



What a Parent Needs to know about a Due Process Hearing

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Sometimes you and the district may not agree about your child's IEP or his or her placement despite honest attempts to do so. When that happens, and informal attempts to resolve such a dispute or misunderstanding fail, you may want to consider the option known as a due process hearing.

What are my rights in regards to requesting a due process hearing?

You have the right to request an impartial due process hearing over any issue regarding the identification, evaluation, educational placement, or provision of a Free Appropriate Public Education (FAPE) of your child under the Federal law known as the Individuals with Disabilities Education Act (IDEA) and State law.

How do I request a due process hearing?

To request a due process hearing, you must complete the request in writing and send it to the school district and the New Mexico Public Education Department (NMPED) Special Education Bureau (SEB). The request must include complete information about your child (name, address or available contact information) and the name of the school; and a description of the problem including known facts.

Your written request must include your proposed solution to the problem to the extent you know of at the time. At your option, you may include the name, address and telephone number of your attorney if any; as well as a written statement that says the attorney named may represent your child; and your dated signature plus the dated signature of the attorney, if applicable.

The SEB has a form on its website that includes all of the required information. It can be accessed at http://ped.state.nm.us/SEB/2012/Due_Process_Hearing_Form_02_10_12.doc or you can ask the school district for a copy of the form.

How long do I have to file a due process hearing?

The request must be filed within two years of the date that you knew or should have known about the problem.

Can someone assist me in filling out the due process hearing request?

Several advocacy groups can assist you with the paperwork and they can represent you at the hearing. Free and low cost legal services are available for parents. The advocacy groups and legal services are listed in the Parent and Child Rights in Special Education–Procedural Safeguards Notice. This document can be located online at <http://ped.state.nm.us/SEB/forms/Parent%20Rights%20August%202011final.pdf> or you can call the Special Education Bureau at (505) 827–1457 and request a copy.

What happens after I submit my request to the SEB and the district?

The district will have an opportunity to respond in writing to your request.

The SEB will assign an impartial due process hearing officer who will be in contact with you or your attorney. As part of the due process procedure, the district will offer to hold a resolution session with you and other relevant members of the IEP team to address the issues written in your request, unless you and the district agree jointly not to do so.

Both parties will also be given an opportunity to resolve the misunderstanding or dispute through an alternative dispute resolution (ADR) process such as mediation or a facilitated individualized education program (FIEP) meeting will be offered to you and the district. If you choose to participate in the FIEP, it does not end your right to participate in a resolution session or mediation and does not have an impact on the resolution period (30 days) you are entitled to. You do not have to pay for the ADR. The SEB will pay for the ADR. Your participation in the ADR is voluntary and both parties must agree to participate. If the ADR is successful, the formal due process hearing will not take place and you will have to withdraw your request.



Can a district file due process if they disagree with me?

The district may also request a due process hearing to resolve a disagreement over the appropriateness of the district's evaluation, to request authorization to conduct an evaluation or a reevaluation when a parent refuses consent, or to ask a hearing officer to move a child to an interim alternative educational setting because his or her presence in the current placement poses a substantial likelihood of risk of injury to your child or other children.

If you are involved in a due process hearing, whether it was filed by you or by your child's school district, here are some basics you should know:

- You have the right to a fair and impartial hearing before a state-appointed hearing officer who is knowledgeable about the laws governing special education and administrative hearing procedures.
- The hearing will be scheduled at a time and place that is reasonably convenient for you and your child.
- You have the right to be represented by an attorney.
- Upon request, the SEB will inform you of any known free or low-cost legal services. Such services are listed on the final page of the Procedural Safeguards Notice which can be found on the SEB website at:
http://www.ped.state.nm.us/seo/dl10/Procedural_Safeguards.pdf.
- During the hearing, you or your attorney may present evidence and written and oral arguments. You may require witnesses to attend and you may also confront and cross-examine the district's witnesses. No more than five (5) business days before a hearing, you must share with the district all the evaluations of your child completed by that date, and any recommendations based on those evaluations, which you intend to present at the hearing. The district must share the same information with you. If you or the district do not do this, the hearing officer may not allow you or the district from using that information at the hearing.
- You may choose to have the hearing open to the public and to have your child present at the hearing.
- At any point during the hearing you may have a mediation conference and/or the party requesting the hearing may withdraw its request.
- You will receive written decision from the hearing officer within 45 days of when the timeline for the hearing process began, unless the hearing officer grants an extension.
- You will receive, at no cost to you, your choice of a written or electronic word-for-word record of the hearing and the hearing officer's findings and decision.
- The decision of the hearing officer is final unless either party files a civil action in a state or federal district court.
- A civil action must be filed no later than 30 days from receipt of the hearing decision.
- The findings and decisions of a hearing officer will be made public.
- The district pays the costs of a hearing, with the exception of attorney's fees, which are the individual parties' responsibility. In some cases, a court may award part or all of the attorney's fees to you (if you are the prevailing or winning party) or to the district (if the district is the prevailing party and your claims are frivolous or filed for improper purposes). Hearing officers are not authorized to award attorney's fees.
- Except for disputes over disciplinary placements and manifestation determinations, the child remains in his or her current placement during due process proceedings until a final decision is reached, unless you and the district agree otherwise or the hearing officer directs another interim or temporary placement. Except in the case of short-term out-of-school suspension (up to 10 days in a school year), the child will continue to receive special education services as directed by his or her IEP.
- At the conclusion of the hearing, either party has the right to bring a civil action in a court of law in regards to the due process hearing issues. The laws governing jurisdiction and procedures will apply to any action brought before the court. If the parent prevails in the court's decision, the court may, at the court's discretion, award reasonable attorney's fees. This means that if the parents decide to take the matter to court, they must pay for the attorney's services, and they may or may not get full or part reimbursement of these expenses if they win the case.