

# Resolving Disputes with Parents Series

## Part 6 - The Due Process Hearing, Summarized

There are times when the parties have been unable or unwilling to resolve the dispute themselves, and so they proceed to a due process hearing. There, an impartial, trained hearing officer hears the evidence and issues a hearing decision.

During a due process hearing, each party has the opportunity to present their views in a formal legal setting, using witnesses, testimony, documents, and legal arguments that each believes is important for the hearing officer to consider in order to decide the issues in the hearing. Since the due process hearing is a legal proceeding, a party will often choose to be represented by an attorney.

Due process is a longstanding approach within IDEA to resolving disputes. Filing a due process complaint is the first step in the process that may lead to a due process hearing. A due process hearing, like many legal proceedings, involves multiple steps that must be followed in order for a party to have his or her case heard before a hearing officer.

### What rights does each party have in a due process hearing?

IDEA gives the disputing parties specific rights in a due process hearing. These rights are found at §300.512 and include the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities
  - Present evidence and confront, cross-examine, and compel the attendance of witnesses
  - Stop any evidence from being introduced at the hearing that has not been disclosed to that party at least five business days before the hearing
  - Get a written (or, at the option of the parents, electronic) verbatim record of the hearing
  - Get a written (or, at the option of the parents, electronic) findings of fact and decisions.
- [§300.512(a)]

At least five business days before a hearing conducted under §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing [§300.512(b)]. The hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

IDEA gives parents additional rights in due process hearings. As identified at §300.512(c), these are the right to:

- have the child who is the subject of the hearing present
- open the hearing to the public

- have the record of the hearing, and the findings of fact and decisions, provided to them at no cost. §300.512(c)

## **The Role of the Hearing Officer**

It's the hearing officer's job to weigh the merits of each party's argument, evidence, and witnesses, in light of what IDEA and state law require, also bearing in mind relevant federal and state regulations pertaining to the Act and legal interpretations of the Act by federal and state courts. The hearing officer must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice. IDEA includes provisions at §300.511(c) that describe the minimum qualifications that a hearing officer must have.

### **What is the timeline for reaching a decision in the due process hearing?**

The State Education Agency (SEA) or the public agency directly responsible for the child's education (whichever agency is responsible for conducting the hearing in your State) must ensure that, not later than 45 days after the 30-day resolution period expires (or any of the adjustments made to that period), a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. The hearing officer may grant specific extensions of this time period at the request of either party.

### **Can the hearing officer's decision be appealed?**

**Yes, it can.** However, if not appealed, the decision made by the hearing officer is final. The school system must implement the hearing decision as soon as possible and, in any event, within a reasonable period of time. If it fails to do so, parents may seek court enforcement of an administrative decision. Parents may also file a complaint with the SEA.