.
- The hearing officer will render a decision not later than 45 days after the resolution session, mediation or the date of the written agreement not to do either.
- Exceptions to the 45-day timeframe are not to be expected. Exceptions will be granted only under limited circumstances when the delay does not negatively impact the student, create a financial burden for either party that outweighs the need for the delay and if the delay is determined necessary to provide either party adequate time to prepare its case.

Please remember that this memo only highlights some key elements to the new due process system and does not provide a full description of all the rights and obligations parents and schools have to due process.

For more information, contact the Vermont Parent Information Center at (800) 639-7170; the Disability Law Project at (802) 863-2881 or 1 800-747-5022; or the Department of Education's legal administrator at (802) 828-3136. Someone will help you with your questions as well as direct you to other organizations that may also provide information and assistance to parents at no cost.

APPENDIX A
Extract of Vermont State Board of Education Rule 2360:
Due Process (Rule 2365.1.6 – 2365.1.8)

2365.1.6 Due Process Complaint Procedures

2365.1.6.1 Timeliness of Due Process Complaint Request

- (a) A written due process complaint notice shall be filed with the Commissioner:
- (1) Within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.
 - (2) Notwithstanding (1) above, within 90 days of a unilateral special education placement by the child's parent, where the request is for reimbursement of the costs of such placement.
 - (3) Exceptions to the timeline. The timelines described in (i) and (ii) of this section do not apply to a parent if the parent was prevented from filing a due process complaint due to:
 - (i) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or
 - (ii) The school district's withholding of information from the parent that was required under this part to be provided to the parent.
 - (4) Where the parent has not been given proper notice of special education rights under state and federal law, including notice of the limitations in this section, such limitations shall run from the time notice of those rights is properly given.
 - (5) With same day notification to the school district pursuant to rule 2365.1.6.3.

2365.1.6.2 Initiation of Due Process Hearing by a Parent, a School District, or the Commissioner

- (a) The Commissioner shall make available a model form for a parent or school district to use to initiate a due process complaint.
- (b) A parent or a school district may file a due process complaint on any matters regarding the identification, evaluation, or placement of the child or the provision of a free appropriate public education by sending a written Due Process Complaint Notice to the Commissioner with a copy sent to the other party. If the notice cannot be in writing due to special circumstances, such as an inability to communicate in writing, the notice may be made through other means of communication.
- (c) The party requesting a hearing shall submit the written due process complaint to the Commissioner and to all other parties, on the Department's form set forth in (a) above which shall contain the following information:
- (1) The name of the child;
 - (2) The address of the residence of the child; in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child;
 - (3) The name of the school the child is attending;

- (4) A description of the nature of the problem relating to the proposed, or refused initiation or change of the child's identification, evaluation, and/or educational placement, and the facts relating to the problem; and
 - (5) A proposed resolution of the problem to the extent known and available to the complainant at the time.
- (d) A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (c) of this section.
 - (e) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the complaint filed, unless the other parties agree otherwise.
 - (f) The Commissioner may request a due process hearing in accordance with 16 V.S.A. §2958(c)(1) to challenge the need for residential placement where the residential placement review team recommends that a less restrictive educational placement is both available and appropriate for a child who is eligible for special education services.
 - (g) If a parent requests the information or if a due process complaint notice is received, the Commissioner shall inform the parent of any free or low-cost legal and other relevant services available in the area.

2365.1.6.3 Notification by Commissioner to School District of Receipt of Request for Hearing

If the due process complaint is initiated by a parent, the Commissioner shall on the same day notify the school district by facsimile transmission or electronic mail, confirmed in writing by first class mail. Notification to the school district by the Department shall be made specifically to the special education administrator, if the school district has a special education administrator on staff. If the school district does not have a special education administrator on staff, notification to the school district shall be made to the superintendent.

2365.1.6.4 Commencement of the Due Process Complaint; Elements of Complaint Process

- (a) The hearing process shall commence on the date the Commissioner receives a request for a hearing. If received outside of regular business hours, the process shall commence on the next business day.
- (b) A due process hearing shall include the following:
 - (1) An initial telephone conference call pursuant to Rule 2365.1.6.7(a)(2) and (b).
 - (2) A prehearing conference as in Rule 2365.1.6.11 for the due process hearing, that results in a hearing officer's prehearing order.
 - (3) A hearing that, except for good cause shown, shall be limited to two business days. The hearing officer will grant additional time only if necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion.
 - (4) A hearing officer's decision pursuant to Rule 2365.1.6.16 that shall be the final decision of the Department of Education.

2365.1.6.5 Sufficiency of Complaint

- (a) The due process complaint shall be deemed sufficient unless an opposing party receiving the due process complaint notifies the hearing officer and the complaining party in writing,

within 15 days of receipt of the due process complaint, that the opposing party believes that the due process complaint does not meet the requirements in Rule 2365.1.6.2(c). Filing of such a notification by an opposing party must not be grounds to delay the resolution session required under Rule 2365.1.6.8.

- (b) Within five days of receipt of notification under paragraph (a) of this section, the hearing officer shall make a determination of whether the due process complaint meets the requirements of Rule 2365.1.6.2(b), and shall immediately notify the parties in writing of that determination and the status of the due process complaint.
- (c) A party may amend its due process complaint only if:
 - (1) The other parties consent in writing to the amendment and are given the opportunity to resolve the amended due process complaint through a resolution meeting held pursuant to Rule 2365.1.6.8; or
 - (2) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
- (d) If a party files an amended due process complaint, all due process timelines begin again with the filing of the amended due process complaint.

2365.1.6.6 Response to Issues Raised in Complaint

(a) School District Response

- (1) If the school district has not sent a prior written notice under Rule 2365.1.1 to the parent regarding the subject matter contained in the parent's due process complaint, the school district shall, within 10 days of receiving the due process complaint, send to the parent a response that includes:
 - (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
 - (ii) A description of other options that the IEP team considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (iv) A description of the factors that are relevant to the agency's proposed or refused action.
- (2) A response by the school district under (a)(1) of this section shall not be construed to preclude the school district from asserting that the parent's due process complaint was insufficient.
- (b) **Party Other Than a School District Response.** Except as provided in paragraph (a) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

2365.1.6.7 Scheduling of Resolution Session, Mediation, Prehearing Conference, and Due Process Hearing

- (a) Within two business days of receipt of the complaint, the Commissioner shall schedule and notify the parties in writing of the following:

- (1) The appointed hearing officer to preside at the due process hearing;
 - (2) The time and date of an initial telephone conference call with the hearing officer to be held with the parties or their attorneys no later than four business days from receipt of the complaint;
 - (3) The legal authority under which the hearing is held;
 - (4) A copy of the request for due process hearing; and
 - (5) The right to have an attorney present to represent each party at the party's expense with the exception of Rule 2365.1.6.8(a)(1)(iii).
- (b) In the initial telephone conference call, the hearing officer will establish and issue a due process scheduling order detailing the following:
- (1) Whether the parties have agreed to waive the resolution session and if they intend to attempt mediation.
 - (2) If the resolution session is not waived, a date and time for the resolution session.
 - (3) If the resolution session is waived and mediation accepted, the hearing officer will notify the Department of a date by which mediation must occur, and the Department will assign a mediator.
 - (4) If both the resolution session and mediation are waived, the hearing process will commence.
 - (5) The dates for the prehearing conference, 5-day rule disclosure, due process hearing, and final decision using the timelines in Rules 2365.1.6.7, 2365.1.6.9, and 2365.1.6.16.
 - (6) If both parties agree, the hearing officer may also address any concerns about the sufficiency of the complaint.
 - (7) The hearing officer may also address any modifications to Rule 2365.1.6 necessary to address special circumstances, such as a party's inability to communicate in writing or disability.
 - (8) The scheduling shall allow for the following:
 - (i) A date for a resolution session or a date by which mediation shall occur, if the parties so decide;
 - (ii) A half business day for a prehearing conference; and
 - (iii) Two business days for a hearing, except for good cause shown pursuant to Rule 2365.1.6.4(b)(3) and Rules 2365.1.6.15(e).

2365.1.6.8 Resolution Session

(a) Convening a Resolution Session

- (1) The school district shall convene a resolution session on the date scheduled by the hearing officer at the initial conference, if the parties have not been able to agree on a mutually convenient time and date. The resolution session must be held no later than 15 days after receiving notice of the due process complaint. The session will include the parents and the relevant member or members of the IEP Team (and an appropriate representative of any other party) who have specific knowledge of the facts identified in the due process complaint, and:

- (i) Must include a representative of the school district who has decision-making authority on behalf of the school district;
 - (ii) The school district and the parents determine the relevant members of the IEP team to attend the session; and
 - (iii) May not include an attorney of the school district unless the parent is accompanied by an attorney.
- (2) The purpose of the session is for the party filing the complaint to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the other part(ies) have the opportunity to resolve the dispute that is the basis for the due process complaint.
 - (3) The parties may agree in writing that discussions that occur during the resolution session are confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute.
 - (4) The session described in paragraph (a)(1) and (2) of this section need not be held if:
 - (i) The parents and the school district agree in writing to waive the session and so notify the hearing officer; or
 - (ii) The parents and the school district agree to use the mediation process described in Rule 2365.1.4 and so notify the hearing officer.
- (b) Resolution Period
- (1) If the school district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint or such sooner date as the parties jointly notify the hearing officer that resolution is unsuccessful, the due process hearing may occur, and all of the applicable timelines for a due process hearing must commence.
 - (2) The timeline for issuing a final decision under Rule 2365.1.16 begins at the expiration of this 30 day period, or such sooner date as the parties jointly agree that resolution has been unsuccessful.
 - (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent to participate in the resolution session may result in an order of dismissal or other action by the hearing officer pursuant to Rule 2365.1.6.9.
 - (4) The timelines for resolution session may be shortened pursuant to an expedited hearing request under Rule 2365.1.6.17.
- (c) Written settlement agreement. If a resolution to the dispute is reached at the session described in paragraph (a) of this section, the parties shall execute a legally binding agreement that is
- (1) Signed by both the parent and a representative of the school district who has the authority to bind the school district; and
 - (2) Enforceable by filing for due process pursuant to Rule 2365.1.6 or in any state court of competent jurisdiction or in a district court of the United States.
- (d) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within three business days of the agreement's

execution. Nothing in this rule shall preclude either party from consulting with an attorney at any time.

2365.1.6.9 Time of Hearing; Withdrawal or Other Action for Dismissal of Hearing

- (a) The hearing shall be scheduled to begin as soon as possible but no later than 35 days after expiration of the resolution period pursuant to Rule 2365.1.6.8(b), provided that when an expedited hearing under Rule 2365.1.6.17 is requested, the hearing shall be scheduled to begin no later than 10 days after the receipt of the request by the Commissioner.
- (b) A parent may withdraw a request for a due process hearing without prejudice until such time as the parent retains legal counsel. “Withdrawal without prejudice” does not stop or in any other way alter the statutory period(s) of limitations described in Rule 2365.1.6.1.
- (c) Upon motion by a party or by independent action of the hearing officer, the hearing officer may order dismissal of a complaint for failure of any party to prosecute.

2365.1.6.10 Voluntary Production of Information; Motion for Production of Information

- (a) Each party shall attempt in good faith to make a complete response to requests, as soon as practicable, for the voluntary production of information.
- (b) When a dispute between parties arises concerning a request for the voluntary production of information, releases or documents, any party may file a motion requesting that the hearing officer order the parties to comply with information requests.
 - (1) The motion shall be filed at least seven business days before the prehearing conference, and a response shall be filed and provided to the moving party at least one business day prior to the prehearing conference, or as soon as possible after receiving a notice of intent to object to all or part of a request for production.
 - (2) The moving party’s motion shall:
 - (i) List with specificity the information it is seeking to discover; and
 - (ii) Set forth in detail those factors which it believes justify its request for information.
 - (3) When a party has demonstrated that such request for information is relevant to the issues described in the hearing notice or identified by the hearing officer as a result of the prehearing conference and is necessary for a full and fair presentation of the evidence at the hearing, the hearing officer shall grant the motion.

2365.1.6.11 Prehearing Conference Procedures

- (a) The prehearing conference required by Rule 2365.1.6.4(b)(2) shall be conducted by a hearing officer at a neutral site located in or near the school district in which the due process matter is pending. The prehearing conference shall be as follows:
 - (1) Detailed Written Statement: At least three days before the prehearing conference, the complaining party shall provide the hearing officer and the opposing party a detailed written statement of what he/she believes are the issues to be addressed in the due process hearing, including any procedural violations. At least one day before the prehearing conference, the opposing part(ies) shall provide to the hearing officer and the complaining party a detailed written statement of any defenses. Any procedural violations known to a party or defenses not raised at or before the prehearing conference may be excluded at the due process hearing at the discretion of the hearing officer.

- (2) **Witness List:** At the prehearing conference, the parties shall provide to the hearing officer and the opposing parties a preliminary list of the witnesses they plan to call and a general summary of the testimony they expect from each witness. This list may be supplemented at the time of the final five day rule submissions.
- (3) **Statement of Facts:** No later than the prehearing conference, each party shall provide to the hearing officer and the opposing party, a statement of facts. The intent of the statement of facts is to outline those facts which are not expected to be contested, so that only those issues which remain in dispute need be addressed at the hearing.
- (4) **Core Exhibits:** No later than the prehearing conference, the school district shall submit to the hearing officer and the parents a binder of proposed core exhibits consisting of the relevant portions of the student's file that the district expects will be introduced. Either party may supplement but not duplicate those proposed exhibits with the other material as long as the supplement is received by the hearing officer and the opposing party at least five days before the hearing.
- (5) **Order of Presentation at Hearing:** The party that has initiated the hearing shall present its case first unless the hearing officer determines that the change in order of presentation would not materially prejudice any party's right to a full and fair hearing, and:
 - (i) The hearing would proceed in a more timely manner if the party not initiating the hearing presents their case first; or
 - (ii) The hearing would proceed in a more efficient manner if the party not initiating the hearing presents their case first.
- (6) **Hearing Officer's Prehearing Order:** Following the prehearing conference, the hearing officer shall issue a prehearing order containing rulings on any motions heard at the conference, any decisions made about evidence or order of presentation, scheduling, or other related matters, and a clear and specific identification of the issues to be heard.
- (7) **Record of the Prehearing Conference:** The hearing officer shall ensure that an electronic verbatim record shall be made of the prehearing conference. The recording shall become a part of the record of the case. Copies shall be made available to the parties on request.

2365.1.6.12 Use of Affidavits

- (a) At hearing, parties may submit otherwise admissible testimony, in whole or in part, in the form of affidavits, so long as the witnesses are present at hearing for cross-examination by the opposing party.
- (b) Testimony may also be submitted at hearing by affidavit, without an opportunity to cross examine the witness, by prior agreement of the opposing party.
- (c) Affidavits to be introduced as evidence at hearing shall be disclosed to the opposing party no fewer than three business days prior to the hearing.

2365.1.6.13 Final Disclosure of Evidence Occurring Five Days before Hearing.

- (a) At least five business days prior to a hearing, each party shall disclose to all other parties all evidence, including a final witness list with a brief description of each witness's testimony and copies of documentary evidence including evaluations and recommendations, that the

party intends to use at the hearing. If neither party objects, the parties shall submit copies of their exhibits to the hearing officer two business days prior to a hearing.

- (b) Any evidence supplementing the core exhibits must be legibly labeled in the upper right-hand corner with consecutive Arabic numerals as either “School District Exhibit (Number)” or Parent Exhibit (number)”, as appropriate. An index, by title, of all exhibits submitted shall also be exchanged.
- (c) A hearing officer may exclude evidence, including an evaluation or recommendation, not disclosed in accordance with this section.

2365.1.6.14 Notification Concerning Agreement

- (a) If the parent and the school district reach a settlement agreement prior to the hearing, the school district shall notify the hearing officer in writing and include a written statement signed by both parties requesting the cancellation of the hearing and the dismissal of the case with prejudice.
- (b) A settlement agreement, whether reached through a resolution session, mediation, or other means of negotiation between the parties, shall not constitute a final decision or order of the hearing officer.
- (c) A legally binding settlement agreement, whether reached through a resolution session subject to a review period pursuant to Rule 2365.1.6.8(d), mediation, or other means of negotiation between the parties, shall be enforceable in any State court of competent jurisdiction or in a district court of the United States.

2365.1.6.15 Hearing Procedures

- (a) All hearings shall be electronically recorded by the hearing officer or his/her designee. The hearing officer shall also arrange for a stenographic recording of the hearing
- (b) The order of the presentation shall be determined pursuant to Rule 2365.1.6.11(a)(5).
- (c) Any party to a due process hearing has the right to:
 - (1) Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses and the production of relevant documents.
 - (3) Request that the hearing officer prohibit the introduction of affidavits pursuant to Rule 2365.1.6.12 that have not been disclosed to that party at least three business days before the hearing or any other evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
 - (4) Obtain a written, or at the option of the parents, electronic, verbatim record of the completed hearing; and
 - (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
 - (6) The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parents.
- (d) Parents involved in a hearing may:
 - (1) Have the child who is the subject of the hearing present; and

- (2) Open the hearing to the public. If a due process hearing is open to the public, the hearing officer shall seat the members of the public in such a way that does not interfere with the proceedings.
- (e) Each party shall have one day to present its case, unless the hearing officer determines that additional time is necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion. The time allowed for each party's presentation shall include both direct examination of its witnesses and cross examination of its witnesses by the opposing party.
- (f) The hearing officer may limit the number and examination of witnesses to eliminate redundant, cumulative, or irrelevant testimony.

2365.1.6.16 Decision; Extension of 45-Day Period

- (a) The Commissioner shall ensure that not later than 45 days after expiration of the resolution period under Rule 2365.1.6.8(b)(2), or if the parties elect to mediate or waive the resolution session, 45 days after the date the parties elected to mediate or signed the waiver:
 - (1) A final decision is reached in the hearing;
 - (2) A copy of the decision is sent by first class mail to each of the parties; and
 - (3) The final decision includes a statement regarding the appeal rights pursuant to Rule 2365.1.11.
- (b) A hearing officer may grant extensions of time beyond the period set out in (a) above, except as to expedited hearings, for specific periods of time at the request of either party if:
 - (1) The child's educational progress or well-being would not be jeopardized by the delay;
 - (2) The party would not have adequate time to prepare and present the party's position at the hearing in accordance with the requirements of due process; and
 - (3) The need for the delay is greater than any financial or other detrimental consequences likely to be suffered by a party in the event of the delay.
- (c) Decision of hearing officer
 - (1) Subject to subdivision (2) of this subsection, a hearing officer shall make a decision on substantive grounds based on a determination of whether the child received a FAPE.
 - (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
 - (i) Impeded the child's right to a FAPE;
 - (ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
 - (iii) Caused a deprivation of educational benefit.
 - (3) Nothing in this section shall be construed to preclude a hearing officer from ordering a school district to comply with procedural requirements under Rule 2365.1 through 2365.1.13.

2365.1.6.17 Expedited Due Process Hearings

- (a) An expedited due process hearing procedure shall be available for disciplinary issues in accordance with Rule 4313.3 and 34 CFR § 300.521, 34 CFR § 300.526, as provided in 34 CFR § 300.528.

- (b) The expedited procedure shall provide a full due process hearing, but under a restricted time schedule as set out in subsections (c) – (j) of this section.
- (c) Expedited hearings shall:
 - (1) Not exceed two days; and
 - (2) Be scheduled to be heard within 10 days where the issue before the hearing officer will be whether there is a substantial likelihood of injury to self or others if the child is returned to the mainstream.
- (d) Upon being appointed, the hearing officer shall immediately arrange with the parties two days of hearing to occur within 10 days of the filing of a complaint under Rule 2365.1.17(c)(2). At the same time, the hearing officer shall schedule an expedited resolution session to be held between the parties, and a prehearing conference, prior to the hearing.
- (e) The expedited due process hearing shall meet the requirements of 34 CFR § 300.508.
- (f) At least two business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and evidence to be offered at the hearing, and recommendations based on the offering party's evaluations that the party intends to use at the hearing. Any party to the hearing has the right to request that the hearing officer prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least two business days before the hearing.
- (g) The hearing officer may waive any of the procedures in this section in a case, but only to the extent necessary to preserve the full and fair nature of the due process hearing.
- (h) The hearing officer shall render a decision, including findings of fact and conclusions of law.
- (i) The hearing officer shall mail a written decision to the parties by first class mail within 15 days of the receipt of a written notice of the complaint.
- (j) Any party aggrieved by a decision of the hearing officer may appeal the decision as provided in Rule 2365.1.8.

2365.1.7 Impartial Hearing Officer

- (a) A hearing may not be conducted by a person who is an employee of the Department of Education or the school district or public agency that is involved in the education or care of the child, or by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department to serve as a hearing officer.
- (b) The hearing officer shall be a licensed attorney who:
 - (i) Has the knowledge of, and the ability to understand, the provisions of the IDEIA, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;
 - (ii) Has the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - (iii) Has the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- (c) The Department shall keep a list of individuals to serve as hearing officers and that list shall contain a statement of the qualifications of each of those persons.

2365.1.8 Finality of A Due Process Hearing Decision; Appeal

- (a) The decision of a hearing officer is final unless appealed to a state or federal court of competent jurisdiction.
- (b) Parties have right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction. An appeal from a due process hearing decision to a court of competent jurisdiction pursuant to 20 U.S.C. §1415(i)(2) and (3)(A), 1415(l) shall be commenced within 90 days from the notice of the final decision, and not after.

APPENDIX B: Parent Due Process Complaint Form

This form may be used to submit a due process complaint to resolve a disagreement about the identification, evaluation, eligibility or placement of a student or regarding the provision of a free appropriate public education for a student under the Individuals with Disabilities Education Improvement Act.

Instructions:

1. All asterisked (*) information on this form must be included when you submit a request for a due process hearing. If you, or your attorney, do not include the asterisked (*) items on this form, it may result in the denial or delay of a due process hearing and the reduction of any attorney's fees awarded by the court.
2. At the same time that you send this form to the Commissioner, you must send or deliver a copy of this form to the school district's special education coordinator or superintendent.
3. As soon as your complaint is received by the Commissioner, the Department will attempt to contact you to identify a mutually convenient time for an initial telephone conference call that needs to occur no later than four days from the receipt of the complaint. If the Department is unsuccessful at reaching you, a time and date will be selected and you will be notified by first class mail.

4. Under federal and state law, a parent can raise the following problems in a due process complaint:

Identification (Issues related to the timely and accurate identification by a school district of a student with a disability. This may also include issues arising from termination of services or eligibility.)

Evaluation (Issues involving the timeliness, appropriateness, and conclusions of evaluation procedures, and/or of the determination of eligibility or continuing eligibility or ineligibility, or of a parent's refusal to consent to an evaluation.)

Educational Placement (Issues involving the appropriateness of the instructional and related services, program and/or setting in which the student with a disability is provided services, including issues arising from proposed or requested changes in placement.)

Provision of a free appropriate public education (Issues involving the appropriateness and adequacy of the IEP offered to the student with a disability, and/or issues about the district's compliance with special education procedures. This may also include issues arising from termination of services or eligibility, and/or issues arising out of suspension or expulsion of the student with a disability.)

5. If you have a complaint about one of the items above, please describe it completely and accurately on the attached pages. Remember: It is important that you describe any issue that you wish to have addressed at the due process hearing, and the facts that you feel support your position. If you do not describe the issue you will not be able to raise it at the hearing. Focus on the issues that genuinely have had an adverse effect on the student's ability to receive meaningful educational benefit.

If you are not sure about how to complete this form, you may want to contact one of the following for more information or assistance:

Vermont Family Network
600 Blair Park Rd, Suite 301
Williston, VT 05401
Tel: (802) 876-5315 or 1 800-639-7170

VT Disability Law Project
264 North Winooski Avenue
Burlington, VT 05402
Tel: (802) 863-2881 or 1 800-747-5022
Fax: (802) 863-7152

Susan Boyd
Vermont Dept of Education
120 State Street
Montpelier, VT 05620-2501
Tel: (802) 828-3136

Parent Due Process Complaint Form

Mail to: Commissioner, Department of Education, 120 State Street, Montpelier, VT 05620-2501

Date: _____

Is this an Expedited Due Process Hearing for disciplinary issues under [Rule 4313.3](#) (see Page 8)? Yes No

*Parent's Name: _____ Parent's Name: _____

*Address: _____ Address: _____

*Tel: W (____) _____ H (____) _____ (cell) _____ Fax: _____ email: _____

Attorney/Advocate: _____

Address: _____

*Tel: W (____) _____ H (____) _____ (cell) _____ Fax: _____ email: _____

*Student's name: _____ Date of Birth: _____

*Student's Residence, if different from parent. If the student is homeless, please provide contact information:

*School the student attends: _____ Grade: ____ Disability: _____

A copy of this request must be provided to the Special Education Coordinator or Superintendent at the School District. Please confirm that you have done this by checking off one of the following:

A copy of this request was:

_____ mailed on _____ (date)

_____ hand-delivered on _____ (date)

The copy was provided to:

Name: _____ Title: _____

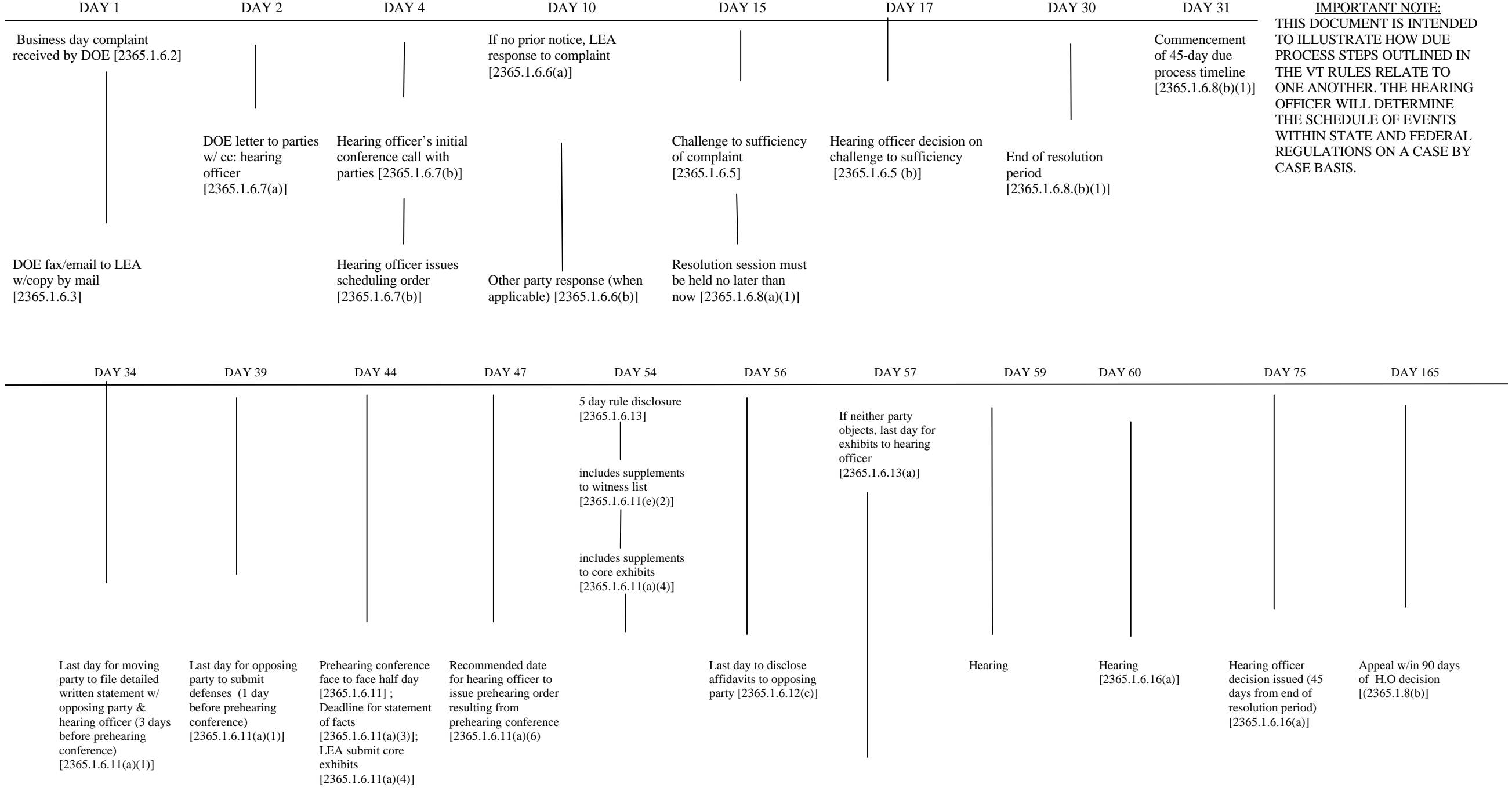
Address: _____

Are you interested in receiving information about mediation? Yes No

"I would like to request mediation in an attempt to resolve this complaint Yes No"

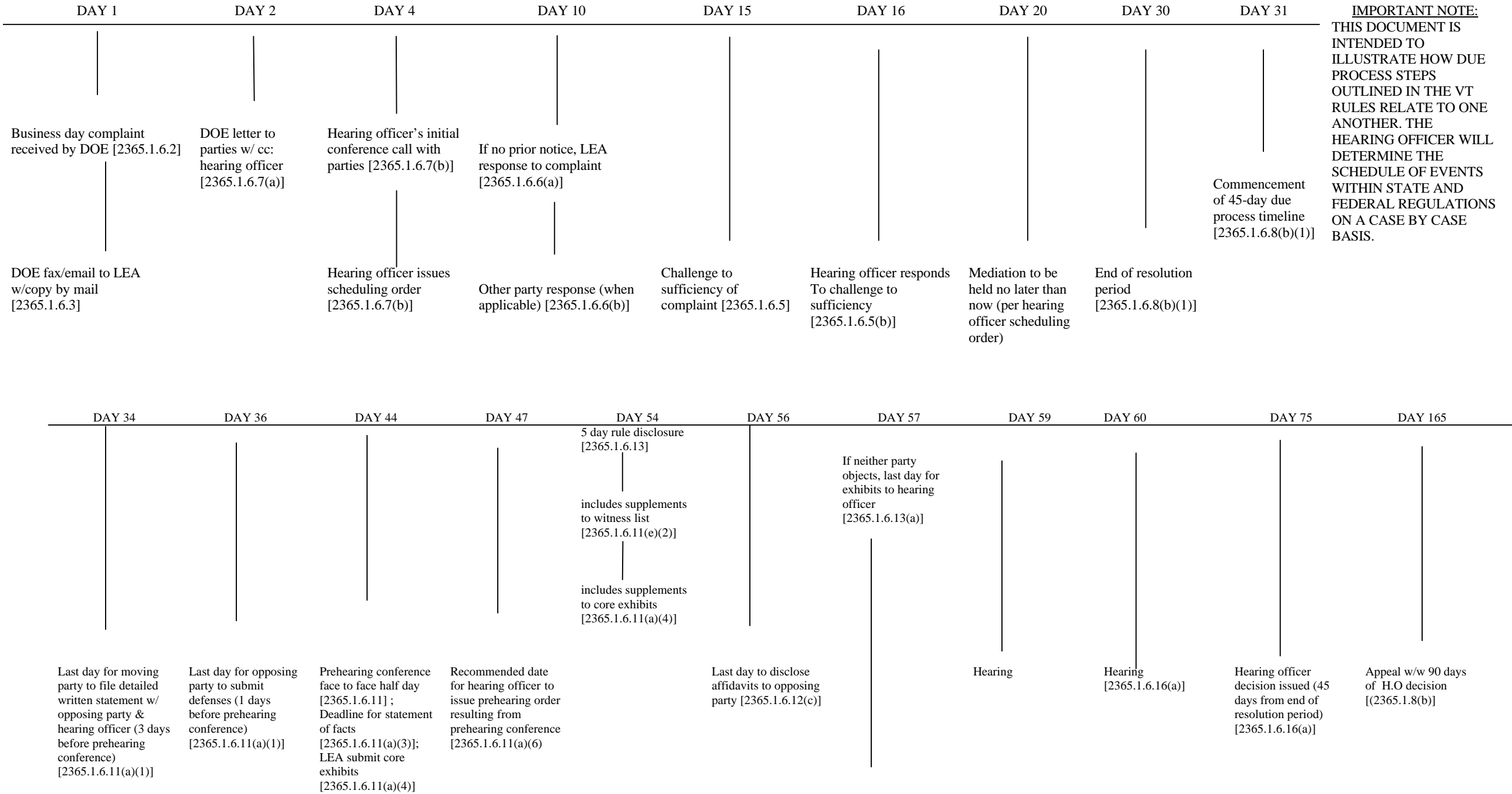
APPENDIX C
Sample Timelines

#1 **SAMPLE TIMELINE: VT SPECIAL EDUCATION DUE PROCESS INITIATED BY PARENT WITH PARTIES OPTING FOR RESOLUTION SESSION**

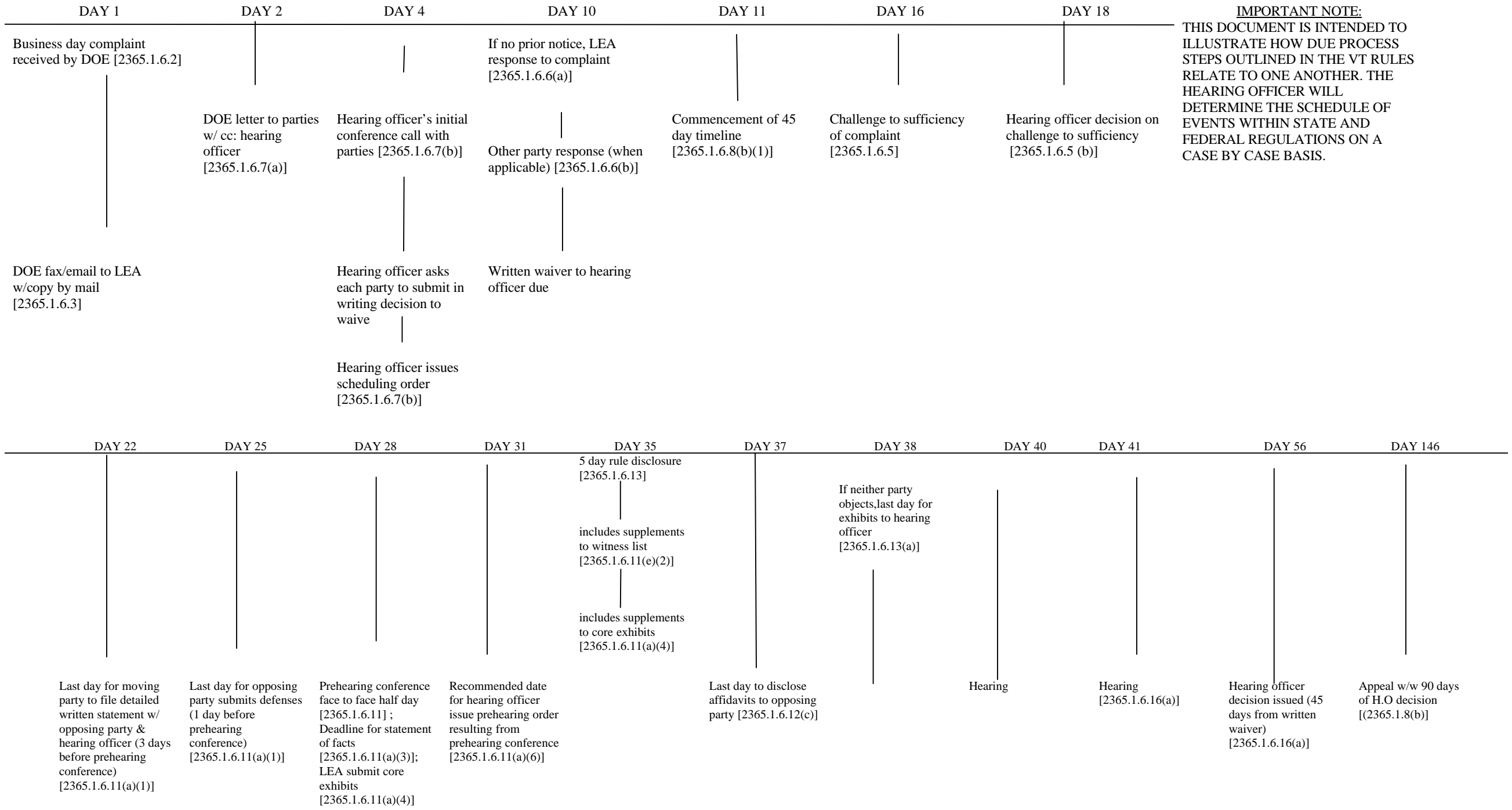


IMPORTANT NOTE:
 THIS DOCUMENT IS INTENDED TO ILLUSTRATE HOW DUE PROCESS STEPS OUTLINED IN THE VT RULES RELATE TO ONE ANOTHER. THE HEARING OFFICER WILL DETERMINE THE SCHEDULE OF EVENTS WITHIN STATE AND FEDERAL REGULATIONS ON A CASE BY CASE BASIS.

#2 SAMPLE TIMELINE: VT SPECIAL EDUCATION DUE PROCESS INITIATED BY PARENT WITH PARTIES OPTING FOR MEDIATION



#3 SAMPLE TIMELINE: VT SPECIAL EDUCATION DUE PROCESS INITIATED BY PARENT WITH WAIVER OF RESOLUTION SESSION AND NO MEDIATION



IMPORTANT NOTE:
THIS DOCUMENT IS INTENDED TO ILLUSTRATE HOW DUE PROCESS STEPS OUTLINED IN THE VT RULES RELATE TO ONE ANOTHER. THE HEARING OFFICER WILL DETERMINE THE SCHEDULE OF EVENTS WITHIN STATE AND FEDERAL REGULATIONS ON A CASE BY CASE BASIS.

#4 SAMPLE TIMELINE: VT SPECIAL EDUCATION DUE PROCESS INITIATED BY LEA WITH NO MEDIATION

IMPORTANT NOTE:
THIS DOCUMENT IS INTENDED TO ILLUSTRATE HOW DUE PROCESS STEPS OUTLINED IN THE VT RULES RELATE TO ONE ANOTHER. THE HEARING OFFICER WILL DETERMINE THE SCHEDULE OF EVENTS WITHIN STATE AND FEDERAL REGULATION ON A CASE BY CASE BASIS.

