



Equitable Services  
Dispute Resolution Procedure

ESDRP Form 4  
Notice of Enforcement Hearing

**Notice of Enforcement Hearing**

Date emailed to parties: mm/dd/yyyy

Case Number: \_\_ - (20xx-xx)

In the matter of

**[name of private school]**

vs.

**[name of LEA public school district]**

Case Number: \_\_ - (20xx-xx)

As authorized by sections 1117(b)(6) and/or 8501(c)(6) of the *Elementary and Secondary Education Act of 1965 (ESEA)* as amended by the *Every Student Succeeds Act of 2015*, the Mississippi Administrative Code 7-3:80.4, and the Mississippi Department of Education's *Every Student Succeeds Act: Equitable Services Dispute Resolution Procedure*, an **Enforcement Hearing** has been requested in the above-styled matter to resolve one or more disputes between the parties regarding the equitable services requirements of *ESEA*.

The presiding officer for this Enforcement Hearing shall be Mississippi's State Ombudsman for Equitable Services, Bryan P. Lieb, Esq., who shall hear the evidence and arguments, and issue a written decision and order.

**The Hearing shall commence on [date], at [time] [a.m./p.m.], in a conference room provided by [LEA] located at [address].**

The parties shall take notice that the conduct of the Enforcement Hearing shall be governed by the above-cited *Equitable Services Dispute Resolution Procedure*, and otherwise by the Ombudsman's discretion. If there is any variation, the text of the above-cited *Procedure* shall supersede the following condensed procedures and instructions:

- a. The school district and private school must each be represented at the hearing by a designated representative, and may also be represented by legal counsel. These two positions may be held by different persons, or by the same person, at the discretion of the party. The party's designated representative, or his/her designee (for example, legal counsel) shall be given the opportunity to question each of that party's witnesses, or defer to the Ombudsman's questioning of the witness. The designated representative may testify as a witness.
- b. Oral, written and other (video, audio, etc.) evidence may be presented at the hearing. Witnesses provided by the parties may give testimony, including discussion of documents and other evidence. Testimony shall be given under oath administered by the Ombudsman, and subject to cross-examination by the opposing party's representative or designee. The Ombudsman may, at any time, intervene to question any person testifying. The parties may give closing arguments after the completion of all witness testimony.
- c. Witnesses are required to answer all questions allowed by the Ombudsman, who may disallow irrelevant or repetitive questions on his/her own initiative or upon the successful objection of a party. A refusal to answer shall be deemed to imply an answer against the interest of the witness's party. The Ombudsman shall warn a refusing witness and give a final opportunity to answer prior to taking a negative inference from the refusal. If a negative inference is taken, it is not automatically fatal to the party's case, but is another piece of evidence to be weighed in the final consideration of whether the private school has met its burden of proof to demonstrate, by a preponderance of the evidence, LEA-noncompliance with the equitable services requirements of *ESEA*.
- d. The Ombudsman shall assess the credibility of each item of evidence offered, and the weight afforded such evidence shall be influenced accordingly. The technical rules of evidence shall be relaxed, in the Ombudsman's discretion.



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- e. Subpoenas of persons or physical evidence shall not be issued.
- f. Witnesses shall be sequestered, waiting in a designated area or areas outside of the audible hearing of the proceedings until summoned in to testify. Before departing the hearing room to be sequestered, the Ombudsman shall order the witnesses not to discuss their testimony or any matter related to the case with any other person until the completion of the Enforcement Hearing. Because of the possibility of a private school witness returning to give rebuttal testimony, private school witnesses should return to the sequestration area(s) after testifying. A private school witness who is not immediately available to be recalled for rebuttal testimony may be disqualified from giving rebuttal testimony.
- g. Each party's designated representative, and if present, legal counsel, are entitled to remain in the hearing room throughout the hearing (never sequestered). Either of these persons may give sworn witness testimony in due course.
- h. Designated observers associated with the parties (limited to party administrative officers) may be permitted in, or excluded from, the hearing at the Ombudsman's discretion, including consideration of seating capacity. Observers must remain silent. Credentialed reporters and members of the public may be limited or excluded (respectively) by the Ombudsman. Any recording and/or broadcasting, other than the creation of the official transcript, is prohibited.
- i. Any new documents or other evidence (video, audio, etc.) not previously exchanged for the Settlement Conference but intended to be introduced at the Enforcement Hearing shall be provided to the Ombudsman (who shall immediately forward to the opposing party) a minimum of three (3) business days prior to the day of the hearing, or, if scheduling requires, as much in advance as possible. At the Enforcement Hearing, on the Ombudsman's own initiative, or on the successful objection of a party, the Ombudsman may exclude from evidence any document or other physical evidence not provided by the offering party sufficiently in advance, if the ability of the opposing party to effectively respond is judged to be substantially impaired. Arguments of the parties shall be heard on this issue prior to the Ombudsman's decision to exclude or admit the evidence.
- j. Following the full presentations (which may include brief opening statements) of both the private school (which presents its case first) and the LEA (which presents its case second), the Ombudsman shall ask if the private school representative requests any rebuttal testimony (the summoning or recalling of a witness by the private school, the sole intended purpose of which is to contradict specific evidence offered by the LEA). If rebuttal testimony is requested, the Ombudsman shall ask the requesting representative (or legal counsel) for a summary of the expected testimony. The Ombudsman shall only allow the testimony if concluding that it will neither be repetitive of prior testimony nor irrelevant, and that the rebuttal testimony will not introduce matters unrelated to the specific contradiction of prior evidence. Following all testimony, the LEA, followed by the private school, may make closing arguments. Each party shall be allowed 15 minutes for this closing.
- k. The Ombudsman shall arrange for a transcript of the Enforcement Hearing to be taken by a court reporter, or via sufficient digital audio and/or digital video. The transcript recording shall not be broadcast. No other recording or broadcasting of the hearing shall be permitted.
- l. The highest level of civil decorum is required of all participants at the hearing. The Ombudsman may warn, and subsequently expel, any individual exhibiting unabated disruptive or uncivil behavior. The Ombudsman may preemptively close the hearing should any individual disrupt the hearing to the extent proceeding becomes impractical in the Ombudsman's judgement, in which case a negative inference will be taken against the party associated with the disruptive individual.