



PROCEDURAL SAFEGAURDS: Understanding Due Process Hearings

Maine Parent Federation
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While there are different ways for parents to informally disagree and resolve conflict with a school or CDS site, there are also formal ways for disagreements to be resolved. A due process hearing is typically one of the most formal---and frequently--- one of the more adversarial ways to resolve a dispute. This is in part because it is a formal process, including witnesses and testimony and is likely to be an emotional time for both parents and school personnel. However, there are times when parents and schools or CDS sites are unable or unwilling to resolve the conflict themselves, and so they proceed to a due process hearing.

During a due process hearing, each party (the parents and the school or CDS site) has the opportunity to present their views in a formal legal setting, they may use 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.

The first step is to request a Due Process Hearing from the Maine Department of Education (MDOE). The MDOE provides a model form to assist in filing the request, but the use of the form is not required. The due process hearing will only address disagreements or issues that are written in the request, so it is important to include all the issues. Try to keep your statements brief but accurate.

Within 15 days of receiving notice that a parent has requested a due process hearing, the school must hold a resolution meeting. The participants would include the parents and other members of the IEP team who have knowledge of the facts identified in the hearing request. The parent and the school decide who will attend this meeting. This meeting cannot include an attorney for the school unless the parent also has an attorney present.

The purpose of the meeting is for the parent to discuss the due process hearing request and supporting facts so the school has the opportunity to resolve the dispute. If the school is not able to resolve the issues raised in the hearing request to the satisfaction of the parent within 30 days, the hearing moves forward. A resolution session is required unless both the parents and the school agree in writing to not have a meeting or if they decide to go to mediation instead.

At the time of the resolution session, the parent and the school should sign a confidentiality statement. Although FERPA, the Federal Educational Rights and Privacy Act, applies to any written agreement or educational record that results from the resolution session it doesn't cover discussion unless you have a signed confidentiality statement.

If the parents and the school are not able to resolve the issues outlined in the hearing request, the next step in the process is a pre-hearing conference, a meeting convened by the hearing officer.

What is said and presented at the pre-hearing conference sets the stage for the hearing. Both parties will be asked to bring a witness list and copies of exhibits, so it is important to prepare for this meeting. Exhibits are documents that you want to use to support your case such as a child's evaluations, copies of letters, copies of IEPs, etc. The school can have an attorney present at the pre-hearing conference and the hearing, even if the parent does not have an attorney present.

During the pre-hearing conference, the hearing officer asks each side for a brief oral description of the problem and an estimate of how much time will be needed for the hearing. The witness lists for both sides are reviewed as are any exhibits. It is not necessary to bring all exhibits with you to the pre-conference session, but the parent and the school must exchange exhibits at least 5 business days before the actual hearing for them to be allowed.

The hearing is similar to a court trial, although a hearing is run by a hearing officer and not a judge. The parent can choose to have the hearing open to the public. They can also choose to have their child present at the hearing. The impartial trained hearing officer cannot work for the MDOE or the school district involved in the hearing, and cannot have a personal or professional conflict that would affect their objectivity. Each side is required to have an opening statement, testimony from witnesses with cross-examination, evidence to be submitted for the official record, and a closing statement. The hearing officer hears the evidence, can ask questions of witnesses, and issues a hearing decision. The hearing officer may ask the parents and the school to submit their closing arguments in writing.

The hearing decision must be issued within 15 days after the end of the hearing and the record is closed. Parents may obtain a copy of the transcript or a recording of their due process hearing at no cost from the Maine Department of Education. If either party is unhappy with the decision of the hearing officer, they can appeal the decision. Either party has 90 days after the hearing officer has issued their decision to file a civil action. If no appeal is filed, the decision issued by the hearing officer is final.

In an appeal, the judge reviews the record of the due process hearing and decides if the right decision was made. Generally, the judge will only be looking for a clear error of law and not at any new evidence. Because an appeal to court is even more involved than the due process hearing, parents may want to consult an attorney before deciding to appeal. If a decision is made to appeal, a copy of the request must be sent to the MDOE at the same time the appeal is filed.

When a hearing decision includes actions that the school must take, the school has 45 days from the time the decision is issued to notify the Maine Department of Education that they have complied with the hearing decision or that they are filing an appeal. The MDOE monitors a school's compliance with a hearing decision or corrective action plan. If a parent doesn't think an agreement is being carried out, they may request a complaint investigation with the state.

For a copy of the Notice of Procedural Safeguards go to:

Web: <http://www.maine.gov/education/speced/documents/ProceduralSafeguards.doc>

For a copy of the Maine Unified Special Education Regulations:

Web: www.maine.gov/education/speced/contentrules.htm



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This fact sheet was designed to inform the reader and its contents should not be taken as legal advice or a complete document on the subject. For more information on Understanding Due Process Hearings and other topics of importance to families of children with disabilities and special health care needs, contact Maine Parent Federation by telephone at 1-800-870-7746 (Statewide), 207-588-1933, or by email at parenconnect@mpf.org.

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