

DIVISION OF ADMINISTRATIVE LAW APPEALS
Bureau of Special Education Appeals
August, 2012

SO YOU WILL BE GOING TO A SPECIAL
EDUCATION HEARING WITHOUT A LAWYER

This is what you absolutely need to know

For more information and explanations,
please refer to the *BSEA Reference Manual*

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*Words with an asterisk are explained in the Definitions Section

I. BEGINNING THE HEARING PROCESS

1. BSEA contact info: Bureau of Special Education Appeals
1 Congress Street
Boston, MA 02114
617-626-7250 Telephone
617-626-7270 Fax
2. The BSEA does not give legal advice. No one at the BSEA can be your representative, or advocate for you at the hearing. The BSEA cannot appoint a lawyer or advocate to represent you or the Student at a hearing.

The BSEA can give you “technical assistance”. You can call and ask for help finding a form or regulation, for help understanding appropriate responses or procedures, or for information about special education law in general. You can ask to speak to a Mediator, the Director or Assistant Director of the BSEA, or a Hearing Officer other than the one assigned to your hearing.
3. You may not talk directly to the Hearing Officer who is assigned to your case unless the other party or the other party’s representative is also present. This is called *ex parte* communication and is prohibited. You may not have *ex parte* communication with the Hearing Officer in any form ... on the telephone or in person or in writing.
4. Whenever you send a letter or other written communication to the BSEA, you must send a copy to the other party at the same time.
5. The BSEA has a very useful website: www.doe.mass.edu/bsea.

On the website you can find links to forms, BSEA Hearing Rules, previous BSEA Decisions, special education statutes and regulations, and the BSEA Reference Manual that explains mediations and hearings.

You can find some of the same resources in print at the law library associated with your local courthouse.
6. It is very helpful to keep a separate file for all your communications with the BSEA and the other party about your appeal.
7. You can negotiate directly with the other party at any time. If the other party has a lawyer, you must negotiate with that lawyer or get the lawyer’s permission to contact the other party directly.

8. You can withdraw your Request for Hearing at any time by sending a letter to the other party and the BSEA.
9. You should carefully consider whether it is a good idea for the Student to attend a hearing. There is no child care available at the BSEA. There are no separate or secure waiting rooms. Hearings typically last two to three full business days.

II. HOW TO FILE FOR A HEARING

A. FORMAT

There is a Request for Hearing form you can fill out or you may write a letter. Your Hearing Request must:

- 1. be in writing
- 2. contain your name, address and phone number
- 3. contain the Student's name, the Student's residence, and the name of the school the Student is currently attending
- 4. contain the name and contact information of your advocate or attorney, if you have one
- 5. contain the name of the school district responsible for the Student
- 6. set out the nature of the dispute: here is where you explain why you want a hearing
- 7. set out the resolution you are seeking: here is where you explain what you want the Hearing Officer to do
- 8. request an interpreter or translator if you or the Student needs one

B. FILING THE REQUEST FOR HEARING

1. Make at least two copies of the completed Hearing Request form or letter.
2. Send the original Hearing Request to the other party.
3. Send a copy of your Hearing Request to the BSEA.
4. Keep a copy of the Hearing Request for yourself.

C. AFTER THE BSEA RECEIVES YOUR REQUEST FOR HEARING

1. The BSEA will send you a “Hearing Notice” within five days of receiving your request for a hearing.
2. The Hearing Notice has a lot of important information, including:
 - a. the name of the Hearing Officer assigned to your appeal;
 - b. if you are a parent requesting a hearing, the date by which the school district must meet with you to discuss your concerns, known as the “resolution meeting”;
 - c. the date by which the other party must respond in writing to your concerns;
 - d. the date for your conference call with the Hearing Officer (this is usually your first contact with the Hearing Officer);
 - e. the date for the hearing.

III. WHAT HAPPENS NEXT

1. Agreement: The school district and the parent can reach an agreement by talking directly and informally to each other, or at a resolution session, or with the assistance of a BSEA Mediator.
2. Pre-Hearing: If you do not come to an agreement, you are on the road to a hearing. You can ask for a pre-hearing conference before the hearing. The pre-hearing conference is a relatively informal way to meet a Hearing Officer and any lawyers involved, get some feedback on the strengths and weaknesses of your appeal, and ask for technical assistance in preparing for a hearing. A pre-hearing is helpful if you are prepared to listen carefully to other perspectives and to follow directions for presenting your case at the hearing.
3. Conference Call: You will have a conference call with the Hearing Officer and the other party or their lawyer before the hearing date. The conference call is usually scheduled to occur 19 days after the date your hearing request reaches the BSEA. The Hearing Officer will ask a few questions to determine whether the matter is ready for a hearing. For example, the Hearing Officer may ask: If you have had a resolution meeting or a mediation? If the Student is currently attending school? If you are expecting the results of an observation or evaluation? If you have identified all the documents and witnesses you intend to present at the hearing? The Hearing Officer may also ask you to explain more about why you are requesting a hearing and what you think the solution to the dispute should be. The Hearing officer will then confirm the dates, time and location for the hearing.

4. Motions: Motions are requests addressed to the Hearing Officer. Motions ask the Hearing Officer to take some type of action on the appeal. You must submit Motions in writing to the Hearing Officer and at the same time to the other party. The other party has seven days to submit a response. The Hearing Officer will respond in writing soon afterwards. Some typical Motions are: requests to postpone a hearing; requests for a conference call; or requests to change the location of the hearing. Not every appeal needs Motions.

5. Last Steps:
 - a. At least ten days before the hearing, you may ask the BSEA to issue a subpoena* to anyone you want the BSEA to order to testify at the hearing. This request must be in writing.

 - b. You must get all the documents you want the Hearing Officer to consider to the BSEA and the other party at least five business days before hearing date. These are your exhibits.* They must be submitted in a three-ring binder with an index. Each document must be numbered. Please check the BSEA Reference Manual for organizational instructions. You must also include a list of all the witnesses you intend to present at the hearing.

 - c. Call your witnesses to make sure they are aware of the time and location of the hearing. Alert the other party and the Hearing Officer if you learn of any potential problems with witness schedules.

 - d. If the hearing is postponed or cancelled, you are responsible for notifying your witnesses. The BSEA does not provide any compensation for anyone who attends a hearing, including witnesses.

IV. THE HEARING

1. Before the hearing formally begins, the Hearing Officer will often ask if there is any “housekeeping” or anything that needs to be discussed to make the hearing go more smoothly. You should tell the Hearing Officer if any of your witnesses have scheduling limitations, if you have problems with your exhibits or the other party’s exhibit packet, if you need to break at certain times for medical reasons, if you have a new advocate, or anything else that might affect the flow of the hearing.
2. The hearing follows a trial format, but is less formal. It is tape recorded. There may also be a stenographer present if a party requests it. The typical procedure is: Hearing Officer welcomes participants and reads a formal opening statement into the record. The Hearing Officer puts the documents into the hearing record* as exhibits.* You and the other party have a chance to make an opening statement. Whoever asked for the hearing goes first.

Assuming you have requested the hearing, you then present your witnesses one by one. First you ask the questions (direct examination). The other party then will ask the witness questions (cross-examination). The Hearing Officer may also ask questions. When you have finished presenting all your witnesses, the other party will present its witnesses by asking the first round of questions. Then you may ask questions. The Hearing Officer may also ask questions. When all the witnesses are finished, the Hearing Officer will ask if you would like to make a closing statement.* Then the hearing will finish.

3. The Hearing Officer will not make a decision right away. You will receive a written decision in the mail about 25 days after the last day of the hearing, or about 25 days after the day the BSEA receives your written closing statement.
4. The purpose of the hearing is to gather evidence. The Hearing Officer’s role is to manage the flow of the evidence and to ensure that each party can participate in the process. The Hearing Officer is aware of how difficult it is to advocate at a hearing without legal assistance. The Hearing Officer will help you present your case by reminding you of the schedule, rephrasing or reframing your questions to witnesses to ensure that the information is relevant, and making sure that no one takes unfair advantage of you. The Hearing Officer is neutral at all times. She or he cannot represent you or the Student or give you any legal advice.
5. If you want to testify, the Hearing Officer will administer an oath* to you which may apply to most of your speech at the hearing. You will be questioned by both the other party and the Hearing Officer.

V. EXPECTATIONS

1. During all contacts with the BSEA and with the school's representative, you will be treated in most ways as if you are a lawyer. You will be expected to be prepared, to be respectful, honest, cooperative and on time. Although the due process system can feel overwhelming, it is important to remain calm and focused on your goal.
 - a. Remember that the other party, the lawyer(s) and the Hearing Officer are not your enemies. Their skills and experience can be very helpful to you if you maintain a professional attitude and ask for assistance when you need it.
 - b. Keep in mind that everyone else at the hearing is probably just as uncomfortable as you are.
 - c. Read all documents you receive from the BSEA and from the other party very carefully. Ask questions if you don't understand.
 - d. Listen carefully to the Hearing Officer's directions. Ask questions if you don't understand.
 - e. Follow the deadlines and the orders carefully. If you can't meet the deadline, ask for an extension, in writing. If you do not follow the Hearing officer's orders, your case may be dismissed.
2. As you know, these disputes can be very emotional. You may be tempted to yell, to call others names, to pound the table, to accuse people of unprofessional conduct or other uncivil behavior. **PLEASE DON'T!!** Hearing Officers have the authority to delay or dismiss all or parts of your case if your words or behavior are out-of-line.

VI. DEFINITIONS

You may see these terms in the BSEA Hearing rules or in other documents about special education procedures. You may also hear them during conference calls, negotiations or at hearing. The BSEA Hearing Rules can be found on the BSEA website: www.doe.mass.edu/bsea, or you can ask the BSEA to send you a print copy of the Hearing Rules.

Admissible: Made part of the official record of the Hearing that the Hearing Officer will consider when making a Decision. The Hearing Officer can only pay attention to evidence that is “admitted” into the record.

Burden of Proof: The moving party in a dispute has the burden of proof, which means it is that party’s responsibility to prove that what it said in the hearing request is true. If you request the hearing and you do not meet your burden of proof, you will not “win” your case.

Caucus: A caucus is often a part of a mediation. A caucus happens when the mediator speaks to one of the parties separately and apart from the other. The mediator may then return and caucus with the other party.

Closing Statement: Your final argument in support of your hearing request.

Discovery: The process in which parties request and exchange information with one another after the Hearing Request has been filed and before the hearing begins. Interrogatories, requests for documents, and depositions are all different tools for discovery.

Dismiss: The Hearing Officer closes the BSEA file. The BSEA will not take any more action on the hearing request.

Dismiss with Prejudice: The case is closed and the BSEA cannot consider the issues set out in the hearing request ever again.

Dismiss without Prejudice: The case is closed but the BSEA may consider the issues set out in the hearing request if an entirely new hearing request is filed.

Evidence: The documents and testimony that the Hearing Officer will consider when making the Decision.

Examination: Formal questioning. Direct examination occurs when you ask questions of the witnesses you brought to the hearing. Cross examination occurs when you question the witnesses brought by the other party.

Exclude: To keep a document or part of a witness’s testimony out of the hearing record.

Exhibits: Documents that are accepted into the official record of the hearing.

Ex Parte Communication: Communication between the Hearing Officer and one of the parties when the other party is not present. Ex parte communication is not allowed. The other party must always be present, either physically or on the line in a conference call, when you speak with your Hearing Officer. Similarly, the Hearing Officer cannot receive written ex parte communication. All correspondence and documents that you send to the Hearing Officer must be copied to any other party at the same time that you send them to the Hearing Officer.

Expedited Hearing: A Hearing that is scheduled and resolved more quickly due to pressing circumstances outlined in the BSEA Hearing Rules.

FAPE: Free Appropriate Public Education: All children with disabilities are entitled to FAPE according to state and federal law.

Five Day Rule: A list of all potential witnesses as well as all documents that you want the Hearing Officer to consider must be presented to the other party and to the Hearing Officer at least five business days before the hearing date. If you miss this deadline, the documents may not become a part of the hearing record.

IDEA: Individuals with Disabilities Education Act: The most important federal law concerning special education.

Inadmissible: Documents or testimony that does not meet the standards for inclusion into the hearing record.

Joinder: Adding another agency or school that may be responsible for providing some services to the student as a party to the BSEA appeal.

LEA: The local educational agency or school district.

Least Restrictive Environment (LRE): The principle that students with disabilities must be educated with regular education students as much as is appropriate and possible.

Moving / Non-Moving Party: The *moving* party is the one who asks the Hearing Officer to take action (also known as the Petitioner). The *non-moving* party is the person or agency that responds (also known as the Respondent). These terms apply to both the original Request for Hearing and to any Motion made during the hearing process.

Oath: The speaker swears to tell the truth. There are very serious consequences for the appeal and for the person if she or he is not honest after agreeing to tell the truth.

Objections: A statement made when you want the Hearing Officer to ignore a document or part of a witness' testimony. There must be a good legal reason for an objection.

Official Record / Hearing Record: The documents and the tape recorded testimony that the Hearing Officer will consider when making the Decision.

Opening Statement: Your formal introduction of the issues and facts to the Hearing Officer.

Party: A necessary participant in the Hearing. Generally the parties are the parents and the school district. Only parties must obey BSEA orders.

Pro Se: Means “for oneself.” A *pro se* party is one who represents him/herself at Hearing, as opposed to being represented by an attorney or advocate.

Pull Out: When the student is temporarily removed from the mainstream classroom for special education instruction or services.

Recess: A break or pause in the BSEA hearing.

Record: The documents and tape recorded testimony that the Hearing Officer will consider when making the Decision.

Show Cause: Means “tell me why”. An Order to Show Cause asks the parties to state in writing why the case should stay active. If the parties do not respond, or do not provide convincing reasons for the Hearing Officer to keep the case open, a Hearing Request may be dismissed.

Statute of Limitations: The law setting out the “expiration date” for special education claims. Generally you must request a hearing within two years of the date of the school district’s action that you disagree with.

Stay Put: A special education term which refers to the program or placement the student was attending at the time the Parents rejected the IEP or the Hearing Request was filed.

Sua Sponte: Means “on one’s own.” A legal term used when a Hearing Officer decides to take formal action without the request of either party.

Subpoena: An order commanding a person to appear at a certain date and time, in a certain location, in order to give testimony in a legal proceeding.

Subpoena Duces Tecum: An order requiring that specified documents be turned over to a party for use in a legal proceeding.

Testimony: The words of the witness who has taken an oath to tell the truth.

Venue: Location.

Witness: The person who is responding to questions under oath at the hearing.