

Due Process FAQs

This section contains some frequently asked questions about the Office of Dispute Resolution and its work. The FAQs are organized by the following topics:

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Relationship Between PDE and ODR

Q: What is the relationship between ODR and the Department of Education?

A: The Department of Education (PDE) provides the funding for ODR's operations, but PDE and ODR have separate and distinct functions. ODR is a neutral office, responsible for administering the due process and mediation systems statewide. Unlike PDE, ODR has no enforcement authority. It is PDE's Bureau of Special Education, not ODR, which handles the enforcement of Hearing Officers' decisions.

Filing for Due Process

Q: How do I file for due process?

A: Complete the ODR Request Form and mail, fax, or email it to the address shown on the form.

Q: What happens once ODR receives my request for a due process hearing?

A: Your request will be assigned a case number and an ODR Case Manager. The Case Manager will locate a Hearing Officer in your geographic region available to take your case. The Hearing Officer will then contact you to schedule the due process hearing. The Case Manager prepares the hearing notices for the parties and arranges for the stenographer. The Case Manager is available to answer general procedural questions for you, but he or she cannot give you legal advice.

Legal Representation

Q: Do I have to be represented by an attorney at the due process hearing?

A: No, you may represent yourself. This is called proceeding pro se. You should familiarize yourself with the hearing procedures as set forth in the Special Education Dispute Resolution Manual.

Q: Can ODR give me advice?

A: ODR personnel cannot provide legal advice to parents or school districts. However, ODR personnel can provide information about due process procedural questions.

Q: How do I find an attorney to represent me?

A: The Pennsylvania Bar Association has information on attorneys who practice in the field of special education law and who may be willing to represent you.

Q: Who is responsible for the cost of my attorney?

A: If you choose to hire an attorney, you will be responsible for paying the attorney for his or her services. If you win the due process hearing, you have the right to seek reimbursement for the money you spent on attorney's fees through your local court system. You should consult with your attorney about the mechanisms for recovering fees. Neither ODR nor the Hearing Officer have jurisdiction over the awarding of attorneys' fees.

Q: What alternatives are available if I cannot find an attorney to represent me?

A: You may proceed pro se, that is representing yourself. You may also want to consider requesting Mediation, which involves an unbiased third party trying to help both sides reach agreement. Both sides must agree to mediate and attorneys are not permitted.

Hearing Officers

Q: What types of backgrounds do Hearing Officers have?

A: Hearing Officers are professionals with knowledge of special education issues and law. Typically, a Hearing Officer is an attorney, college professor, psychologist, or educational agency worker. The Hearing Officer may be retired from these professions. Hearing Officers lists the individuals currently serving in this capacity for ODR, along with their professions and backgrounds.

Q: Are Hearing Officers associated with the school district?

A: No. A Hearing Officer is an impartial professional who is not affiliated with the particular education agency involved in your due process hearing, either through employment or a professional or personal relationship.

Q: How will the Hearing Officer contact me?

A: Either the Hearing Officer or his or her office staff will contact you to begin the process of scheduling the due process hearing. Depending on the complexity of the case, the preference of one or both of the parties, or the usual practice of the Hearing Officer, he or she may hold a telephone conference prior to the due process hearing. The conference may review the issues, discuss scheduling, and deal with any matters that need to be resolved prior to the hearing.

At the time of this initial contact, the Hearing Officer or his or her staff will let you know how the Hearing Officer will be communicating with the parties, and in turn how the Hearing Officer

wishes to be contacted, such as by letter or email. The Special Education Dispute Resolution Manual describes the pre-hearing and hearing processes in detail.

Q: Why is there an issue about how the due process hearing parties communicate with the Hearing Officer?

A: Because the Hearing Officer will not participate in *ex parte* communication, that is communication with either party about the merits of the case outside the presence of the other party. It is the content of the discussion, not the discussion itself, which makes it improper.

For example, it is acceptable for the Hearing Officer to speak to a parent or an educational agency representative on the telephone about scheduling matters. It is not acceptable to have such a conversation about the issues in dispute, the conduct of the parent or school district, the opinion of the parent or school district about the child's educational program, and so on. If either side attempts to engage in *ex parte communication* with the Hearing Officer, the Hearing Officer will immediately terminate the discussion. Some Hearing Officers will not speak to either side individually in order to ensure that *ex parte communication* never occurs. When the Hearing Officer first contacts you, he or she will tell you the acceptable methods for communicating.

Q: Who supervises the Hearing Officers?

A: As required by IDEA 97, the Hearing Officers are impartial individuals who contract with ODR to preside over due process hearings. Because of the impartiality requirement, Hearing Officers must make all decisions about the due process proceedings independent of any other individual or agency. Therefore, Hearing Officers do not receive direction or instruction from ODR on how to handle a particular case. Appeals of the Hearing Officer's decisions are available to the parties.

The Due Process Hearing

Q: Where will the due process hearing be located?

A: IDEA '97 requires that the hearing be held at a place reasonably convenient to the parent. Typically, the hearing is held at the educational agency's building.

Q: What is a five-day disclosure?

A: At least five business days prior to the first due process hearing, the parties are required to exchange lists of all of the documents and witnesses they intend to use at the hearing. The list must be specific enough so that the opposing party can identify particular documents and know the identity of the witnesses.

Q: What do I need for evidence?

A: You should be prepared to present documents and witnesses which will support your position at the due process hearing. Typically the documents used at due process hearings include IEPs, ERs, evaluations, communications between the parties, etc. Typical witnesses include the parent, the child's teacher(s), a school administrator, and any experts with knowledge of the issues.

Q: What happens if the school district does not follow through with the Hearing Officer's directions set forth in the due process hearing's decision?

A: At the request of the parent or his or her counsel, the Department of Education's Bureau of Special Education (BSE) will begin enforcement proceedings. Neither ODR nor BSE institutes enforcement proceedings unilaterally. The educational agency must complete an Assurance Form, which is a document typically signed by the Superintendent of the school district, attesting to the fact that the educational agency has completed all of the actions ordered by the Hearing Officer. The parents and their counsel, if any, will be notified that ODR has received the Assurance Form and that the file will be closed unless the parent or his or her counsel alert ODR that they disagree with the educational agency's position that all action has been completed. Upon receiving this information from the parent or counsel, ODR will alert BSE that an enforcement proceeding needs to be started.
