

Due Process Hearings

A due process hearing is another option for parents and schools to resolve disputes. It is a formal, adversarial legal process similar to going to trial in a court. A hearing officer hears evidence from all parties and makes a legally binding decision.

A parent or school district has the right to request a due process hearing about any of the following:

- Identification of a child as needing special education,
- Evaluation of the child,
- Educational placement or services of the child,
- Provision of a free appropriate public education (FAPE) to a student with a disability.

A due process hearing must be requested within one year of the date that the complainant knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply if the parent was prevented from requesting the hearing because of specific misrepresentations by the school that it has resolved the problem, or because the school withheld information that was required to be provided to the parent. If a parent requests a due process hearing, the *parent has the burden of proof* to prove that the school violated regulations.

A request for a due process hearing (due process complaint) must be filed in writing with the Texas Education Agency. The IDEA timelines applicable to due process hearings commence when the non-filing party first receives the request for a due process hearing. Unless rebutted, it will be presumed that the non-filing party first received the hearing request on the date it is sent to the parties by the Texas Education Agency (TEA). The TEA has developed a model due process hearing request form which may be used by a parent to initiate a due process hearing. The form is available from TEA, regional education service centers and all school districts. The form is also available on the TEA website.

The party filing a request for a due process hearing must provide a copy of the request to the other party. If a parent files a request for a due process hearing, the school must give the parent a copy of the *Notice of Procedural Safeguards*.

The request for a due process hearing must include:

- the name of the child and address (or available contact information if the child is homeless);
- the name of the child's school;
- a description of the nature of the problem and facts relating to the problem; and
- a proposed resolution of the problem (to the extent known and available to the party at the time).

A party may not have a due process hearing until the party, or the attorney representing the party, files a request for a due process hearing that meets these requirements.

Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for all applicable actions. The hearing officer shall schedule a pre-hearing conference to be held at a time reasonably convenient to the parties to the hearing. The pre-hearing conference shall be held by telephone unless the hearing officer determines that an in-person conference is required.

The purpose of the pre-hearing conference shall be to consider any of the following:

- specific issues as set forth in the due process complaint notice;
- admitting certain assertions of fact or stipulations;

- establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or
- discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

Not less than five business days prior to a due process hearing, each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party attends to use at the hearing. Each party must also include a list of all witnesses which they plan to call to testify at the hearing.

The hearing shall be conducted at a time and place that are reasonably convenient to the parents and the child involved. The parent has the right to bring and be advised by an attorney and individuals with special knowledge or training regarding children with disabilities. Hearings are closed to the public, unless the parent requests that the hearing be open. The parent has the right to have the child present. They also have the right to have the transcript of the hearing provided at no cost.

The hearing officer must issue a final decision no later than 45 days after the expiration of the 30-day resolution period, or the adjusted time periods allowed in the regulations, after a request for hearing is received by the TEA, unless the deadline for a final decision has been extended by the hearing officer for "good cause" at the request of either party. Due process hearings concerning disciplinary placements are conducted in an expedited manner. The resolution meeting must be held within seven calendar days and the hearing must be held within 20 school days of the due process hearing. The hearing officer must make a decision within ten school days after the hearing.

The school district must implement any decision that is; at least in part, adverse to the school district within ten school days after the date the decision was rendered. School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

The decision issued by the hearing officer is final, except that any party to the hearing may bring a civil action in any state or federal court.

If the parent wins part or all of what they are seeking in a due process hearing or in court, a judge in a court proceeding may rule that the parent is the prevailing party and may order the school to pay for the parent's attorney's fees and related costs, if they are reasonable. This order will not include attorney's fees and related costs for the resolution session or representation at ARD meetings; unless a due process hearing officer or judge ordered the ARD meeting.

If the school prevails and a court finds that the parent's due process hearing complaint was presented for any improper purpose such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation, the parent may be ordered to pay the school district's reasonable attorney's fees, and under certain circumstances the parent's attorney may be ordered to pay the district's reasonable attorney's fees.

Information from the Texas Education Agency on due process hearings is at: <http://tea.texas.gov/index2.aspx?id=2147497560>



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