

Special Education Due Process

FILING A COMPLAINT

If you decide that filing a due process complaint/hearing request is warranted, there are a few things to keep in mind including the two year deadline to file after the problem occurred. Also, you don't have to use a special form, but IDEA requires certain information to be included on the complaint letter or it will be dismissed or returned which will delay resolving the matter. Specific content includes the child's name, address, name of child's school, a description of the problem and facts related to the problem, and your ideas to resolve the matter. The parent or school must send the other party a copy of the complaint letter at the same time it is filed with the state department. The state department will send parents and the school district a letter with the name of the assigned hearing officer, important timelines to adhere to, and information about the required Resolution Meeting.

RESOLUTION MEETING IS REQUIRED

The school district has 10 calendar days to respond to your due process complaint, and you have 10 days to respond to the issues listed if the school filed the complaint. The school district is required to schedule a resolution meeting within 15 calendar days of receiving your complaint, unless you and the school district agree in writing not to have the Resolution Meeting, or to use Mediation instead. Resolution Meetings offer parents and school districts one final opportunity to resolve

issues before going to a hearing. The school district may not have an attorney present unless an attorney accompanies the parent. If parents fail to participate in the Resolution Meeting when it hasn't been waived by both parties, the school district can ask the hearing officer to dismiss the due process complaint. If the school district fails its obligation to schedule the Resolution Meeting and participate within the required 15 day timeline, the parent can request that the hearing officer begin the timeline for the due process hearing. It is hopeful that a resolution can be reached and both parties will enter a legally binding, written agreement which must be signed by the parent and the school district representative with authority to bind the district. The parents and school district have 30 days from filing the due process complaint in which to try and resolve the complaint without initiating a due process hearing. If the dispute cannot be resolved within 30 calendar days of filing the request, then a hearing may occur, with additional timelines.

DUE PROCESS HEARING

The two parties may have reached this point after unsuccessfully trying another option for dispute resolution, or they may have waived those options and gone straight to the due process hearing. The clock is now ticking on the 45 day timeline for holding a due process hearing and resolving their dispute. IDEA gives the disputing parties specific rights in a due process hearing. These include the right to: be accompanied and advised by counsel; present evidence and confront, cross-examine, and compel the attendance of witnesses; stop any



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evidence from being introduced at the hearing that was not disclosed at least five days before the hearing; get a written or electronic verbatim record of the hearing; and get a written or electronic record of the findings of fact and decisions.

Additional parental rights include having the child who is the subject of the hearing present, and having the hearing open to the public. The hearing officer must possess the knowledge and ability to conduct hearings in accordance to standard legal practice and be knowledgeable about *The Individuals with Disabilities Education Act* and regulations. They must not have a personal or professional interest that conflicts with his or her objectivity. During the hearing both sides will present their positions, call and cross-examine witnesses, and enter documents into evidence. Based on this evidence, the hearing office will issue his decision.

REACHING A DECISION


A final decision must be reached in the hearing not later than 45 days after the 30 day resolution period expired, taking into considered any timeline extensions that were approved. A decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds. Where a procedural violation has been alleged, the hearing officer may find that your child did not receive FAPE only if the procedural violations interfered with your child's right to FAPE, significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE, or caused your child to be deprived of an educational benefit.

If the hearing officer's decision is not appealed, it is legally binding, even if you disagree with the outcome. The school system must implement the hearing decision as soon as possible. Any party may appeal in state or federal court, giving notice of intent to file within 30 days upon receipt of the decision. During the due process hearing, your child must remain in his current educational placement, unless you or the school agree otherwise. Current educational placement is the setting in which the IEP is currently being implemented. If the school district doesn't follow the hearing officer's decision, parents may file a written state complaint requesting that the State enforce the decision.

EXPEDITED HEARING REQUESTS

An expedited hearing may be requested in certain situations, such as when parents disagree with the school's disciplinary decision affecting the child, usually suspensions from campus. Parents can also file an expedited hearing request when they disagree with the school's decision about whether a child's behavior is related to their disability. This decision is called a manifestation determination. A school district may also file for an expedited hearing request when it believes that a child's behavior could be dangerous to the child or others. Expedited hearing requests must include the same information required for a due process complaint. A resolution meeting must occur within seven calendar days unless parents and school agree in writing not to hold the resolution meeting, or to use mediation instead. If the dispute has not been resolved within 15 calendar days, the hearing



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timeline begin. The hearing must be held within 20 school days of the request being filed. The hearing officer must issue a decision within 10 school days of the date of the hearing. The child remains in the educational setting chosen by the IEP team until a decision is rendered by the hearing officer, or the time period for the disciplinary action expires. The State must ensure that the hearing officer's decision is followed, unless the decision is appealed.

not assume endorsement by the Federal Government. Project Officer, David Emenheiser. Special Education V.12

YOUR OPINION MATTERS

Please take a few moments to tell us what you think by completing a short survey about this sheet or other services of the AL-PTI.

<https://www.surveymonkey.com/r/ALPTI>

FOR ADDITIONAL INFORMATION

Alabama Department of Education, Special Education Services www.alsde.edu/sec/ses

Center for Appropriate Dispute Resolution in Special Education www.cadreworks.org

U.S. Department of Education, IDEA
<https://sites.ed.gov/idea>

APEC IS HERE TO HELP

APEC provides free training, information, and consultation to families. Visit our training calendar for more information about learning opportunities at www.alabamaparentcenter.com or call our center.

The contents of this publication were developed in part under a grant from the US Department of Education, #H328M150012. However, those contents do not necessarily represent the policy of the US Department of Education, and you should



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