

Educational Due Process Hearings

An Educational Due Process Hearing is a hearing that parents can request under Article 7 of the Indiana Code to have an independent hearing officer determine whether his or her special needs child is receiving an appropriate education or whether they are eligible for special education.

Education law varies from state to state and in Indiana disciplinary procedures can vary from district to district. The information below will provide you with some very basic information and help answer some frequently asked questions, but the information on this website is not legal advice and is not meant to be a substitution for seeking the advice of competent legal counsel. Your case is unique and you need legal advice that is specifically tailored to fit your needs. Our Hollingsworth & Zivitz, PC education team is here to provide you with the advice you need to make decisions that will have a lasting impact on your child's life.

EDUCATIONAL DUE PROCESS– General Information

Under Article 7 of the Indiana Code and the federal law titled the Individuals with Disabilities Education Act (IDEA) parents of children with special needs, which range from ADHD to Autism, are entitled to challenge their child's eligibility for special education and/or their child's educational programming if they believe it is inappropriate to meet their child's needs. A program may be inappropriate for a variety of reasons. In some cases a child's Individual Education Plan (IEP) may be very good, but not be appropriately implemented by the School, in other cases a child's IEP may not take into account their needs or be insufficient to help them academically advance.

In situations where a parent has been unable to work with a school to get an appropriate program for their child, a parent has the right to request a Due Process Hearing to resolve the disagreement with the school regarding the child's disability, identification, evaluation, eligibility, placement, services, or reimbursement of services.

DUE PROCESS HEARING – FAQ's

Should I retain an attorney for a Due Process Hearing?

The law does not require parents to hire an attorney to pursue a due process case and many parents try to navigate this system on their own. However, it may be wise to consider hiring an attorney experienced in this area. Special education law is a very complex field with both federal and state laws that may affect a hearing officer's decision. An attorney trained in education law can be very helpful in guiding parents through the minefield of statutes, regulations, and case law that surrounds this field. However, it is very important that the attorney that is hired is one who is trained in education law and has worked in the area of special education. We advise that you ask whomever you retain about their background and whether or not they have pursued Due Process Hearings, and how many, on behalf of parents and children in the past.

I have heard you can get attorneys fees if successful, is this true?

Under both Article 7 and IDEIA a parent represented by legal counsel during the proceedings of a due process hearing, appeal or civil court action is entitled to reimbursement of legal fees if the parent ultimately prevails. When there are a number of issues in a case and the parent only prevails on a few of those issues there are situations where schools argue for a reduction in the payment of the attorney fees, given that the Plaintiffs often do not win on every single issue in litigation.

How do I request a Due Process?

A Due Process request is submitted in the form of a formal letter written by either you or your attorney stating the statutes violated and the issues to which the Independent Hearing Officer will be asked to decide. This letter is sent to the Department of Education and then an Independent Hearing Officer is appointed. In Indiana he or she is appointed by the Indiana Department of Education, division of Exceptional Learners from a rotating list.

What happens after a Request is Made and the Hearing Officer is Appointed?

The hearing officer will contact the school and your attorney to set up a time for a pre-hearing conference, most often this is done in the form of a conference call. At that conference the issues are clarified and formalized and dates for discovery and the hearing are set. The conference call includes all the parties involved in the due process matter, the parent(s), school's representative(s), school's attorney, your own attorney and the independent hearing officer (IHO).

After the conference call both the parents and the school will prepare their case for hearing. My office will give you "homework assignments" to help me prepare your case for hearing. This is helpful to me, as no one will know your case and the facts better than you do, and it helps keep your legal fees lower.

How long does it take from the Due Process request until the Due Process Hearing?

The time line will vary depending on the situation. For instance, if your child has been expelled or their has been a change in programming without your consent, a Due Process Hearing can occur as quickly as 10 days.

What is the time line for a Due Process Case?

- 1) The request for a due process hearing is submitted to your state's education agency and to the school and cooperative or interlocal.
- 2) Your state's education agency assigns an independent hearing officer (IHO) to your case from a rotating list.
- 3) The school district will file an answer to your request within 10 days of the request or submit a request for an extension of time to further investigate the matter.
- 4) A resolution session will be scheduled within 15 days of your request to attempt to resolve the matter.
- 5) Within the 15 day time period the IHO will contact the school and your attorney to set up a time for a prehearing conference if the resolution session is unsuccessful.
- 6) Both parties (the school and parents) will prepare their case for hearing and depending on if there is a need for extensions from either side, a case will generally go to hearing within 45 – 65 days.
- 7) The hearing will be conducted according to the plan devised at the prehearing conference.

What is a resolution session?

A resolution session is an attempt for both sides to work the situation out as early as possible. We advise that clients go to the resolution session and do their best to be clear with the school as to the issues and what is necessary to resolve them. This is an essential part of solving the problems and working to find common ground.

What is mediation and is it an option?

Mediation can be good in complex education situations involving multiple issues or litigation. It is a process in which the parties with or without their attorneys sit down with a neutral party (the mediator) to discuss the disagreements between the parents and the school regarding the child's disabilities.

Do we need witnesses or experts?

Generally yes. While the parents have the most in-depth knowledge of their child's case, in most situations the debate is over your child's medical, physical, psychological, and intellectual needs. For instance, if your child has a bi-polar disorder and the school is failing to provide adequate programming, a good behavior modification plan and accommodations – it is important that you have a pediatrician, psychiatrist, or other professional that is aware of your child's needs and can help advise the hearing officer as to what is needed and what is appropriate. If you have a child with autism, who is 4 or 5 year old, and you are requesting that ABA therapy be part of his or her education, it is essential to be able to have supporting experts to testify as to your child's specific and individual needs. In 90% of cases parents already have pediatricians, therapists, and other people that worked with their child. In cases concerning special education eligibility for children whom the school failed to identify, we can assist you in finding qualified evaluators and individuals who focus in working with children with your child's specific disabilities.

How far back can we go with my child's records when showing the school's history of failure?

Both IDEA and State Law place a two year statute of limitations on Due Process cases. In rare situations the issue can be pursued further.

What happens at the Due Process Hearing?

A Due Process Hearing is like a "mini-trial." Each side presents an opening statement and calls witnesses. The witnesses include school personnel, administrators, physicians or psychologists, therapists, and parents. Each side calls their own witnesses and illustrates to the hearing officer their view of the case.

What happens after the hearing?

At the end of the hearing, the hearing officer will state when the decision will be made and state that it will be mailed to the attorneys for both sides. Once we receive the decision we will notify you. Each party has a right to appeal the decision. Any appeal must be filed with the Board of Special Education Appeals (BSEA) within 30 days of the receipt of the decision. Either party can request an extension of time to submit their appeal (called a Petition for Review) to the BSEA. A successful appeal will have to show that the hearing officer's decision was one of the following:

- (1) Arbitrary and capricious;
- (2) An abuse of discretion;
- (3) Contrary to law, contrary to a constitutional right, power, privilege or immunity;
- (4) In excess of the jurisdiction of the independent hearing officer;
- (5) Reached in violation of an established procedure, [or]
- (6) Unsupported by substantial evidence.

Can I get attorneys fees at the mediation?

It depends. If the mediation was requested with a pending Due Process Hearing set and the result is an settlement agreement between the parties than attorneys fees can be part of the agreement. If there is no request for Due Process, in most cases each party is responsible for their own attorneys fees.

INDIANA HEARING OFFICERS

The following individuals serve as hearing officers in Indiana in Article 7 and IDEIA special education due process cases:

Dr. Melody Dilk
Attorney at Law
Professional Psychological Services
10293 N. Meridian St., Suite 375
Indianapolis, IN 46290
Phone: 317-581-2288
Fax: 317-581-2295

Terry R. Curry, Esq.
111 Monument Circle, Ste. 302
Indianapolis, IN 46204
Phone: 317-231-6325
Fax: 317-231-6330

John Krauss
815 W. 96th St.
Indianapolis, IN 46260
Phone: 317-840-4848
Fax: 317-575-9090

Kristin Anderson
Attorney at Law
4167-69 Broadway
Indianapolis, IN 46205
Phone: 317-923-2234
Fax: 317-283-2849

Dennis Graft
Attorney at Law
P.O. Box 783
Avilla, IN 46710
Phone: 260-897-9800
Fax: 260-897-9801

Dr. Thomas Huberty
201 N. Rose Ave.
Bloomington, IN 4740
Phone: 812-856-8332
Fax: 812-856-8202

Dr. Jim Jacobs
School of Education
Indiana State University
Terre Haute, IN 47809
Phone: 812-237-3585
Fax: 812-237-8208

Dr. Joseph McKinney
Attorney at Law
Ball State University
TC - 915
Muncie, IN 47306
Phone: 765-285-8495
Fax: 765-285-2166

Christine Sepiol
9529 Walnut Dr.
Munster, IN 46321
Phone: 708-755-1900 ext. 241
Fax: 708-755-0000