

ODR
THE OFFICE FOR DISPUTE RESOLUTION

UNDERSTANDING SPECIAL EDUCATION DUE PROCESS HEARINGS

A GUIDE FOR PARENTS

2022 Version

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Office for Dispute Resolution
6340 Flank Drive, Harrisburg, PA 17112-2764
(800) 222-3352; (717) 901-2145
TTY Users: PA Relay 711
www.odr-pa.org

Through the Office for Dispute Resolution (ODR), the Pennsylvania Department of Education (PDE) fulfills its statutory mandate to maintain a special education due process system. PDE contracts with the Central Susquehanna Intermediate Unit (CSIU) to provide fiscal and certain management support for that office, without becoming involved in substantive operations. The hearing officers and mediators are free from interference or influence on any matters affecting the outcome of individual mediations and due process hearings. This includes, without limitation, interference, or influence from any entity, individual, or group, such as parents, advocacy groups, school districts, intermediate units including CSIU, ODR staff, and PDE. At the same time, those hearing officers and mediators are provided with administrative support, as well as training delivered in a manner preserving their impartiality through ODR, which itself is also free of such interference or influence.

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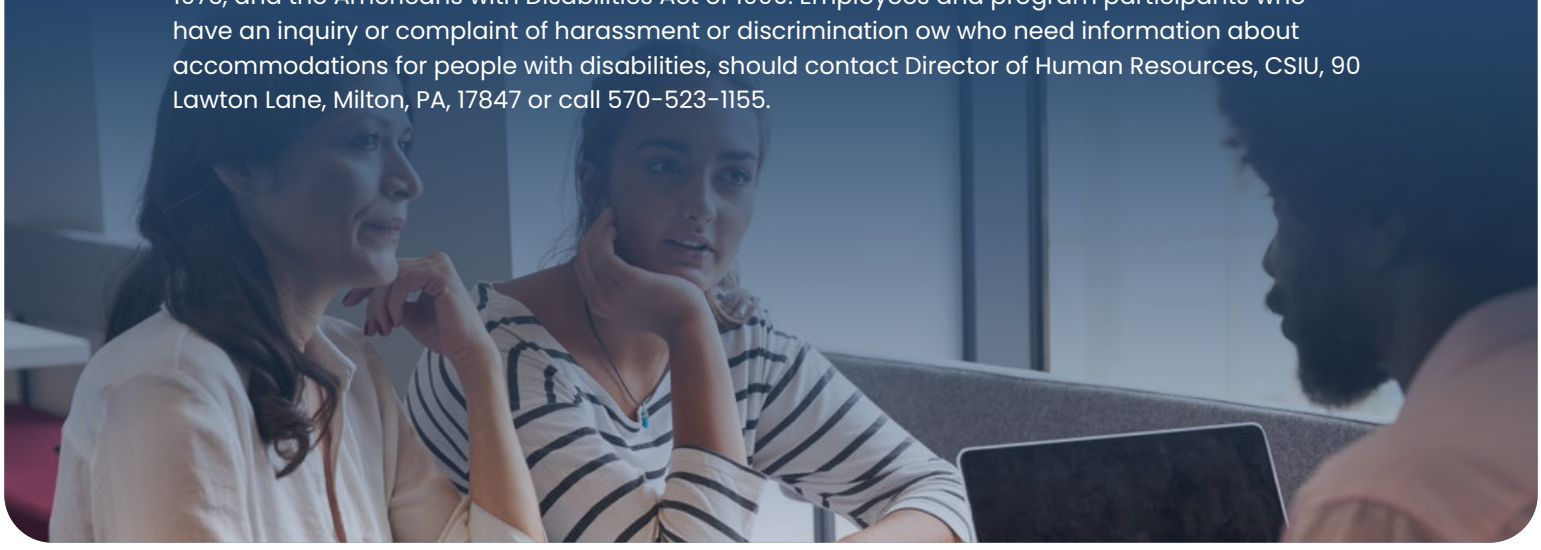


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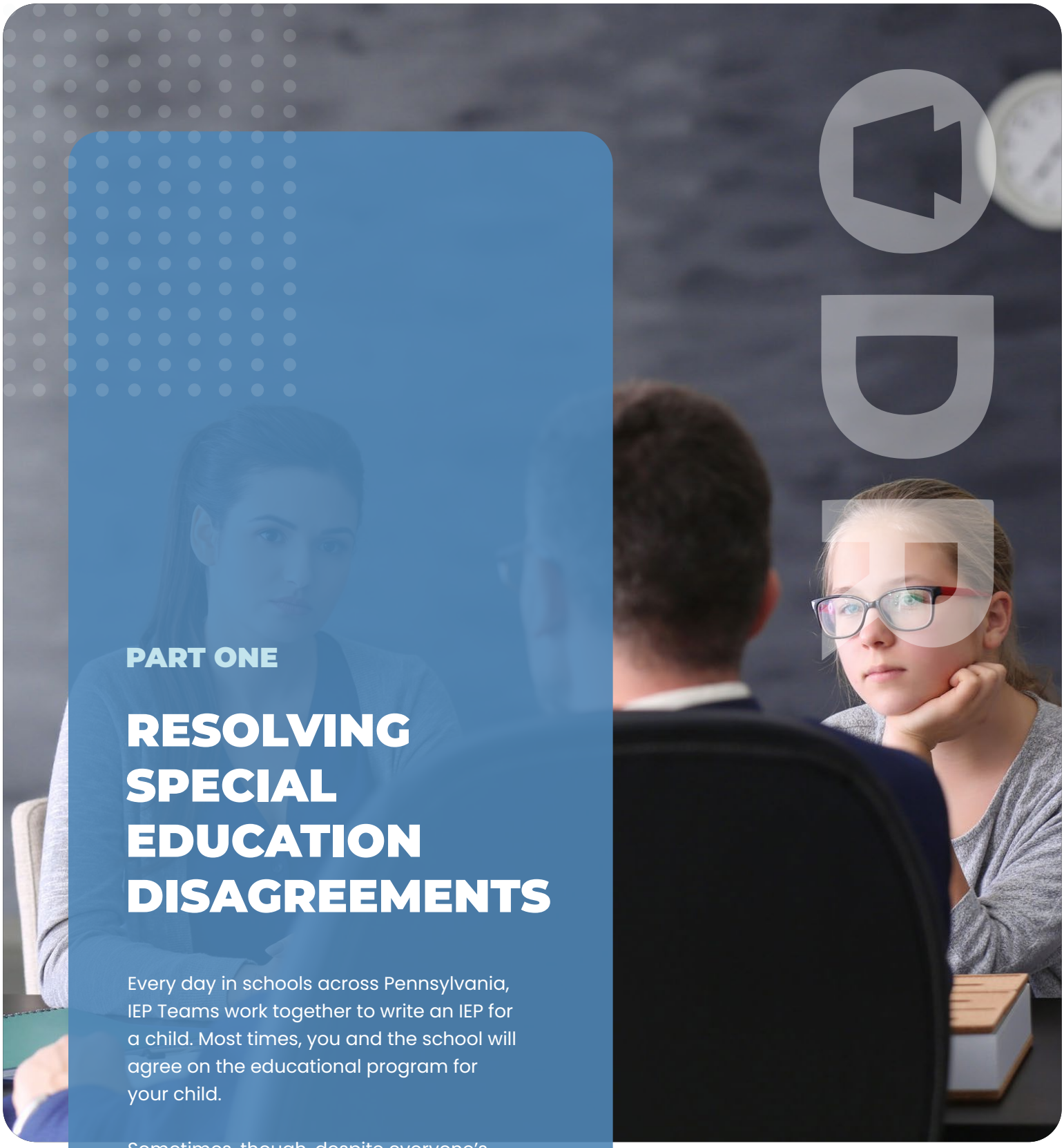
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PART ONE

RESOLVING SPECIAL EDUCATION DISAGREEMENTS

Every day in schools across Pennsylvania, IEP Teams work together to write an IEP for a child. Most times, you and the school will agree on the educational program for your child.

Sometimes, though, despite everyone's best efforts and intentions, there will be a disagreement about your child's education.

A due process hearing (litigation) is not the only way to resolve these disagreements.

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WAYS TO RESOLVE SPECIAL EDUCATION DISPUTES

Engage in Informal Discussions	**Talk with Special Education Director**	**Call ConsultLine**
Consult Other Resources	**Request An Evaluation**	**Ask IEP Team to Meet**
Request IEP Faciliation	**Request Mediation**	**File A Complaint with PDE**

Start with Informal Discussion

Sometimes just talking to your child's teacher or school administrators may resolve the problem. The school may not be aware of your concerns. Open communication between parents and schools benefits everyone, particularly the student.

Begin by talking to your child's teacher. Contact them to schedule a time to meet or talk over the phone. This way you can be sure that the teacher has time to talk with you. Before the meeting, it might be helpful to send a list of your questions or concerns so the teacher can prepare. At the meeting, share your concerns, but be willing to listen to the teacher's thoughts as well. Often, you will be able to resolve the problem together.

There may be other people you will want to talk to as well. Regardless of whom you talk to, if something is not clear to you, ask for an explanation. If you are unable to resolve the matter with your child's teacher, you may wish to consider one or more of the following.

QUICK TIP

It can be helpful to keep a journal or log of your communications with the school. After you speak to someone, you might want to send an email or letter to the school, summarizing what was discussed. This will give you a record of your discussions. This will also give school staff the chance to revisit an issue with you if they understood your discussion to be different than how you summarized it. Communication problems can be avoided this way.



ADDITIONAL RESOURCES

There are many abbreviations, or acronyms, for terms used in the special education field. For example, the **Individualized Education Program** is referred to as the IEP, and free appropriate public education is referred to as FAPE (rhymes with the word "cape").It can be helpful to become familiar with some of these frequently used abbreviations/acronyms as you prepare for the hearing.

See **this website** for a list of commonly used abbreviations/acronyms.

Meet with the Special Education Director

You may want to meet with the Special Education Director to talk about your concerns. If you want to, you can send a letter or an email to the **Special Education Director** before the meeting, so they have an idea of what you want to talk about. If there is a document which you think is important to the discussion, you can include it in your letter or email. Be willing to listen to what the Special Education Director has to say. Many times, you can resolve the problem together.

Contact the Special Education ConsultLine

PA residents call: 800-879-2301;
non-PA residents call: 717-901-2146;
TTY Users – PA Relay 711

ConsultLine is a helpline for parents and advocates of children with disabilities ages 5 to 21. The types of information include:

- The processes involved in having a child evaluated, identified, and provided with special education, accommodations, and related services;
- Parents' rights and procedural safeguards, including information about regulations;
- Dispute resolution services and options for resolving disagreements about a child's special education program;
- The process and procedures of a caller's active case related to IEP Facilitation, Mediation, and Due Process Hearing;
- Information, assistance, and access to the state complaint process managed by the Pennsylvania Department of Education's Bureau of Special Education (BSE); and
- Resources, publications, websites, and referrals to disability-related organizations

ConsultLine is listed in the **Procedural Safeguards Notice**, under "Appendix A – Resources".

Note: *If your child is an infant or up to the age of 5, the following resources are available to you:*

- CONNECT Information Service for Early Intervention: 800-692-7288

- Office of Child Development and Early Learning (OCDEL): 717-346-9320



Consult Other Resources

The Procedural Safeguards Notice lists many resources available to parents including:

The Arc of Pennsylvania
301 Chestnut Street, Suite 403
Harrisburg, PA 17101
Toll-Free Voice: 877-337-1970
Voice: 717-234-2621
www.thearcpa.org

Disabilities Rights Pennsylvania
www.disabilityrightspa.org

Harrisburg Office
301 Chestnut Street, Suite 300
Harrisburg, PA 17101
Toll-Free Voice: 800-692-7443
TDD: 877-375-7139
Voice: 717-236-8110
Fax: 717-236-0192

Philadelphia Office
The Philadelphia Building
1315 Walnut Street, Suite 500
Philadelphia, PA 19107-4798
Voice: 215-238-8070
Fax: 215-772-3126

Pittsburgh Office
429 Fourth Avenue, Suite 701
Pittsburgh, PA 15219-1505
Voice: 412-391-5225
Fax: 412-467-8940

Hispanics United for Exceptional Children (Philadelphia HUNE, Inc.)
2215 North American Street
Philadelphia, PA 19133
Voice: 215-425-6203
Fax: 215-425-6204

Hispanics United for Exceptional Children (Philadelphia HUNE, Inc.)
2215 North American Street
Philadelphia, PA 19133
Voice: 215-425-6203
Fax: 215-425-6204

Mission Empower
1611 Peach Street, Suite 120
Erie, PA 16501
Toll-Free Voice: 844-370-1529
Voice: 814-825-0788
www.missionempower.org

Office for Dispute Resolution
The Office for Dispute Resolution (ODR) administers the mediation and due process systems statewide and provides training and services regarding alternative dispute resolution methods.

6340 Flank Drive
Harrisburg, PA 17112-2764
Toll-Free Voice (PA Only): 800-222-3353
Voice: 717-901-2145
TTY Users: PA Relay 711
www.odr-pa.org

Parent Education and Advocacy Leadership Center (PEAL)
2325 East Carson Street, Suite 100A
Pittsburgh, PA 15203
Toll-Free Voice: 866-950-1040
Voice (Pittsburg): 412-281-4404
Voice (Philadelphia): 215-567-6143
TTY: 412-281-4409
Fax: 412-281-4408

Pennsylvania Bar Association
100 South Street
Harrisburg, PA 17101
Voice: 800-932-0311
www.pabar.org

The Pennsylvania Training and Technical Assistance Network (PaTTAN)
http://www.pattan.net

Central Office
6340 Flank Drive
Harrisburg, PA 17112
Toll-Free Voice (PA Only): 800-360-7282
Voice: 717-541-4960
Video Phone-VP: 717-255-0869

East Office
333 Technology Drive
Malvern, PA 19355
Toll-Free Voice: 800-441-3215
Voice: 610-265-7321
Video Phone-VP: 610-572-3430

West Office
3190 William Pitt Way
Pittsburgh, PA 15238
Toll-Free Voice: 800-446-5607
Voice: 412-826-2336
Video Phone-VP: 412-265-1002

Public Interest Law Center of Philadelphia (PILCOP)
United Way Building, 2nd Floor
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
Voice: 215-627-7100
Fax: 215-627-3183
https://www.pubintlaw.org/

State Task Force on the Right to Education
Toll-Free Voice: 800-360-7282, Option 5
Voice: 717-541-4960, Option 5
https://www.pattan.net/about-us/partners/state-task-force/

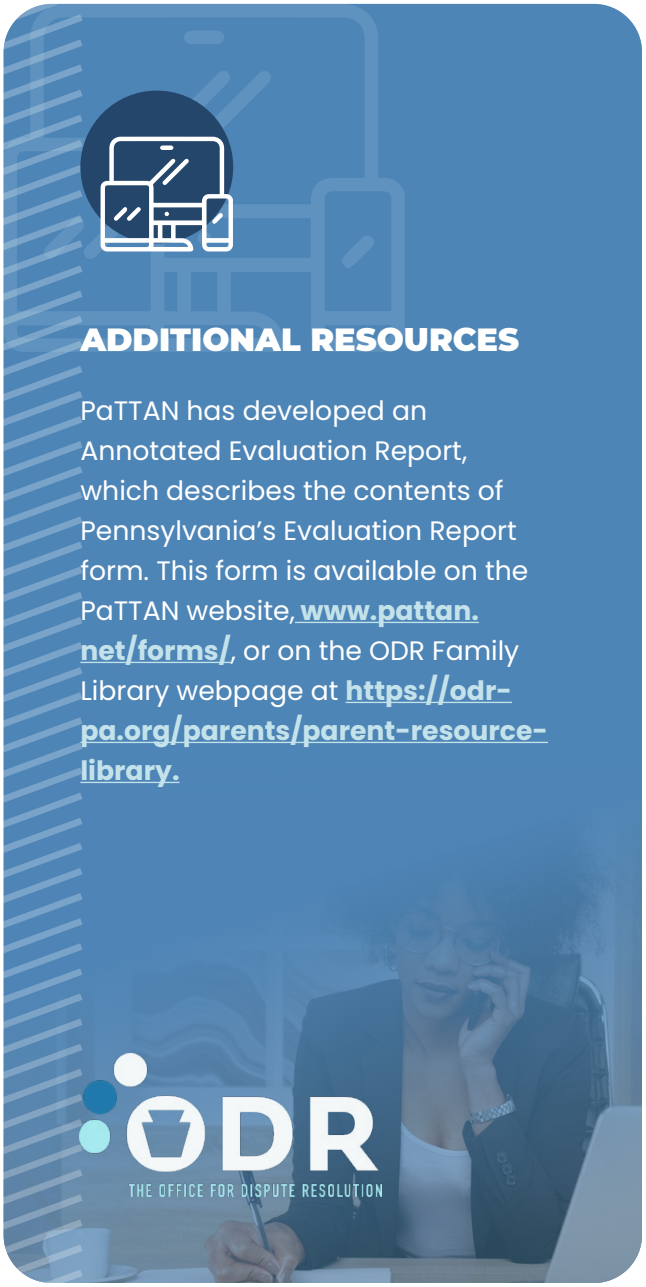
Local Task Force on the Right to Education (LTF)

There are 29 LTFs in Pennsylvania and they are organized by Intermediate Unit regions. The LTF advocates on behalf of students who receive special education services and makes recommendations necessary for the improvement of special education in the region they represent. To learn more about the LTF in your area, use the phone numbers listed under **State Task Force on the Right to Education.**

Request an Evaluation

You may want to ask your school to evaluate or reevaluate your child. The results of an **evaluation** or **reevaluation** may help both you and the school decide what the next steps should be. There are limits to the number of evaluations that will be performed on your child. To learn more about evaluations, you can speak with a ConsultLine Specialist at 800-879-2301 (TTY Users: PA Relay 711).





Request an IEP Team Meeting

You can ask that the IEP Team schedule a meeting to discuss your concerns. To request this meeting, write a letter or email to the principal, with a copy to the Special Education Director. Keep a copy of the letter/email for your records.

QUICK TIP

The next two services, facilitation and mediation, are free to you and the school. However, both you and the school must agree to use them. If only one of you wants the service, ODR cannot schedule it.
Facilitation is available for the IEP meeting; Mediation is available for special education disagreements.



Request IEP Faciliation

PA residents call: 800-222-3353;
Non-PA residents call: 717-901-2145
TTY Users: PA Relay 711

You may want to ask that a facilitator attend your child's IEP meeting to assist the Team. ODR offers free IEP Facilitation for IDEA claims to parents and schools. Facilitation is not needed for all IEP meetings. Facilitation is usually requested when the parent and the school believe that communication problems are preventing the IEP Team from agreeing on an IEP. The facilitator does not become a member of the IEP Team. The facilitator is not at the meeting to give advice or to tell the Team what to do. Instead, the facilitator's role is to make sure that everyone is given the opportunity to speak and work together to try to reach agreement. The goal of IEP Facilitation is an agreed-upon IEP.

If you believe that a facilitator might assist the IEP Team in better communication, contact ODR. While you are not required to, you can let the school know you have made this request. ODR staff will contact the school to see if it agrees with your request for facilitation. (The school can also request the presence of a facilitator at the IEP meeting.)

ConsultLine Specialists are available to speak with you about these services.
ConsultLine: 800-879-2301; ODR: 800-222-3353; TTY Users: PA Relay 711

ADDITIONAL RESOURCES

ODR has prepared a short video on IEP Facilitation, which is available on the **ODR website**. Below are additional resources pertaining to IEP Facilitation:

IEP Facilitation Request Form
IEP Facilitation Brochure
Preparing for Your Facilitated IEP

Request Mediation

PPA residents call: 800-222-3353;
Non-PA residents call: 717-901-2145
TTY Users: PA Relay 711

You may request **mediation** from ODR. Like the IEP facilitator, mediators are not decision makers. The mediator will facilitate communication between you and the school. The goal of mediation is for you and the school to resolve the problem and to put your agreement in writing. This is called the mediation agreement.

You may bring an attorney with you to mediation. If you choose to do so, notify the school that you are bringing an attorney because the **LEA** may want to bring its attorney too.

QUICK TIP

You may request mediation and due process at the same time. Your due process hearing will not be delayed because you requested mediation. Because mediation is usually easier to schedule, and usually takes only one day to complete, you may find that you have resolved your concern and do not need the due process hearing any more.

The ODR Mediation Case Manager, as well as ConsultLine Specialists, are available to speak with you about these services. ConsultLine: 800-879-2301; ODR: 800-222-3353; TTY Users: PA Relay 711

File a Complaint with the PA Department of Education: Office of Child Development and Early Learning (OCDEL) or Bureau of Special Education (BSE)

You can file a complaint with the Department of Education if you believe that your child is not receiving the services listed on the Individualized Family Services Plan (IFSP) or Individualized Education Program (IEP). You may also file a complaint with the Department of Education if you believe that technical requirements, like a timeline, are not being followed. Where you file a complaint depends on the age of your child (see below).

This type of complaint is different from a due process hearing complaint/request for a hearing (which is discussed later) and is handled differently.

If your child is an infant/toddler or of preschool age:
You may file a complaint with the Office of Child Development and Early Learning (OCDEL) at 717-346-9320.

If your child is of school age:
You may file a complaint (http://odr-pa.org/parents/state-complaint-process) with the Pennsylvania Department of Education's Bureau of Special Education- Division of Compliance (DOC) at 717-783-6913.



Generally, you are required to file a complaint of this type within one year of the violation.

To learn more about the complaint process for children ages infant to age 5, you can call CONNECT at 800-692-7288 or OCDEL at 717-346-9320.

To learn more about the Complaint process for children ages 5 to 21, you can call ConsultLine at 800-879-2301; TTY Users: PA Relay 711.



ADDITIONAL RESOURCES

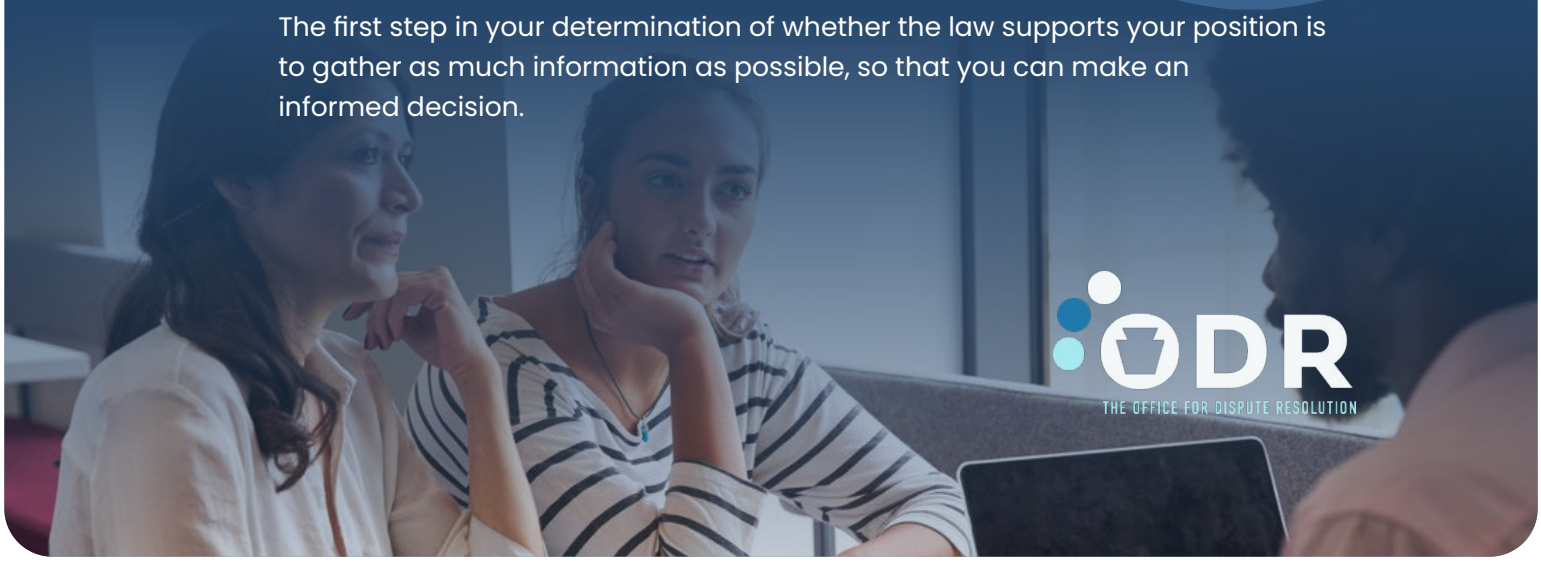
ODR has prepared a short video on mediation, which is available on the ODR website. Below are additional resources pertaining to mediation:

Mediation Request Form
Mediation Guide
Frequently Asked Questions about Attorney Participation at Special Education Mediation
Stay-Put Procedures
FAQ's Regarding Pendency

CHECKING IN

- If you have tried some or all these suggestions, and you still have concerns about your child's education, then it may be time to consider whether you want to request a due process hearing.
- This is an important decision to make. Due Process hearings are not something to be entered into lightly.
- The Federal Government (U.S. Department of Education's Office of Special Education Programs or OSEP) recommends that parents and schools use due process hearings only when everything else has failed to resolve the problem.
- Due process hearings are formal, complicated procedures.
- A due process hearing can be financially, physically, and emotionally draining for parents. It is difficult for school staff as well.
- You have the right to request a due process hearing, and sometimes that may be what is needed to resolve the problem.
- It is recommended that you be certain you cannot resolve the problem in other ways first before you request a hearing.
- Even before you request a hearing, you will need to figure out whether the law supports what you are seeking for your child. A hearing officer will apply the law to the facts that are presented at the hearing. They will consider not only the facts that you present, but the facts that the LEA presents as well.

The first step in your determination of whether the law supports your position is to gather as much information as possible, so that you can make an informed decision.



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PART TWO

ASSESSING THE STRENGTH OF YOUR POSITION

You do not want to spend the time, energy and money participating in a due process hearing if the law does not support your position. In other words, will the hearing officer agree with your view of the law, or will they agree with the school's position?

The next step is to figure out whether you have a case:

- What is the likelihood that a hearing officer will interpret the law the way you are?
- What does the law say?
- What documents and witnesses do you need to prove your case?
- How do due process hearings work?

These may seem like overwhelming questions, so take it step by step.

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Here is an outline of steps, discussed in greater detail below, you may want to take to help you decide whether you want to request a due process hearing:

Gather all relevant educational information about your child.

↓

Learn what the law says about your child's particular situation.

↓

Understand the school's position, whether you agree with it or not.

↓

Determine whether a hearing officer has jurisdiction over your concern.

↓

Understand due process hearing procedures.

↓

Based upon all of this information, determine if a due process hearing is how you want to proceed.

STEP 1: GATHER ALL RELEVANT EDUCATIONAL INFORMATION ABOUT YOUR CHILD

You need to have a complete understanding of your child's needs and educational program. Here are some things you can do to become prepared.

QUICK TIP

As you go about gathering this information, do not stop talking to and working with the school. Sharing information as you get it may help both you and the school understand your child's situation better. Sharing information may result in the problem being resolved or prevent future problems. Most due process cases are settled (resolved) before they get to the actual hearing.



Organize Your Records

Start by organizing your records. Here is a list of documents that might be helpful to you. If you do not have copies, now is the time to get them and review them carefully.

Report Cards

Does the report card show that your child is doing well in school? Struggling in school or even failing? What do the teacher comments say?

Homework and Tests

Homework and tests help to show two things: 1) what your child is being taught in school; and 2) how well your child is doing in school. Standardized tests, such as the PSSA, Keystone Exams, and others, may also be important.

Written Communication with School Staff

Your child's school record includes notes and emails to you or other staff regarding your child. What do those communications show? Have you identified concerns to the school, or has the school identified concerns to you? How have the school or you responded? Has there been progress?

Generally Distributed School Information

This refers to the information that a school sends home with many (or all) students or puts on its website. This may be pamphlets, notices, calendars, or policies. Consider whether any of this information is important to the concern you have about your child's program.

Evaluations

Your child's evaluation(s) are often times an important part of a due process hearing. Make sure you have copies of all evaluations completed on your child whether by the school or private evaluators.

Some or all these documents may be used as exhibits at a due process hearing, so the earlier you can get them together, the better prepared you will be.

QUICK TIP

*There are three documents that are almost **always important** in any due process hearing:*

1. *Evaluation Report;*
2. *Notice of Recommended Educational Placement (called the "NOREP"); and*
3. *The Individualized Education Program (IEP).*

*The **Evaluation Report, NOREP and IEP** all work together to establish the program your child needs.*

Notice of Recommended Educational Placement (NOREP)

In many cases this is an important document because it indicates what the IEP team concludes is the educational program your child needs.

Individualized Education Program (IEP)

This is the blueprint (or map) for the education and services your child will receive. Make sure you have copies of every IEP that pertains to your concern. Review each one of them carefully.

Classroom Visit

You may want to visit your child's classroom. Your school will have a policy about parents visiting the classroom. Check with the school about its policies for such visits. Follow all school rules about the visits.

Inspect Records at School

The school maintains educational records on your child. You have the right to review those records. Once you ask to review them, the school is required to respond to your request in a timely manner. At the most, the school must make those records available to you no more than 45 calendar days after you make the request. There may be a small "per page" charge by the school for any documents that you request to be copied.

Consider an Independent Educational Evaluation (IEE)

If you disagree with the evaluation of your child completed by the school, you may ask for an independent evaluation. An independent educational evaluation, or IEE, is an evaluation conducted by a qualified examiner who is not employed by the school.

If you ask for an IEE, the school will give you this information:

- Information about where to get an IEE;
- The requirements for the IEE; and
- The qualifications of the IEE examiner

The school may ask you for the reasons why you disagree with the school's evaluation. You are not required to give a reason, but if you do, it may result in you and the school discussing your concerns and even resolving them.

After you ask for an IEE, the school will do one of two things:

1. The school will request a due process hearing to show that its evaluation was appropriate; or

2. The school will make sure that an IEE is done at the school's expense (not yours) and provide you with guidelines that will be followed about such things as the bulleted points above.

If the hearing officer agrees with the school that its evaluation was appropriate, you still have the right to an IEE but at your expense.

You are entitled to only one Independent Educational Evaluation (IEE) at the school's expense each time the school conducts an evaluation which you disagree with.

If you get an IEE at the school's expense or share with the school an evaluation you obtained and paid for yourself, the results of the evaluation:

- Must be considered by the school in determining your child's educational program (unless the evaluation did not meet the school's requirements); and
- May be used by you, the school, or both, as evidence at the due process hearing.

CHECKING IN

You have now gathered all the information you need about your child's educational program. Now, the Step Two question is "Does the law support my view of my child's education?

Here are some questions you will need to ask:

- What does the law say?
- What timelines must I follow?
- How have Hearing Officers decided on similar cases?
- What witnesses and exhibits will help to prove my case?
- What is the school's position?



STEP 2: LEARN THE LAW

Special Education Regulations and Laws

You will need to have at least a basic understanding of special education law and how those laws apply to your child's educational program.

The two main federal laws (statutes) that apply to due process hearing are the following:

- The **Individuals with Disabilities Education Act (referred to as "IDEA")**; and

- **Section 504 of the Rehabilitation Act of 1973** (referred to as "Section 504")

The IDEA statue and regulations list all the requirements educational agencies must follow to receive federal funding for special education. Section 504 is an anti-discrimination statute/ regulation. Section 504 prohibits discrimination based on disability in programs or activities that receive federal financial assistance from the U.S. Department of Education.

The IDEA **statue** and **regulations** list all the requirements educational agencies must follow to receive federal funding for special education. Section 504 is an anti-discrimination statute/ regulation. Section 504 prohibits discrimination based on disability in programs or activities that receive federal financial assistance from the U.S. Department of Education.

There are a lot of similarities between IDEA and Section 504. For more information on the differences between these two statues, see the U.S. Department of Education's website at http://www.ed.gov, or you may wish to call ConsultLine at 800-879-2301; TTY Users: PA Relay 711.

There are also state statutes and regulations regarding special education. The state

ConsultLine Specialists are also available to you to review special education laws and regulations at 800-879-2301; TTY Users: PA Relay 711.

ADDITIONAL RESOURCES

There are many websites about special education law. Some are more respected that others. One well-known and well-respected national website, **Wright's law**, is geared towards parents.

The **Family Resource Library** on ODR's website has information for parents about special education regulations, rights, and procedures.

counterpart to the IDEA law is found in the **Pennsylvania Code**, under **Chapter 14**. You will hear people refer to the state regulations as "Chapter 14". Chapter 14 does not apply to students who attend a charter or cyber charter school. Charter and cyber charter schools adhere to separate state special education regulations which are also found in the Pennsylvania Code, under **Chapter 711**.

The state counterpart to Section 504 is also found in the Pennsylvania Code, under **Chapter 15**. You will hear people refer to the state regulations as "Chapter 15". Chapter 15 does not apply to students who attend a charter or cyber charter school; however, charter or cyber charter schools are required to adhere to Section 504.

More on Statues and Regulations...

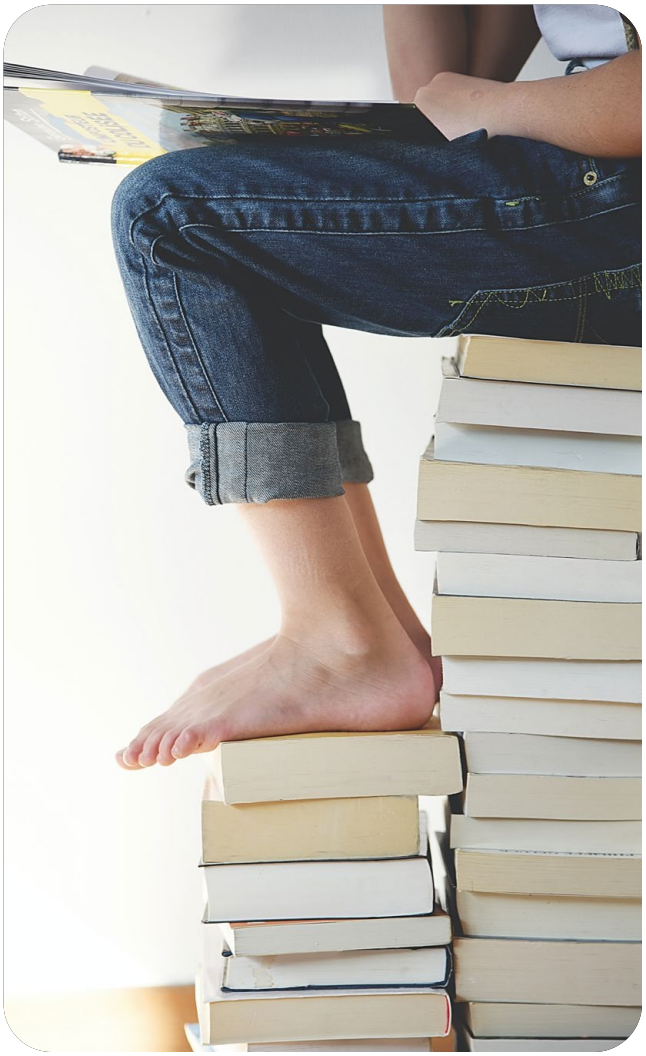
Each federal statue has regulations, which implement the statute. The regulations give more specific information about how the statute is to be followed.

It is less important that you read the statutes. It is very important that you read the regulations.

ADDITIONAL RESOURCES

Read the **IDEA regulations**.

Read the **Section 504 regulations**.





QUICK TIP

When you compare the state and federal regulations you will see that, in most instances, they are the same. There are several sections where Pennsylvania regulations differ from the federal regulations. Important differences are:

- *Pennsylvania regulations require that students with an intellectual disability be reevaluated at least once every two years, while the federal regulations only require a reevaluation at least once every three years.*

- *Pennsylvania regulations define any removal from school to be a change of placement for students identified as having an intellectual disability. This is different from the federal regulations, which do not make this distinction.*

- *Pennsylvania regulations require certain procedures and restrictions when restraining a student. The federal regulations do not address restraints.*

- *Pennsylvania regulations require students who are 14 years of age or older to have a transition plan as part of their IEP. The federal regulations do not require a transition plan to be in effect until the student turns 16 years of age.*

ADDITIONAL RESOURCES

Read more on **Chapter 14 regulations**.

Read more on **Chapter 711 regulations**.

Read more on **Chapter 15 regulations**.

The state regulations for education can also be found on the **Pennsylvania Code's website**.

The Pennsylvania Bureau of Special Education has developed a list of Questions and Answers about Chapter 14. They can be found on the **Legal section of the PaTTAN website**.

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It is important to understand that just because you disagree with your child's educational program, this does not mean that you have met the legal standards for establishing a violation of state or federal law.

Proving Your Case under the IDEA Statute

Special education law can be complicated. But there is a basic concept that is important: a school is not required to provide the best program to a student but, instead, must provide an appropriate program.

Due process hearings often center on a disagreement as to what is "appropriate."

You may want to sign up for the ODR listserv to stay current on recently issued hearing officer decisions, and other dispute resolution information.

Proving Your Case under Section 504

To prove a Section 504 violation, you must prove all the following:

1. The student is disabled as defined in the regulations;

2. The student is otherwise qualified to participate in school activities;

3. The school or board of education receives federal financial assistance; and

4. The student was excluded from participation in, denied benefits of, or subject to discrimination in, a program or other service provided at the school.

Just because you are not happy with your child's program, or even how the school treated your child, does not automatically mean that your school has discriminated against you and your child. You must meet all four legal requirements listed above.

It can be helpful to read and understand legal decisions in previous cases with issues like yours. They might assist you in understanding the legal aspects of your own case better. The ODR website contains copies of recent **hearing officer decisions.** Court decisions are not available on the ODR website and may require an individual with legal knowledge to access and interpret them for you.



QUICK TIP

IDEA requires individualized educational programs for children with disabilities. What may be an appropriate education for one child is not necessarily an appropriate program for your child. Read hearing officer decisions. Feel free to talk to other parents, but remember that your child's IEP Team, which includes you, determines what is needed for your child, based upon their unique, individual needs, not based upon what another child may be receiving.



You do not have unlimited time to decide whether to request due process.

Timelines

Here is what the law says:

IDEA §300.511 – Impartial due process hearing

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by the State law.

This limitation or timeline is referred to as the **statute of limitations**. Pennsylvania does not have an explicit time frame applicable to special education due process hearing requests.

There are two exceptions to this two-year rule:

IDEA §300.511 – Impartial due process hearing

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to –

***1.** Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or*

***2.** The LEA's withholding of information from the parent that was required under this part to be provided to the parent.*

If you believe either of these circumstances has occurred, you must be prepared to prove it. Merely saying this occurred is not enough proof. If the school raises the statute of limitations as an issue (which you will see in the school's answer to your complaint notice or in a motion), the **hearing officer** may do one or more of the following:

1. Ask you to explain before the hearing why you believe that you have requested a hearing in a timely way (referred to as an **offer of proof**; (see "Part Six, Offers of Proof");

2. At a hearing, take evidence from you and the school regarding when you knew or should have known that there was a problem with your child's program and whether you failed to file a due process complaint within the two years after that;

3. At the hearing, take evidence regarding the exceptions listed above (§300.511(f)).

The hearing officer will determine whether your request was timely or not. There are three possible outcomes:

1. You requested the hearing too late, and your complaint will be dismissed. You have the right to appeal the decision to state or federal court.

2. You requested the hearing in a timely fashion, and the hearing will proceed.

3. You did not request the hearing in a timely fashion for some, but not all, of the issues in your complaint. The hearing will proceed on the issues that you raised in a timely fashion. At the end of the hearing process, you have the right to appeal any aspect of the hearing officer's decision to state or federal court including the hearing officer's ruling regarding which issues were (or were not) timely.

QUICK TIP

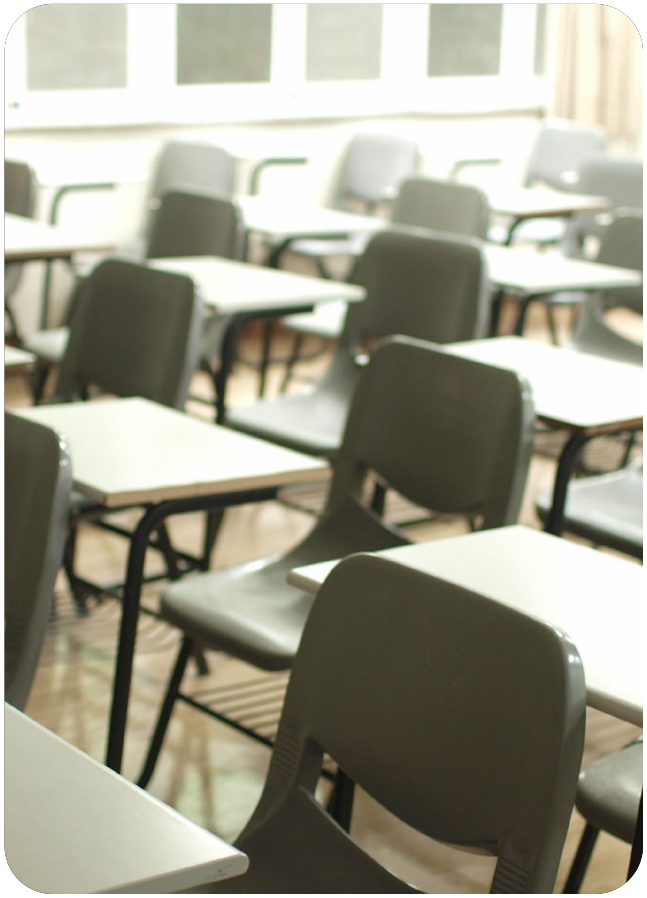
*The Procedural Safeguards Notice is available on **ODR's website**. An audio version is also available on this web page.*

ConsultLine Specialists are also available to you to review special education laws and regulations regarding due process hearings at 800-879-2301; TTY Users: PA Relay 711.

Exhaustion of Remedies

The concept of exhaustion of remedies essentially means that a party must go through the due process hearing procedures first, before filing a lawsuit in state or federal court. In other words, in most instances, you will first be required to utilize the due process system to attempt to resolve your concern. IDEA requires a party to exhaust administrative remedies for claims raised if the party is seeking relief (a remedy or solution) under IDEA.

State law is different in some respects. Chapter 15 of the PA Code states that for discrimination claims, a party may use the due process system to raise claims regarding denial of access, equal treatment or discrimination based on handicap, and then go to court thereafter (if need be), but the parent is not required to start with the due process system.





STEP 3: CONSIDER THE SCHOOL DISTRICTS'

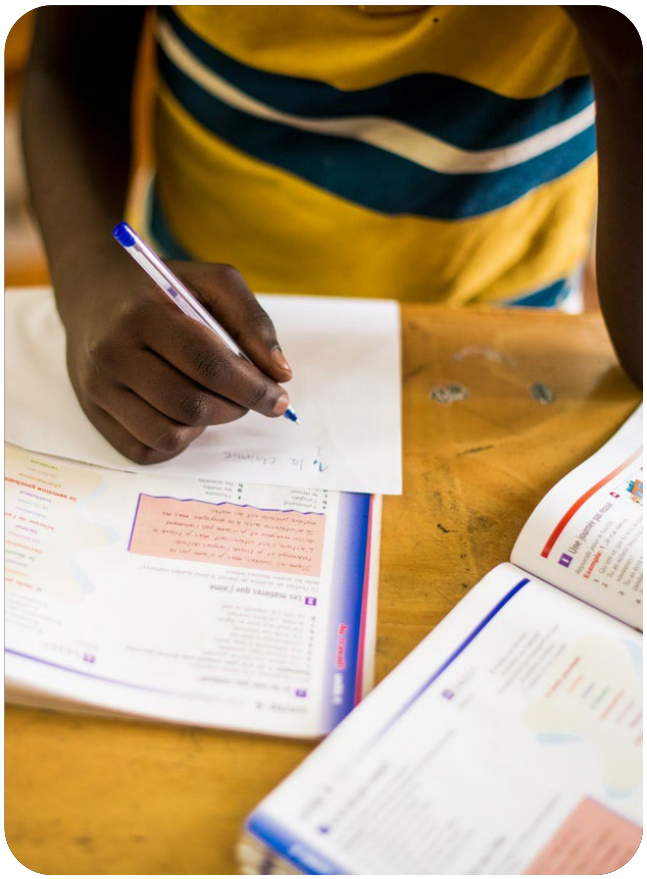
Part of understanding your case is understanding the school's case. Ask yourself these questions:

- What is the school's position? How does its position differ from mine? Why?

- (If you know) What witnesses will the school present at the hearing? What will they say?

- (If you know) What documents (**exhibits**) will the school use at the hearing? Do those documents support what the school is saying, or what I am saying?

- Do the laws support my position or the position of the school?



STEP 4: THE HEARING OFFICER'S JURISDICTION

You will also need to be certain that the issue you have with your child's educational program is an issue that a due process hearing officer can decide. In other words, is your concern something that a hearing officer has the authority (**jurisdiction**) to hear and make a decision about?

A hearing officer's authority typically covers the following broad categories:

- Determining the appropriateness of a program or placement;

- Determining whether a child has been properly identified for services;

- Ordering or denying any relief, such as tuition reimbursement and/or compensatory education services, or an IEE.

You should ask yourself if your issue falls into one of the broad categories above. These questions may be difficult to answer without the help of an attorney or **advocate**. It is important to understand that, while a hearing officer's jurisdiction is broad, a hearing officer does not have jurisdiction over all areas of your child's education.

For example, to determine the appropriateness of a program or placement, hearing officers can make decision on very specific programmatic issues such as the content and scope of an IEP; the type of therapy a child should be receiving; whether transportation will be required as a related service, etc. However, a hearing officer could not conduct a hearing about a parent's concern with a parent-teacher personality conflict.

Utilize all the resources available to you to assist you in your analysis. In the end, you are the only one who can decide whether you will move forward with a request for a due process hearing.

STEP 5: UNDERSTAND DUE PROCESS HEARING PROCEDURES

A **due process hearing** is a legal proceeding before a hearing officer. In Pennsylvania, hearing officers are attorneys. Each hearing officer has extensive background in special education law and hearing procedures. At a hearing, you, and the school (referred together as "the **parties**") are each given the opportunity to present witnesses and documents which support your position. Like any court proceeding, you will be required to prove your case.



ADDITIONAL RESOURCES

A list of current Pennsylvania hearing officers is always available on the **Hearing Officer Bios' web page**. You and the school do not get to choose your hearing officer; ODR makes impartial assignments.

To do so, you will:

- Outline the issues to the hearing officer through your "**Opening Statement**";

- Present exhibits to the hearing officer which prove your position in the matter;

- Question both your **witnesses** and the school's witnesses; and

- Most likely want to testify yourself. (If both parents are involved and would be testifying to the same facts, pick one of you to be the witness.)

A court reporter (or **stenographer**) attends every hearing, taking down everything said, "on the record". The document that the court reporter produces is called a **transcript**. The parent (or their representative) is given one free copy of the transcript. LEAs are responsible for payment for their copy of the transcript.

Most of what occurs at a hearing will be taken down ("transcribed") by the court reporter. At times, however, the hearing officer will tell the court reporter to "go off the record". The hearing officer will go off the record when it isn't necessary for the court reporter to record the discussions (such as discussions about scheduling). The hearing officer determines whether discussions are on or off the record.

The hearing officer writes their decision by applying the law to the evidence presented at the hearing. Either you or the school, or both, can appeal the hearing officer's decision to either state or federal court. It is recommended that you consult with an attorney to help you decide whether to appeal and which court to appeal to, as well as to assist you in meeting any timelines and procedural requirements. The hearing officer will give you appeal information when they send out the hearing officer decision.

To learn more about due process hearings, you might want to consider some or all the following resources:



ADDITIONAL RESOURCES

Review the **Generally Applicable Pre-Hearing Directions**.

Review **ODR's Family Resource Library – Due Process page**.

Read over the **Procedural Safeguards Notice** again and watch ODR's video on "Procedural Safeguards Notice – General Information".

Watch **ODR's videos** on various aspects of the due process hearing.



Call ConsultLine for general information on due process hearings at 800-879-2301; TTY Users: PA Relay 711.

CHECKING IN

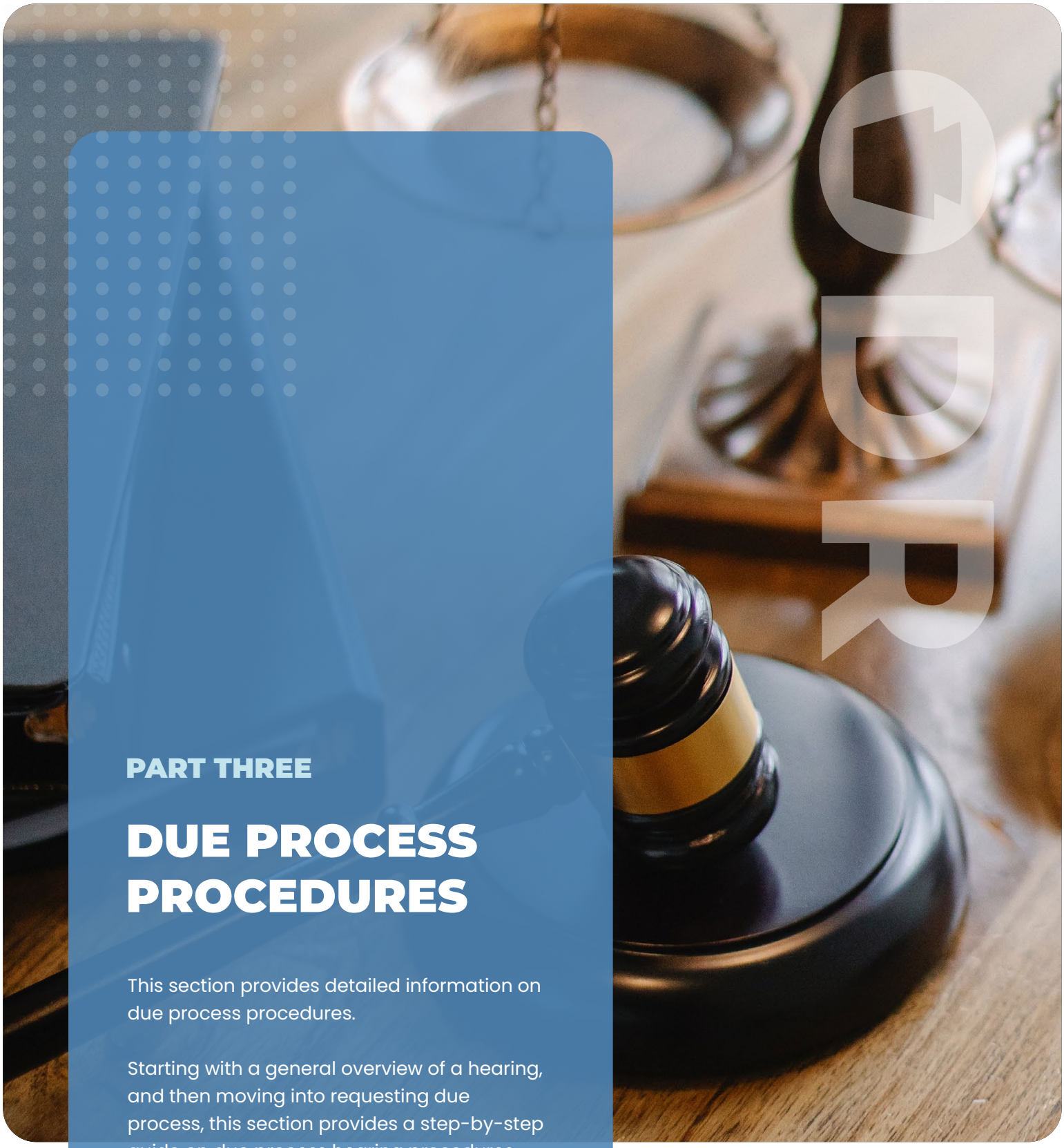
You have now done the following things:

- Gathered information about your child.
- Learned what the law says about your particular concern.
- Determined what the school's position is on the matter.
- Considered whether the hearing officer has jurisdiction over your concern.
- Learned some basic information about due process hearings.

The next section will give you detailed information on hearings, including how to request one.



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PART THREE

DUE PROCESS PROCEDURES

This section provides detailed information on due process procedures.

Starting with a general overview of a hearing, and then moving into requesting due process, this section provides a step-by-step guide on due process hearing procedures.

Although objections and motions are part of due process procedures, they are addressed in separate sections: Part Four (Objections) and Part Five (Motions).

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REPRESENTATION IN A DUE PROCESS HEARING

You have two choices when deciding who will represent you and your child at a due process hearing:

1. You can choose to represent yourself in the hearing. When a parent participates in a due process hearing without legal counsel, this is called "appearing **pro se**".

2. You can decide to use an attorney to represent you. If you choose to use an attorney, you will be responsible for the cost of the attorney. If you prevail in the hearing, you can seek to recover your attorney's fees in court after the due process hearing has concluded.

You can be accompanied and advised by individuals with special knowledge or training in the area of special education, such as an advocate. It is important to note, however, that an advocate cannot represent you in the hearing unless they are an attorney.

The school must be represented by an attorney, including any of its administrators or other employees appearing at the hearing.

EXPEDITED HEARINGS

A special type of hearing you should be aware of is the **expedited hearing**. Expedited hearings are special education hearings that take place within a much shorter timeline, from the filing of a complaint/hearing request to the completion of the hearing officer's decision.

Here are examples of expedited hearings:

Discipline Issues

A parent requests a due process hearing to resolve these circumstances:

- The child has misbehaved in some way. The school wants to discipline the child for this misbehavior. The disciplinary action would result in a change of the child's educational placement, meaning the child would be excluded from school for either: more than 10 consecutive school days; more than 15 total school days in one school year; or more than 10 total school days that form a pattern of removals in one school year. The parent believes that the child's behavior was a manifestation of their disability, and the child should not be disciplined like any other student; the school disagrees and wants the child to be disciplined like any other student.

- The parent disagrees with the **interim alternative educational placement** (of no more than 45 days).

- The school/educational provider requests a hearing to establish that it is dangerous for the child to remain in the current educational placement.



If the child has an intellectual disability (previously referred to as "mental retardation"), any removal from school is a change in educational placement.

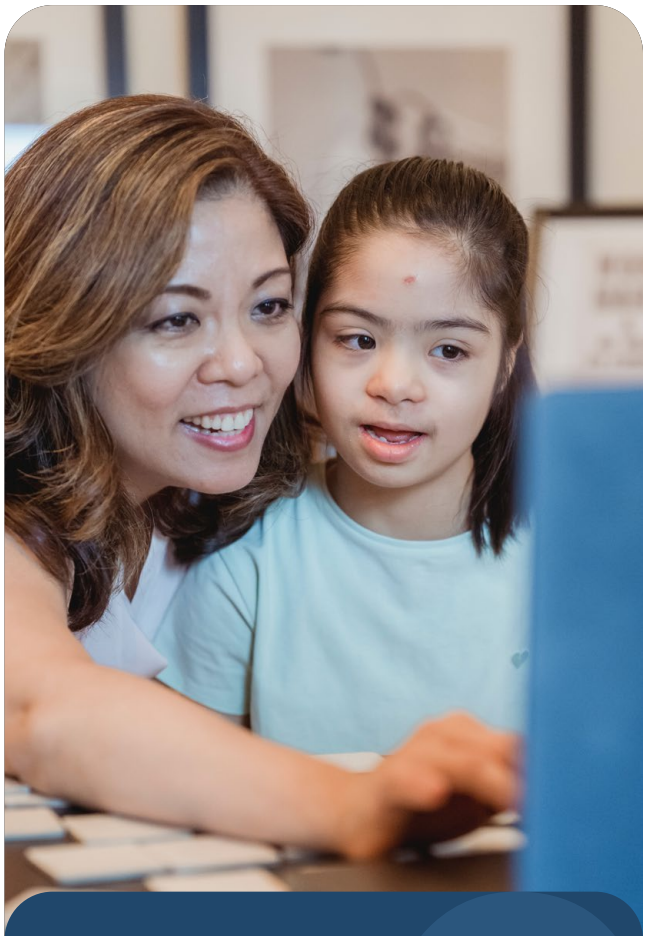
For all other children, these protections do not apply if the removal is for a period that is less than 10 consecutive school days, less than 15 total school days in one school year, or where a pattern of removals has not been formed.

Extended School Year Services (ESY)

A parent requests a due process hearing to resolve these circumstances:

- The parent disagrees with the school's determination that the child is not eligible for extended school year services.

- The parent disagrees with the school's determination of the specific types of ESY services to be provided to the child.

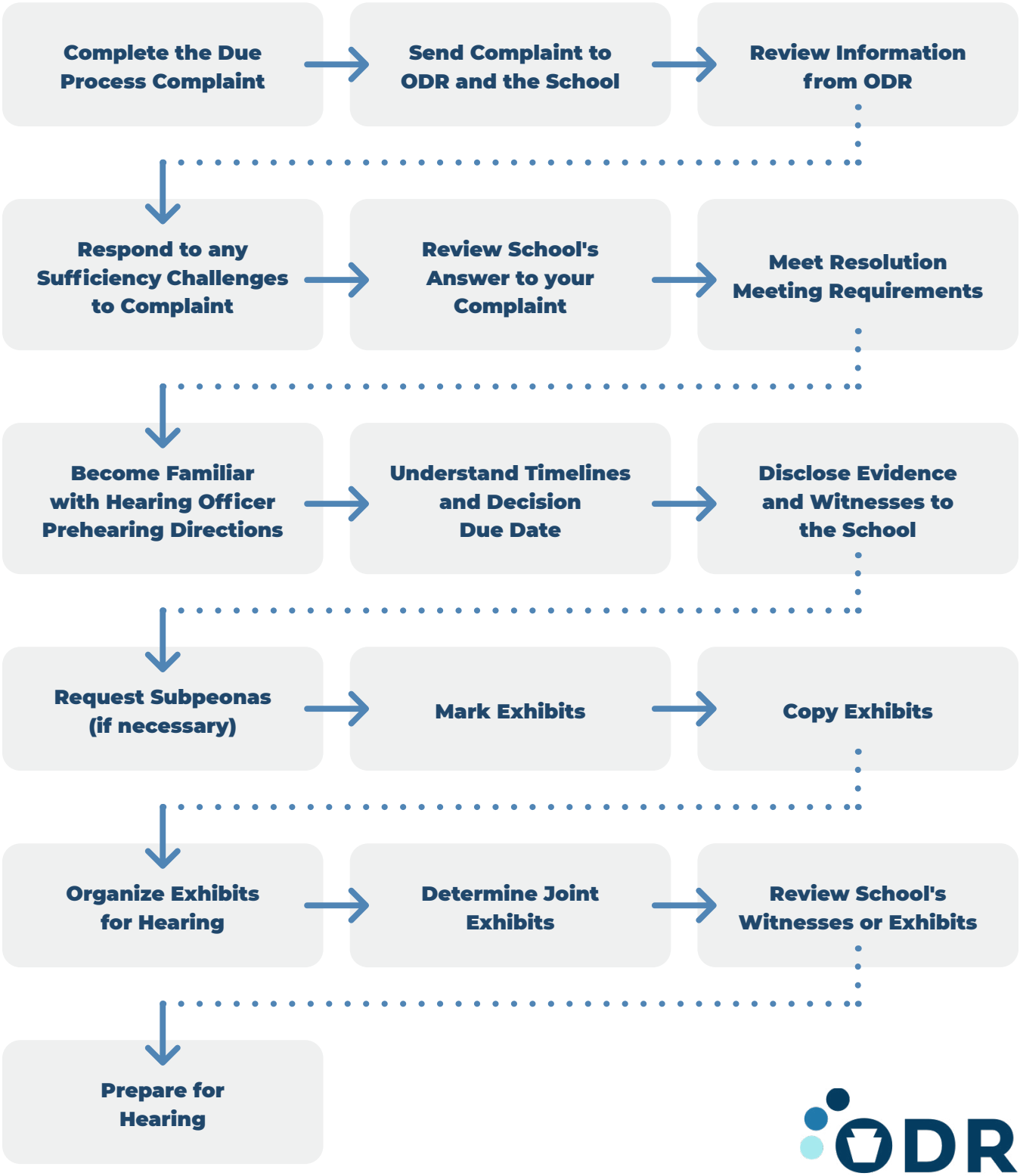


QUICK TIP

A case is not considered to be expedited simply because the parties want it to be held quickly. In other words, the common definition of "expedited" doesn't apply in due process hearings. Expedited hearings are for discipline and ESY cases only. See Part Three, Step 8: Expedited IDEA Discipline Cases and Part Three, Step 8: Expedited IDEA Extended School Year Cases for timelines.

DUE PROCESS PROCEDURES

Here is a flowchart that lists each step of the process. Each step will be explained in full below.



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STEP 1: COMPLETING THE DUE PROCESS COMPLAINT

To request a due process hearing, you must first either:

- Fill out a document ("due process complaint" or "complaint") on ODR's **Due Process web page** , or

- Put all the required information into **due process complaint notice** (e.g., a letter or email).

The actual due process complaint form is not required but is available to help make sure you are including all the required information. If you are more comfortable writing a letter or email, rather than completing a form, you can do so. Just be certain that you include all the required information asked on the form.

The complaint is an important document that:

- Is a formal notification to the school of your concerns; and

- It starts the timeline for completing the hearing.

QUICK TIP

There is also a separate "complaint" process with the Bureau of Special Education referred to as the "DOC complaint". See "File a Complaint PA Department of Education..." section under "Part One, Ways to Resolve Special Education Disputes".

ADDITIONAL RESOURCES

Access a blank **Due Process Complaint form**.

A Sample Due Process Complaint Notice is in **Appendix A**.

The **Procedural Safeguards Notice** is available on ODR's website. An audio version is also on this web page.

The law is very specific as to what information must be included in the complaint.
The complaint form (or a letter or email) must include:

1. The child's full name: first, middle, and last.

2. The address where the child lives.

- If you share custody with another person, list the primary residence for your child. If you believe it is important to explain any residency issues, you may do so in your request for a hearing.

3. The name of the school the child attends. Include both the school district (referred to as the LEA) and the actual name of your child's school building.

- Particularly in large school districts, with several elementary, middle, and high schools, it is important to identify your child's school building:
  - ***Example:*** "My child attends Hamilton Elementary School within the School District of America."
- If your disagreement is with a school district other than with the school district where your child currently goes to school, list the name of the school which should be involved in the due process hearing.
  - ***Example:*** "My child currently attends the American Academy, but my complaint is against the USA School District."

4. Contact Information
Both ODR and the hearing officer will need to have a reliable contact telephone number to get in touch with you, and your email address if you have one. Most correspondence to and from the hearing officer is sent through email; if you do not have email, correspondence will be sent by U.S. mail but will take longer to get to you.

5. A description of the nature of the problem, including facts relating to the problem.

- It is not enough to say in your complaint notice that your child did not receive a **free appropriate public education or FAPE**. This does not tell either the school or the hearing officer what your concern is. You can say that your child did not receive a FAPE but give specific facts to demonstrate why you believe your child did not receive FAPE. If you believe that your child was discriminated against, give the specific facts that make you believe this. Regardless of what your issue may be, you need to provide enough information so that the school and hearing officer can fully understand your concerns.

6. Your proposed solution to the problem
(if you know of a possible solution at the time you fill out the complaint).



It is extremely important that your complaint includes enough information so that the school can understand your concern.

If the school does not have enough information from you, it may challenge the complaint as being insufficient. A hearing officer may dismiss your request for a hearing if sufficient information is not provided. Be as specific as possible, including the remedy (or result) that you want to occur. More information about sufficiency challenges can be found in Part Three, Step 4.

The hearing officer can only decide on issues that are identified in the complaint. Make sure that you have included in the complaint all issues and concerns you want to bring before the hearing officer. If you later discover that you forgot to include something, let the hearing officer know. You might be allowed to file another complaint containing those issues and have those issues also decided by the hearing officer. On the other hand, the hearing officer may tell you that it is too late. It is always best to include everything in the first complaint to avoid any delay.

STEP 2: SENDING THE DUE PROCESS COMPLAINT

Once you have completed the paper complaint form, or your letter/email, you must do this:

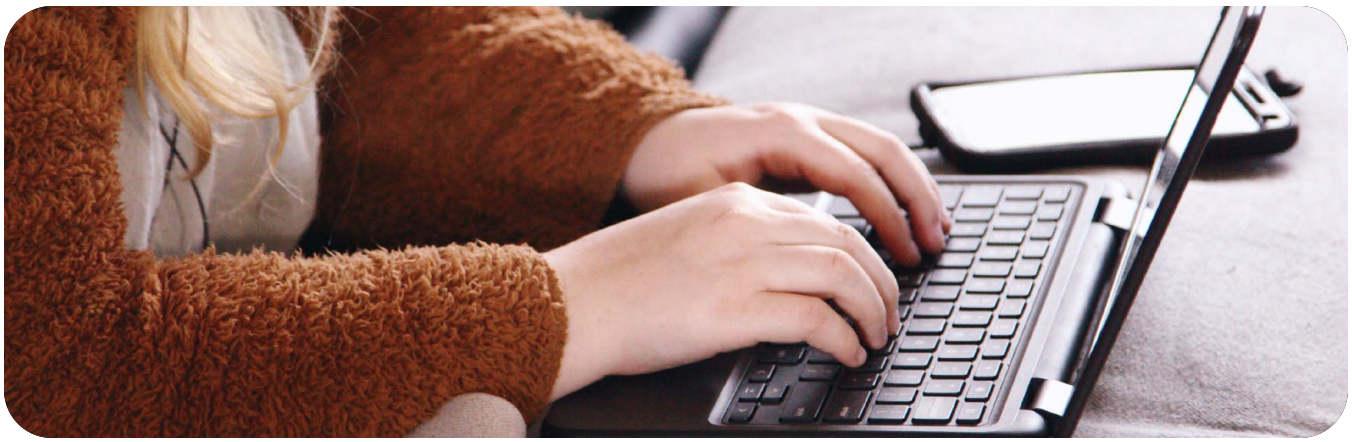
- Send or email a copy of your complaint to the school and (at the same time),
- Mail a copy to ODR at:

  Office for Dispute Resolution
  6340 Flank Drive
  Harrisburg, PA 17112-2764

- Or, if you have access to a scanner, email a copy of the form to ODR at: odr@odr-pa.org

If you have completed the online complaint form:

- Send a copy of your complaint to the school; this can be done by either:
  - Printing out the email confirmation you received from ODR and send it to the school, or
  - Forwarding the confirmation email to the school.



ADDITIONAL RESOURCES

Instruction on how to email the complaint are found on **ODR's Due Process page**.



It is essential that you send a copy of your due process request to both ODR and your school. If you do not provide a copy of your complaint to the school, there may be a delay in the resolution process and due process hearing timelines.

STEP 3: REVIEW INFORMATION FROM ODR

Once you have sent your due process complaint to the school and ODR, ODR will send you the following information:

- A letter or email from the ODR Case Manager containing a **Notice of Hearing** giving you the name and contact information for the hearing officer and listing the date and time for the first hearing.

- Supplemental materials that can provide additional resources and information.

- You will also receive information from the hearing officer in a telephone call, letter, email, or email attachment. The hearing officer will provide information on prehearing directions, timelines and deadlines, and other information for parents representing themselves.

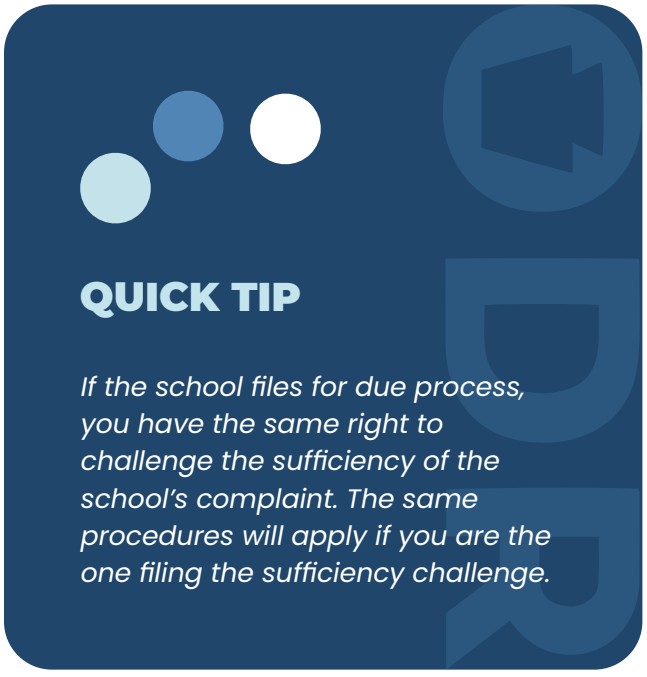
If you are represented by an attorney, the hearing officer will send the information to your attorney as your representative.

If you have questions about the information, you can contact the ODR Case Manager assigned to your case. While the hearing officer decides all aspects of the case (scheduling, motions, etc.), the ODR Case Manager is available to answer general questions you may have about the process.

STEP 4: RESPOND TO ANY SUFFICIENCY CHALLENGES TO THE COMPLAINT

Once you file a complaint with the school and ODR, the school has 15 calendar days from the date it received the complaint to contact the hearing officer and you to challenge its sufficiency (referred to as a "**sufficiency challenge**"). The school will only file a sufficiency challenge if it believes that you have not supplied enough information in your due process complaint for the school to understand what your concerns are.

This is why it is so important that your complaint list as much information as possible to minimize the chance that the school will file a sufficiency challenge.



The hearing officer must decide within 5 calendar days of receiving the sufficiency challenge whether the complaint meets the legal requirements. The hearing officer must notify the parties in writing of that decision.

The hearing officer's decision about the sufficiency challenge will give you a good idea about what is missing from your complaint. Make sure you have clearly identified your issue(s) so that the school can understand the problem. The due process hearing will not move forward until the complaint has been completed properly.

Hearing Officer (HO) Rules on Sufficiency:

1. HO will determine that your complaint is sufficient – meaning that you provided everything that was legally required.

- HO will dismiss the sufficiency challenge.
- Due Process Hearing will proceed.

Or

2. HO will determine that your complaint did not provide all the information required by law, and -

- The HO will give you an opportunity to provide the missing information within a certain time frame.

Or

- The school may agree in writing that you be given the chance to fix the problems in your complaint.

- HO will usually request that you send the amended complaint to the school with a copy to the HO.

- HO will let the parties know how the timelines and decision due dates (See Part Three, Step 8) have been affected.

- In exchange for agreeing to the amendment, the school is given the opportunity to meet with you in an effort to resolve the issues prior to continuing with the due process hearing.

Or

- HO will determine that there are so many errors in the complaint that it should be dismissed.

- Your request for a hearing is denied.

- You must start over again by completing a complaint and sending it to the school and ODR (this happens in rare cases).

STEP 5: REVIEW THE SCHOOL'S ANSWER TO YOUR COMPLAINT

Once the sufficiency challenge (if any) is decided, the school will file an "Answer" to your complaint if it has not previously issued a **Prior Written Notice**/Notice of Recommended Educational Placement (NOREP). The school's response will include the following:

- An explanation of why the school proposed, or refused, to take the action raised in the due process complaint;

- A description of other options that the IEP Team considered and the reasons why those options were rejected;

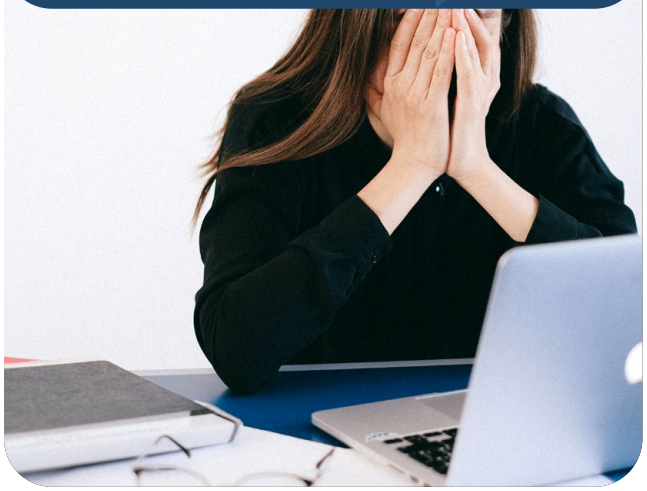
- A description of each evaluation procedure, assessment, record, or report the school used as the basis for the proposed, or refused, action; and

- A description of the other factors that are relevant to the school's proposed, or refused, action.



QUICK TIP

If the school filed the complaint, you must file an Answer within 10 calendar days of receiving the complaint. Your response should specifically address the issues raised in the due process complaint.



Here are the requirements for filing an Answer:

- There are no forms to follow when filing an Answer. A letter/email response is fine.

- The party filing an Answer must do so, in writing, within 10 calendar days of receiving a copy of the complaint.

- In the Answer, the school (or you, if the school filed the complaint notice) must set forth its position. In other words, the Answer must address the information in the complaint.

  - ***Example***: If your complaint indicates that you believe your child did not receive FAPE, the school's Answer will indicate why it believes that your child did, in fact, receive FAPE.

  - ***Example***: If the school requests a hearing to demonstrate that its evaluation of your child was done properly, in your Answer, you should indicate all the reasons why you believe it was not an appropriate evaluation.

- The Answer should be sent to the hearing officer and the other party. A copy should also be sent to ODR.

Carefully read the school's Answer to your complaint. The Answer will help you to understand the school's position (or beliefs) about the information in your complaint notice. This will give you a better idea of how the school's view of your child's situation differs from yours, and what the school intends to prove at the due process hearing.

STEP 6: RESOLUTION MEETING REQUIREMENTS

Before a due process hearing will be scheduled, you and the school must follow the requirements for **resolution meetings** (or resolution sessions). The purpose of this meeting is for you to discuss your complaint so that the school has an opportunity to resolve

your issues without the need for a hearing.

You and the school may agree to settle the case at any time during the proceedings, not just at the resolution meeting. Most of the time, the parties do settle, and the hearing officer does not write a hearing officer decision.

Resolution Meetings only pertain to due process hearings requested by the parent under IDEA. If the school requests due process, the parties are not required to have a resolution meeting.



QUICK TIP

*ODR offers a **Hearing Officer Settlement Conference (HOSC)** service for parties who are close to resolution but have identified sticking points or roadblocks that are preventing a settlement. If both parties agree, ODR will assign a Settlement Hearing Officer to see if the roadblocks can be overcome so that parties can avoid a hearing and can move to.*

If you want to waive the meeting, but the school does not, you must participate in the resolution meeting.

If the school wants to waive the meeting, but you do not, the meeting must take place. It is only when both you and the school, together, agree, in writing, to waive the meeting that you will not be required to participate in the resolution meeting. Waiving the meeting will affect the timelines and the hearing date may have to be changed.

After you request a hearing, one of the following three things will occur:

- The school will expect you to participate in the resolution meeting.

- Both you and the school will agree that a resolution meeting isn't needed. You and the school will agree to "waive" this requirement; the waiver must be in writing.

- You and the school will agree to use mediation instead of the resolution meeting process. In that case, you and/or the school will contact ODR to request mediation.

If the resolution meeting takes place, here are the requirements:

Timelines for Scheduling

IDEA Cases

There is a 30-day **resolution period** in non-expedited IDEA cases.

Within 15 calendar days of receipt of the complaint, the school must hold a resolution meeting with you, and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint. If the school does not hold

the resolution meeting as it is required to do, or if you and the school waive the resolution meeting, you should let the hearing officer know. The hearing officer may then change the date of your due process hearing.

Expedited Cases

There is a 15-day resolution period in expedited IDEA cases.

Within 7 calendar days of receipt of the complaint, the school must hold a resolution meeting with you, and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint.

Section 504 Cases

If your case pertains to both IDEA and Section 504 issues, the rules about resolution meetings for IDEA cases will apply.

The school will hold the resolution meeting even if it has filed a sufficiency challenge to your due process complaint. See Part Three, Step 4 for more information on sufficiency challenges.

District Files the Complaint

The law does not require a resolution meeting when the school is the one requesting the hearing.

QUICK TIP

There may be rare occasions when you are not available to participate in a resolution meeting at any time during the initial 15 calendar day period. If this happens, the school is not required to schedule the meeting during those 15 days. The school will schedule the resolution meeting at a time during the 30-calendar day resolution period when you are available. It is best, however, to try to make yourself available as soon as possible during the first 15 calendar day period.

Who Must Attend

- You, the parent or guardian; and

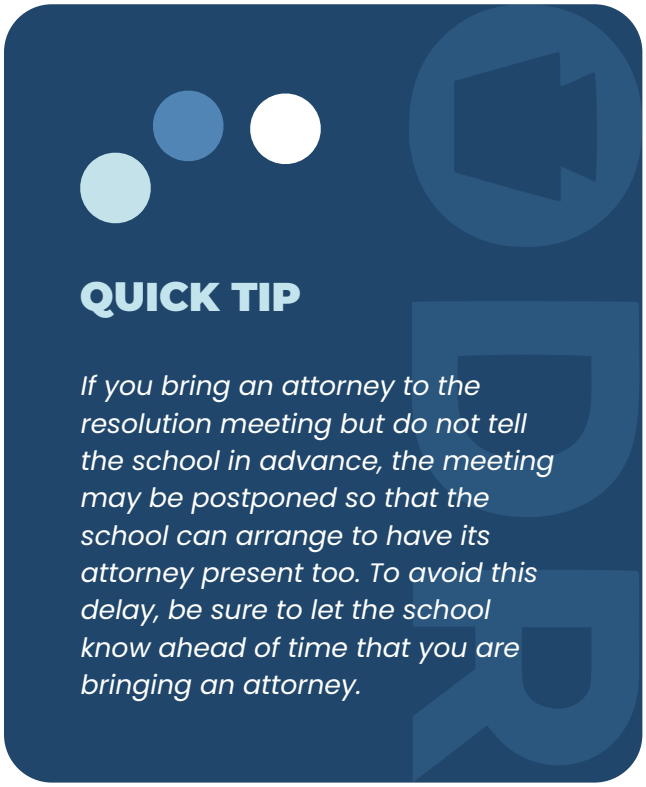
- The relevant member or members of the IEP team who have specific knowledge of the facts listed in your complaint. You and the school determine who the relevant member(s) of the IEP team is/are; and

- A representative of the school who has decision-making authority. In other words, there must be someone at the meeting who has the authority to commit resources on behalf of the school.

Attorneys at Resolution Meetings

If you are not bringing an attorney to the

resolution meeting, the school cannot bring its attorney to the meeting either. If you are bringing an attorney, then the school can bring an attorney.



Your Participation in the Resolution Meeting

Unless you and the school agree, in writing, to waive the resolution meeting or to pursue mediation (see Part One, Ways to Resolve Special Education Disputes: Request Mediation), you are required to attend the meeting. If you do not, the due process hearing will not proceed and your request for a hearing may even be dismissed. Therefore, it is very important that you attend the meeting and make a good faith effort to try to resolve the problem with the school. (And, of course, the school personnel should also make a good faith effort to try to resolve the problem with you.)

Although you and the school may have tried on prior occasions to resolve the dispute, do not assume that the resolution meeting will be unproductive or a waste of time. It is the rare person who truly wants to go to a due process hearing. This resolution meeting may be the time when you and the school can reach agreement.

There are three possible outcomes to the resolution meeting:

- You and the school cannot reach agreement. You will move forward with the due process hearing. The hearing officer should be notified. Usually, the school attorney notifies the hearing officer of this result, but you may also contact the hearing officer yourself (see Part Three, Step 7: Communicating with the Hearing Officer).

- You and the school reach agreement on some, but not all the issues at the resolution meeting. A due process hearing is needed to resolve these remaining issues. Usually, the school attorney notifies the hearing officer of this result, but you may also contact the hearing officer yourself (see Part Three, Section 7: Communication with the Hearing Officer).

- You and the school reach a complete agreement on all issues at the resolution meeting. A due process hearing is no longer needed. You must contact the hearing officer so that hearing can be cancelled (see Part Three, Section 7: Communicating with the Hearing Officer).

Written Resolution Meeting Agreement

If a **resolution meeting agreement** is reached at the resolution meeting, the terms of the agreement should be put in writing. This protects both you and the school so that both understand exactly what has been agreed upon. This written agreement is legally enforceable. This means that if either you or the school believes that the other has failed to live up to the terms of the agreement, either has the right to bring a lawsuit in state or federal court.

Schools are frequently required by law to have certain legal agreements, such as the resolution meeting agreement, approved by the School Board. This means that your issues may not be considered completely resolved until school board approval. Check with your school or its attorney if you have questions about this.



QUICK TIP

IDEA §300.510(e): *"If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution."* (***https://sites.ed.gov/idea/regs/b/e/300.510***)

Resolution Meeting Data Form

The U.S. Department of Education, Office of Special Education Programs (referred to as OSEP) requires all states to report resolution meeting information and outcomes to the federal government every year. Pennsylvania accomplishes this by requiring schools to complete a form called "**Resolution Meeting Data Form**". Forms can only be completed electronically via a web-based, password protected program. Once the school completes and submits the form to ODR, an email with a copy of the completed form will be sent to all parties, which includes you (or your attorney, if you have one) and the hearing officer.

ADDITIONAL RESOURCES

A copy of the Resolution Meeting Data Form is in .

ODR has prepared a short video of Resolution Meetings, which is available on ODR's website, under Facilitation > **Resolution Meeting Facilitation**.



Withdrawal of the Hearing Request

Withdrawal of the hearing request occurs in these situations:

- You and the school have resolved the matter, either at the resolution meeting, at mediation, or at some other point, and so a due process hearing is not needed. Notify the hearing officer immediately that you are withdrawing your complaint notice for one of these reasons. The hearing officer will ordinarily grant your request to withdraw

- If, for other reasons, you decide that you do not want to pursue a due process hearing, you must notify the hearing officer that you wish to withdraw your complaint. The hearing officer will decide whether to allow the complaint to be withdrawn. Some of the factors a hearing officer might consider when deciding whether to allow you to withdraw your complaint are:

- The stage of the proceedings; if the hearing is almost completed, the hearing officer might be less likely to grant the request.

- Whether the school (or you, if it is the school attempting to withdraw its complaint notice) agrees to the withdrawal.

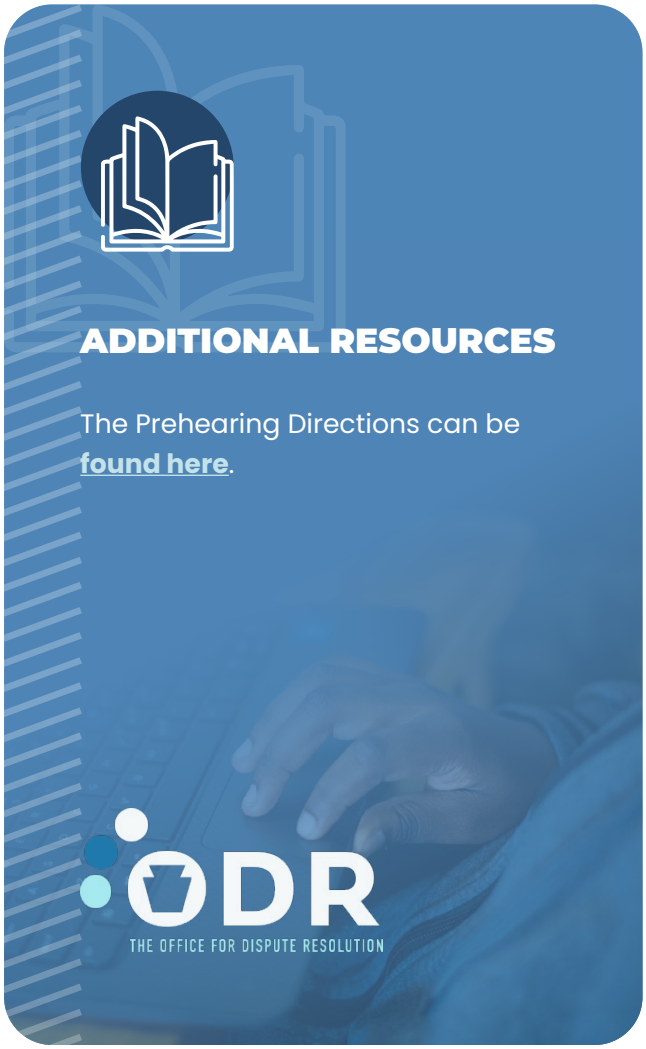
- If the school does not agree to the withdrawal, the extent of any harm the withdrawal may cause the school (or you, if it is the school attempting to withdraw its complaint).

- The likelihood of another hearing having to be held later on the same issues.

STEP 7: BECOME FAMILIAR WITH THE PREHEARING DIRECTIONS

The hearing officers have prepared a document called Prehearing Directions which provides general hearing information regardless of who the assigned hearing officer is.

The Prehearing Directions cover an array of topics. The sections below provide information on the key topics in the Prehearing Directions; however, it is still suggested to read them in their entirety to familiarize yourself with the rules.



Communication with the Hearing Officer

Throughout the course of the proceedings, there will be times when you have need to communicate with the hearing officer. The hearing officers have specific rules about such communications. Here are the hearing officers' rules about communicating with them:

- **Email.** An Attorney or parent/family proceeding without an attorney (this is called being "*pro se*") who has an email account must use email as the only way of corresponding with the hearing officer. All emails to the hearing officer must be copied (the "cc:" section of the email) to the opposing party's attorney, or to a *pro se* parent. Unless told otherwise by the hearing officer printed hard copies of any document that was emailed to the hearing officer are not necessary and should not be sent. All emails must contain the ODR file number in the subject line. Embedded graphics and electronic "stationery" are not appropriate for correspondence about the hearing.

- **Mail.** If any attorney or pro se parent does not have an email account, correspondence and other documents will have to be sent by U.S. mail.

- **Conference Calls.** Either party, or the hearing officer, may request a conference call. Conference calls must include the attorneys for both parties, or the school's attorney and the *pro se* parent.

QUICK TIP

The hearing officer does not work a typical 9 a.m. to 5 p.m. schedule. Therefore, do not be surprised if you receive email communications from the assigned hearing officer at night or on weekends. Check your mail or email regularly to see if you have received any communications from the hearing officer or the school's attorney.

Notifying the Hearing Officer of Settlement

The Prehearing Directions address **settlement**. As soon as the parties have settled the case or believe that they are in a position to request a conditional-dismissal order, the party who filed the complaint shall immediately notify the assigned hearing officer.

Reduction of Unnecessary/ Repetitive Evidence

The hearing officer's Prehearing Directions address the reduction of unnecessary and repetitive evidence. You should become familiar with them to avoid misunderstanding.

Decorum in the Hearing

The hearing officer's Prehearing Directions address decorum or how everyone is expected to act at the hearing. They describe generally acceptable behavior although, again, it is a good idea to become familiar with the directions.

STEP 8: UNDERSTAND TIMELINES AND THE DECISION DUE DATE

Timelines differ depending on the type of due process hearing:

IDEA Cases – Parent Requests Due Process

The IDEA law states that parent-initiated due process cases will be resolved completely no later than 75 days after the complaint is filed. There is an exception to this, however. Either you or the school may ask that the hearing officer extend this 75-day timeline.

The 75-day calculation is figured this way: 30 days (for the resolution period) + 45 days (for the hearing to take place and the decision written) = 75 days.

The **decision due date** is the date the hearing officers will distribute their decision, and the due process case will be closed.

IDEA Cases – School Requests Due Process

The IDEA law states that school-initiated due process cases will be resolved completely no later than 45 days after the complaint noticed is filed. There is an exception to this, however. Either you or the school may ask the hearing officer to extend this 45-day timeline.

Because school-initiated requests do not have a 30-day resolution period, a shorter time is given to complete the actual hearing and allow

the hearing officer time to write their decision.

The decision due date is the date the hearing officer will distribute their decision, and the due process case will be closed.

Expedited IDEA Discipline Cases

For due process hearings based on disciplinary placement, an expedited hearing must occur within 20 school days of the date the complaint was filed.

In expedited disciplinary placement cases, that the decision due date must be within 10 school days after the hearing. There are no exceptions to this timeline.

Expedited IDEA Extended School Year (ESY) Cases

For due process requests regarding ESY, an expedited hearing must be held, and the hearing officer's written decision must be sent to the parties no later than 30 days after the complaint was filed. The hearing is typically held within 15 calendar days of the request but is not a requirement. No exception to the timeline is permitted.

Section 504 Cases

Section 504 does not have a strict timeline; however, ODR hearing officers usually follow IDEA procedures for these cases.

Notifying Parties of the Decision Due Date

The law requires the decision due date to be given to the parties at the beginning of the case.

In the initial letter/email from ODR, you will be given the decision due date based upon a simple calculation. The decision due date may change for various reasons, including:

- An amended complaint is filed, restarting the timelines.

- You and the school agree in writing to waive the resolution period.

- After either mediation or the resolution meeting starts, but before the end of the 30-day period, you and the school agree in writing that no agreement is possible.

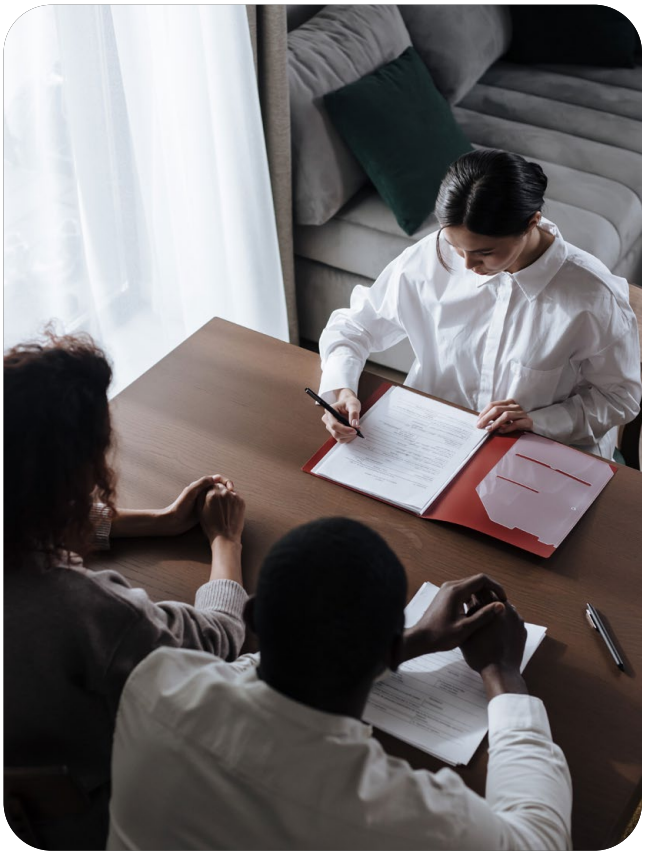


- If you and the school agree in writing to continue the mediation at the end of the 30-day resolution period, but later, either you or the school withdraws from the mediation process.

- Either you or the school asks for, and are granted, an extension of the decision due date.

- Either party may request a hearing date change, known as a continuance, if unforeseen circumstances affect the ability of people to attendance on the scheduled date.

The hearing officer will rule on all continuance requests. A continuance request differs from a request to extend timelines (usually referred to as an extension of the decision due date). The decision due date is calculated when the hearing request is made. Changes to the decision due date may be needed due to numerous continuances; the number of sessions needed to complete the case; time needed to complete written closing arguments, or other reasons. Any request that the decision due date be extended must be directed to the hearing officer. Decision due dates can only be changed if a party explicitly asks the hearing officer to change them. If the hearing officer agrees to extend the decision due date, a new decision due date will be set at the time of the hearing officer's ruling (see 34 CFR 300.510 and 300.515)[1].

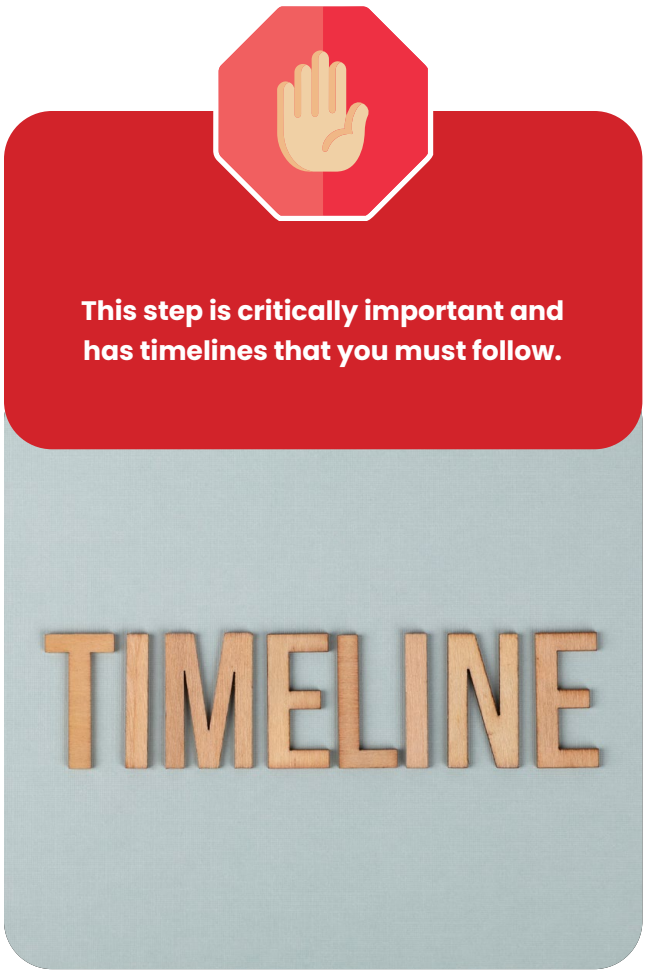


It is very common for the decision due date to change throughout the course of the hearing, based upon requests by the parties to extend the decision due date.

It can be confusing to have the decision due date changed throughout the course of the proceedings, but the federal government requires this process. The hearing officer will let you know if the decision due date has changed. You can always contact the hearing officer with questions about the decision due date (see Part Three, Step 7: Communicating with the Hearing Officer).

[1] https://sites.ed.gov/idea/regs/b/e

STEP 9: DISCLOSE YOUR EVIDENCE AND WITNESSES TO THE SCHOOL



There are three types of **evidence** that are usually presented to the hearing officer at a due process hearing:

1. Your testimony;

2. The testimony of the witnesses for you and for the school, including any experts; and

3. Documents (referred to as "exhibits" at the hearing).

You must let the school know who your witnesses are, and what documents you plan on using, prior to the hearing taking place. The school is required to give this same information to you. You must disclose **all** witnesses and **all** exhibits before the hearing begins.

IDEA and Expedited IDEA Cases

Five business days before the hearing date, you must send to the school's attorney:

- A list of your witnesses

- A list of your exhibits, and a copy of any exhibit that the school does not have already, such as a private evaluation.

You do not need to use a particular form. You may email the **5-day disclosure letter**, mail it or deliver it, but you should use a method that will enable you to prove that you disclosed your witnesses and exhibits in a timely manner. This is typically referred to as the "5-day disclosure". See the next page for a sample

Sample 5-Day Disclosure Letter

Date:
Student Last Name/School District
ODR File No.:
Re: 5-Day Disclosures

Dear [School attonery's name]:

I intend to call the following witnesses and use the following exhibits at the hearing:

1. Jane Marks (parent)
2. Joe Marks (parent)
3. Mrs. Smith (teacher)
4. Dr. Jones (psychologist)

Exhibits

1. Letter from [teacher's name] to [parent's name] dated 10/26/2006
2. Report card dated 11/21/06
3. Evaluation by [expert's name] dated 12/30/06
4. Homework samples August 2006-December 2006
5. Letter from [parent's name] to School dated January 2, 2007
6. NOREP dated January 2007
7. IEP developed January 2007
8. Homework samples January 2007-June 2007
9. Letter from [teacher's name] to [parent's name] dated 3/10/07
10. Final report card June 2007

[Your Signature]

Section 504

Section 504 does not have strict disclosure rules; however, ODR hearing officers usually follow IDEA procedures for these cases.



Both you and the school must abide by the disclosure rules. If either of you do not, the other side can ask the hearing officer to prevent those witnesses from testifying and prevent the party from using exhibits. If this happens to you, it might prevent you from proving your case to the hearing officer. Do not take the chance of having the hearing officer say that you cannot present all your witnesses and evidence because you did not follow the disclosure rules. Give this information to the school attorney in the time frame required. Be able to prove that you provided the information within the timeline just in case there is a question.

To decide what to list in your disclosure document, consider what you are attempting to prove to the hearing officer. What witnesses will help to prove your case? What exhibits will help to prove your case?

Your witnesses should meet all the requirements:

- They have information about your child and the situation which is concerning you;
- They can give relevant information about your concern;
- Their testimony will assist the hearing officer in making a decision.

Do not use multiple witnesses who will be testifying to the same facts; choose the witness you believe will be the most effective and, if necessary, a few others who will briefly support that testimony without repeating. If you present a list of witnesses, the hearing officer may ask you to tell them what you expect each witness to testify about. This is called giving "an offer of proof". The hearing officer may prohibit you from presenting witnesses they believe may be redundant (repetitive or saying the same thing as other witnesses).

You have the right to have your child attend the hearing and testify. This does not happen frequently. However, you know best whether it is a good idea to have your child participate in this way. If you decide that your child has relevant information to provide, make sure you list them on your disclosure.

The school can object to any witness you list (just like you can object to any witness the school lists on its disclosure). The hearing officer will ultimately decide whether a particular witness can testify or not. Here are some circumstances that may cause the school to object:

- Your neighbor may be able to give testimony about your child's behavior at home, but if the issue is your child's behavior at school,

If you want your child to testify, but not be present for the entire hearing, make sure you discuss this in advance with the hearing officer and the school attorney. Arrangements can be made to have your child testify at a certain time and not have to stay for the entire hearing.

then it is not likely that your neighbor can provide relevant testimony. The school could object based on "relevance", and the hearing officer might prevent you from having your neighbor testify.

- Your neighbor's child received a particular reading program and it worked well for that child. You are interested in the same reading program. The IDEA law requires individualized education programs. This means that what worked for one child is not necessarily what is needed for another child. Your neighbor's testimony is probably not relevant.

You will also need to determine what documents (exhibits) you intend to use at the hearing. Many of your exhibits will be the documents you gathered as you were determining whether you had a case or not.

STEP 10: REQUEST SUBPOENAS (IF NECESSARY)

You have listed your witnesses in your 5-day disclosure letter to the school. It is your responsibility to notify your witnesses of the date and time of the hearing. The hearing officer may set specific hearing sessions for particular witnesses, based upon schedules and availability.

QUICK TIP

As soon as you have a hearing date, notify your witnesses of the date, time, and location of the hearing. If there are scheduling problems, notify the hearing officer immediately.

A **subpoena** is a legal order by the hearing officer telling a person that they must attend the due process hearing (a subpoena may also be used to force someone to turn over documents).

Usually, the witnesses are known to the parties and will testify willingly. If you have listed a witness on your 5-day disclosure, but you are not sure whether they will voluntarily attend the hearing, you can ask the hearing officer to issue a subpoena. This takes some time, so make sure you request a subpoena well in advance

of the hearing date.

In your letter or email to the hearing officer asking for a subpoena, you should provide the following information:

- The name of the person or document(s) you wish to subpoena.

- Why it is important to your case that this person attend and testify; or why the document(s) is important to your case.

- Your efforts to get the person to attend the hearing, or obtain the document(s), without the need for a subpoena.

Send a copy of this letter or email to the school's attorney.

The hearing officer will determine if the presence of the witness or document is necessary or not.

Note: You will be responsible for delivering the subpoena to the individual. The hearing officer will not send the subpoena directly to the individual. It will be sent to you.

If you are having trouble getting copies of your child's educational records from the school, you do not have to request a subpoena. Contact the school's attorney and the hearing officer and explain the difficulties you are having in getting your child's records.

STEP 11: MARKING EXHIBITS

Now that you have decided what exhibits to use at the hearing, this is a good time for you to organize your exhibits and mark (identify) them in preparation for the hearing. The hearing officers have strict rules about the way exhibits are to be marked. This is to prevent confusion and allow for easy, accurate identification at the hearing, and to meet the requirements of state and federal court regarding exhibits in the event of an appeal. This is standard procedure for legal proceedings. If the rules for marking exhibits are not followed, you may be asked to re-mark them.

The information below explains exactly how to mark exhibits as required by the hearing officer's Prehearing Directions:

1. Start by putting the exhibits in the order that makes sense to you. There are no right or wrong ways to order your exhibits. The order of exhibits depends on what makes sense to you and is comfortable for you.

- ***Example:*** If your first witness will be addressing the IEP, for example, then it might make sense to make the IEP your first exhibit.

2. Now that you have organized your exhibits, it is time to mark them. All your exhibits must be marked "P" for Parent (the school will mark its exhibits "S" for School District or Charter School; "IU" for Intermediate Unit; or "C" for County).

- ***Example:*** The parent is planning to submit five separate exhibits. The first exhibit would be labeled P-1, the second exhibit would be labeled P-2, etc.

3. On **every page** of **every exhibit**, the page should include the exhibit number and the page number as part of the overall number of

pages in the exhibit. Each page is to be marked separately and completely. The same would apply for the pagination (page numbering) of each of the school's exhibits with the appropriate abbreviation from #2 above.

- ***Continued example from #2:*** The parent's first exhibit is four pages long. The exhibit would be marked as P-1 page 1 of 4, P-1 page 2 of 4, P-1 page 3 of 4, P-1 page 4 of 4. The second exhibit is six pages long, and would be marked: P-2 page 1 of 6, P-2 page 2 of 6, etc.

4. Exhibit numbers and page numbers must be in the lower right corner and not obscured by other print on the page. To ensure that exhibit numbers and page numbers are not cut off when being copied, exhibit markings must be a minimum of a half inch from the bottom of the page and a half inch from the right side of the page.

The next two pages are examples of how marked exhibits look in both portrait and landscape format.

When exhibits are in landscape format, the exhibits should be oriented so that, when placed in portrait format, the text of the document faces away from the left side of the page. In other words, when the page is held in portrait format, the top of the text should be on the left side and the bottom of the text should on the right side, and you would read it from the bottom of the page to the top.

- **Note:** For exhibits that are in printed in landscape format, the exhibit identification should read left to right, on the bottom right corner, when it is held in portrait format.

If the exhibits are not numbered properly, they will be returned to the party for renumbering. The record will not be closed until the exhibits are marked and numbered properly.



Sample

Exhibit

in

Portrait

Format

P-1 page 1 of 1

Sample

Exhibit

in

Landscape

Format

P-1 page 1 of 1

STEP 12: COPYING EXHIBITS

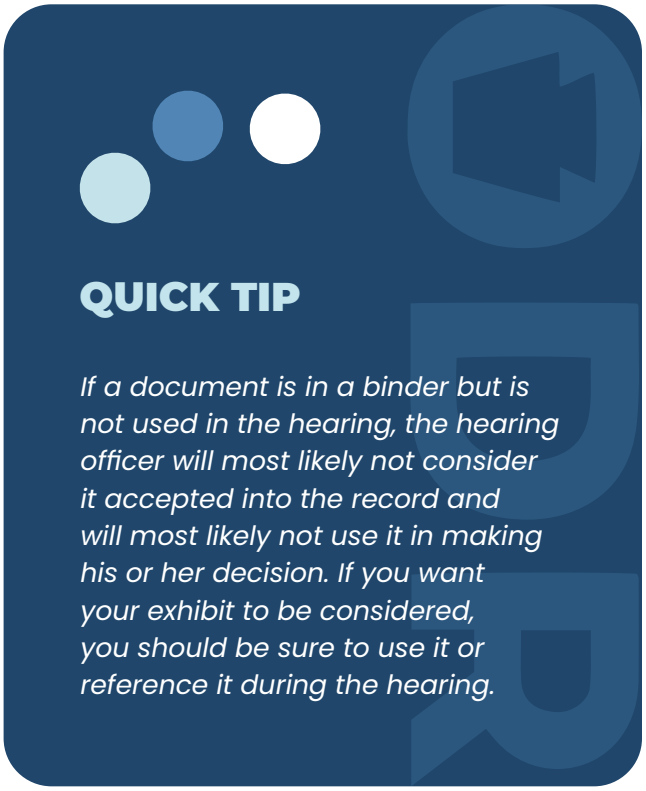
The parties are required to exchange a complete set of their respective exhibits and, at the initial hearing, provide a complete set of their exhibits to the hearing officer.
These rules may differ if you are having your hearing virtually, so check with the hearing officer. Now that you have marked your exhibits, you needed to make copies of them. You are required to have four complete sets of your exhibits at the hearing.

The four copies will be used as follows:

- One copy of exhibits will be for you.
- One copy of exhibits will be given to the hearing officer at the first hearing session.
- One copy of exhibits will be given to the school's attorney at or before the first hearing session.
- One copy of exhibits will be available for a witness to refer to while testifying.

Here are the rules for copying exhibits:

- The copy of your exhibits for the hearing officer must be one-sided.
    - The copy of your exhibits for the school's attorney and any witness may be one-sided or two-sided.
- You will need to distribute your exhibits as follows:
    - You may provide a copy of your exhibits to the school's attorney prior to the first hearing or at the first hearing. The school's attorney will do the same.
    - You will provide a copy of your exhibits to the hearing officer at the first hearing.



STEP 13: ORGANIZING YOUR EXHIBITS FOR THE HEARING

It is recommended that you put you four sets of marked exhibits into four individual binders (notebooks), and tab each exhibit so that you can find it easily. The first page of the binder will list all the exhibits with their associated tab number. It is very common for all participants at a due process hearing to be nervous, and you will likely be nervous as well. This organizational system has been found to be the best way to manage the many (often multi-page) exhibits that are commonly used at a hearing. An example of a cover sheet for the exhibit notebook is on the following page.

Example of a Cover Sheet for the Exhibit Notebook

Parent Exhibits
Student Last Name/School District

Tab	Exhibit #	Exhibit Name
1	P- 1	Letter from [teacher's name] to [parent's name] dated 10/21/2020
2	P- 2	Report card dated 11/21/20
3	P- 3	Evaluation by [expert's name] date 12/20/20
4	P- 4	Homework samples August 2006-December 2020
5	P- 5	Letter from [parent's name] to School dated January 2, 2020
6	P- 6	NOREP dated January 2020
7	P- 7	IEP developed January 2020
8	P- 8	Homework samples January 2007-June 2020
9	P- 9	Letter from [teacher's name] to [parent's name] dated 3/10/20
10	P- 10	Final report card June 2020

STEP 14: DETERMINE JOINT EXHIBITS

Once you have exchanged exhibit lists with the school, it is likely that you will see that the school attorney intends to use some or all the same exhibits that you do. IEPs, NOREPs, report cards, etc. are frequently listed by both parents and schools as hearing exhibits. Eliminating duplicative exhibits creates a much clearer and more concise hearing record.

When both parties are represented by counsel, the hearing officers strongly encourage the attorneys to work together to identify exhibits that both the parent and the school will want to use at the hearing (marked as "joint" exhibit, as opposed to either a parent exhibit or a school exhibit). This reduces or eliminates the number of identical exhibits appearing in both the parents' exhibit book as well as the school's exhibit book (when only one copy is needed). As a pro se parent, you are not required to work with the school to assemble exhibits that both you and the school want to use at hearing, but you are welcomed to do so. Contact the school's attorney if you are interested in doing so.

The Prehearing Directions address the issue of **joint exhibits**. In this regard, the Prehearing Directions are very specific and should be reviewed since various questions can arise.

> ***Example:*** In your 5-day disclosure, you indicate that the September 2020 IEP will be an exhibit. When you marked your exhibits (Sept 20), you marked this IEP as P-1. The school attorney, in its 5-day disclosure, indicated that the September 2020 IEP would be an exhibit, and marked it S-1. At the hearing, there will only be one copy of the September 2020 IEP used. You and the school attorney will decide whether it is marked with a "P" for parent, an "S" for school or a "J" for joint, but regardless of how the exhibit is marked, only one copy will be used.

The hearing officers encourage you and the school to talk about any exhibits listed on both 5-day disclosure letters and choose one copy to use at the hearing. However, the hearing officers may require the parties to designate one copy of the exhibits of record to be used for the hearing.



These directions are intended to apply to duplicates of the same document. If you and/or the school attorney believe that there is a material (significant) difference in any of the exhibits of record that is important for the hearing officer to know about, then you and the school may use your own (duplicate) copy of the exhibit at the hearing.



STEP 15: REVIEW THE SCHOOL'S WITNESSES OR EXHIBITS

The school's 5-day disclosure document will list the witnesses it intends to present at the hearing, and the exhibits it intends to use. Review this information carefully. Determine whether you have any objections to the witnesses and exhibits listed (if the school objects to any of your witnesses or exhibits, be prepared to explain to the hearing officer why you believe that those witnesses and exhibits are properly included in your 5-day disclosure).

Remember that the school attorney is likely very experienced in special education due process hearings and will know what witnesses and exhibits are properly listed on the 5-day disclosure. In other words, it is the exception rather than the norm that a parent will object to the school's 5 day disclosure, and the hearing officer will agree with the parent, and forbid the witness to testify or prevent an exhibit from being used at the hearing. However, there is the possibility that you have a legitimate objection to either, so review the school's 5-day disclosure carefully.

A witness or a document is not considered to be objectionable simply because you disagree with what you believe the witness will say at the hearing or disagree with what is listed on the exhibit. If you agreed with the school's witnesses and exhibits, you would not be going to a due process hearing.

While it is impossible to list all the possible reasons the school might object, here are some possibilities:

- The witness you have listed is not an appropriate person to testify at the hearing.
    - ***Example:*** You have listed the Superintendent of your child's school or School Board members as witnesses for the due process hearing. While there may be a rare instance where the Superintendent or Board member truly is needed to establish a fact at the hearing, most often it is the principal, special education director,

the teachers or other school personnel who have direct knowledge of your child and therefore are appropriate witnesses at the hearing.

- You have listed multiple witnesses to establish the same point through repetitive identical or nearly identical testimony.

    - ***Example:*** If one teacher can establish an important fact at the hearing, it is not necessary to present the testimony of five other teachers to say the exact same thing. Remember that it is not the quantity (number) of witnesses and exhibits, but the quality of the witness' testimony and exhibits that is important.

- You have listed as your exhibits every IEP your child has ever had.

    - ***Example:*** Before the due process hearing begins, the hearing officer will very carefully and deliberately identify the issues to be addressed at the hearing. If your child's 5th grade IEP is at issue at the hearing, it is probably irrelevant what your child's IEP in Kindergarten said. This is not a hard and fast rule; every case is different, and you may be able to establish the relevance of the earlier IEP. But be prepared to explain to the hearing officer why this document is truly relevant to the issues.

Note: See Part Four: Objections for more information on objections.

If you believe that you have a legitimate objection to the school's exhibits or witnesses, you can do one of two things:

1. You can send a letter or email to the hearing officer, with a copy to the school attorney, explaining, in very precise terms, why you believe the school should be prohibited from presenting a certain witness, or using a certain exhibit. The hearing officer may respond in several different ways:

- The hearing officer may respond to your letter or email, ruling on your objection (telling you whether they agree with you);

- The hearing officer may ask the school attorney to respond to your objections before the hearing officer rules;

- The hearing officer may decide to handle your objections in a conference call;

- The hearing officer may decide to handle your objections at the first hearing.

2. Make a note for yourself so that at the hearing you can raise your concerns (objections) at that time and ask the hearing officer to make a decision.

CHECKING IN

So far, the following things have occurred:

- A due process hearing request was filed by either you or the school.
- A sufficiency challenge was filed, if needed, and the hearing officer ruled on the sufficiency challenge.
- Whoever did not file the complaint, has filed an Answer to the complaint.
- A resolution meeting was held (or waived or used mediation instead of the resolution meeting) if you, as a parent, filed the complaint.
- You and the school have exchanged your 5-day disclosure lists.
- You have talked with the school attorney about joint exhibits.
- You have marked and made four copies of your exhibits and considered putting them in individual binders (if you are having an in-person hearing; if you are having a virtual hearing, check with the hearing officer on how exhibits should be handled).
- You have reviewed the school's 5-day disclosure lists to see if you have any objections to its witnesses/exhibits.
- You and the school's attorney have either exchanged copies of your exhibits or will do so at the first hearing.

Now it is time for you to do your final hearing preparation.
Everyone prepares for a hearing differently, and in different order,
but here is a checklist of commonly done activities to prepare.



ODR
THE OFFICE FOR DISPUTE RESOLUTION

STEP 16: PREPARE FOR HEARING

Opening Statement

At the first hearing session, the hearing officer will ask you to give an Opening Statement.

An opening statement is not evidence. The hearing officer will not decide the case based upon what you do or do not say in your opening statement. But the opening statement helps the hearing officer determine exactly what the issues are (the things you and the school disagree about). The opening statement also gives the hearing officer an overview of your case. You can explain the basic facts of the situation, and what you would like the hearing officer to do.

Remember, up to this point, all the hearing officer knows about your case is what you put in the complaint, and what the school has put in its Answer. The opening statement is your opportunity to explain in your own words what the case is all about.

Be aware that the hearing officer expects the side that asked for the hearing to state exactly what the issues in the hearing are. The hearing officer will only listen to testimony and consider documents that are related to the issues identified in the opening statements.

After both sides have given their opening statements, the hearing officer will typically state the issues precisely on the record. The hearing officer will ask each side if they have correctly summarized the issues and will work with the parties until the issues are complete and clear. If there is something that is not included in the final hearing officer summary of the issues, it will not be addressed in the hearing and it will not be included in the hearing officer's decision. Make sure you



If an issue is not raised in the opening statement, it will not be addressed in the hearing officer's decision (only in some rare exceptions).

QUICK TIP

After you finish giving your opening statement, the school attorney will give his or her opening statement. Listen carefully, as it will give you a good idea of where the school intends to challenge your views about your child's educational program.

understand exactly what issues will be handled at the hearing.

As you begin to prepare for the upcoming hearing, you might want to start by writing out your opening statement to organize your thinking. Other people prefer to write out the opening statement after all the hearing preparation is completed. There is no set time to write the opening statement. Whatever works best for you is fine. However, you should write out your opening statement before the hearing and you can simply read it at the hearing or use it as a guide as you speak. Typically, an opening statement is about 5 minutes long so you will not be able to, nor are you expected to, cover every single fact at this time.

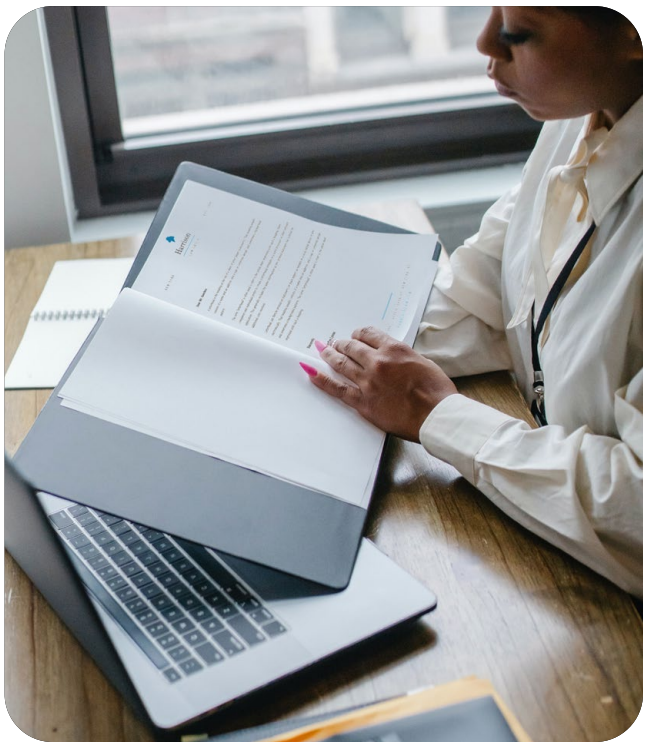
Here are some tips when planning your opening statement:

- State the main facts as you believe them to be.
- Be clear.
- Be assertive, yet positive. Now is not the time to be argumentative.
- Do not overstate your case.
- Explain the theory of your case (what you believe the situation is, and what you believe the situation should be).
- End by explaining the remedy or outcome you seek (Mauet, 1980).

Example Format for Opening Statements

Here is one format you may want to follow (You are not required to use it, but this gives you an idea of how to structure your opening statement:

- Introduction:
    - "Hearing Officer [Name]: My name is Beth Jones, and I am the parent of Connor Jones, a 5th grade student in [school district]."
- Short description of the relevant facts about your child and why you requested due process:
    - "I requested a due process hearing because I have concerns about my son's reading program. Connor has been identified as having a specific learning disability in reading. He has been doing very well in school until this year…"
- Explain what you believe has occurred.
- Explain what you believe the evidence will show:
    - "The November 2020 IEP indicates that…"
- What are you seeking:
    - "What I am asking you to do is…"
    - "Thank you."



Order of Witnesses at Hearing

Look at your list of witnesses in your 5-day disclosure letter. You will need to decide in what order you want to present your case.

- What makes logical sense?
- What witness should testify first?
- Are there any scheduling problems with any witnesses? If so, witnesses may have to go out of the order you would have preferred. However, this should not be of concern since hearing officers routinely deal with such scheduling challenges and the resulting need to change the order of a witness. Therefore, the hearing officer will be able to understand your evidence even if the witnesses are out of the order you would have preferred.

Your Testimony at Hearing

You may want to be a witness at the hearing. Normally witnesses must be asked questions, which they answer. Because you do not have your own attorney to ask you questions, you are permitted to give a statement instead. You will be sworn in by the court reporter and asked to swear or affirm that you will tell the truth. (Attorneys do not testify so they are not sworn in by the court reporter.) You will then be given the opportunity to testify. You will be asked questions by the school's attorney and maybe the hearing officer.

You may write out your testimony and refer to it, or even read it, if that makes you more comfortable.

Preparing Questions for Witnesses

The way you prepare for witness questioning will depend on you and your style and preferences. You may want to write out specific questions to be asked of each witness. You may want to write out a list of topics you would like to address with each witness, rather than actual questions. But regardless of how you choose to do it, you should spend time figuring out what you want to ask all the witnesses (both yours and the school's) at the hearing. Unlike you, witnesses cannot simply make a statement; they must be asked questions.

Remember, the questions you ask your witnesses and the answers you expect to get from them are intended to prove your case; that is, what you believe to be the facts. Keep this in mind when writing out questions but know that you can never know with 100% certainty what any witness will say.

Guidelines for Questioning Witnesses

There are rules about questioning witnesses. A due process hearing is an administrative proceeding, rather than a court proceeding, so the hearing officer is not obligated to follow the strict rules that apply in a court proceeding. However, it is important that you be familiar with some of these rules because the hearing officer will expect both you and the school's attorney to follow them in some manner.

One of the fundamental rules to remember is that you cannot testify for your witnesses. You present or "call" a witness at the hearing because you believe that this witness will testify to important facts that the hearing officer needs to hear. You do not call your witness and then essentially give them the answers you are looking for in your question or suggest the answers in your questions. This is called **leading the witness**.

So, when you are questioning your own witnesses, referred to as **direct examination**,

you will usually not be allowed to ask leading questions, which are questions that suggest or contain their answer.

Here is an example of a leading question, which is inappropriate:

Parent: "So my child did not receive speech therapy during the months of January through March, three times a week like his IEP required, right?"

School Attorney: "Objection. [Parent's Name] is leading the witness."

Instead, questions should proceed this way (for a non-leading question):

Parent: "How often did my child receive speech therapy during the months of January through March?"

[Witness answers]

Parent: "How often did the IEP say my child was to receive speech therapy during that time frame?"

[Witness answers]

Parent: "What effect, if any, did this reduction in speech therapy have on my child?"

QUICK TIP

It is very easy to ask leading questions; even experienced attorneys may do so at times. It might be helpful to start your questions to your witnesses with words like "who", "what", "where", "when", "why" and "how" to reduce the possibility of asking leading questions.

[Witness answers]

You may not ask leading questions of your witnesses. But you may ask leading questions of the school's witnesses. Questioning the school's witnesses occurs during cross examination.

The classic way to conduct **cross examination** is to start with:



"Isn't it true that…", or

"Would you agree with me that…"

When you are deciding what questions you want to ask witnesses, keep straight in your mind that you should not ask leading questions of your witnesses, but you can ask leading questions of the school's witnesses. If it is not clear whether a witness is considered to be a parent witness or a school witness, talk to the hearing officer about it.

Fact versus Opinion

Normally, a witness may only testify as to facts within their knowledge, and not their opinion. An exception is for an **expert witness**, who may testify as to their opinions; however, you must prove that your witness is an expert by asking a few questions that show they're knowledgeable in the area they will be testifying about. The expert is usually a professional in the area on which the testimony is sought. Examples would be a psychologist, therapist or other professional who works with your child. The school may also present its experts to testify at the hearing.

To qualify a witness as an expert, the usual questions ask about the person's educational background, degrees, and work experience. Their answers demonstrate that they are knowledgeable about the subject they are being asked to testify about, such as psychological testing, physical therapy, etc.

Here is an example of questions asked of experts:

Parent: "Dr. Smith, will you please describe your educational background?"

[Witness answers]

Parent: "Please describe your work experience."

[Witness answers]

If the expert has published books or papers on the topic, or has done anything else of importance, you can ask them about that. You will get ideas for questions by reviewing the expert's resume.

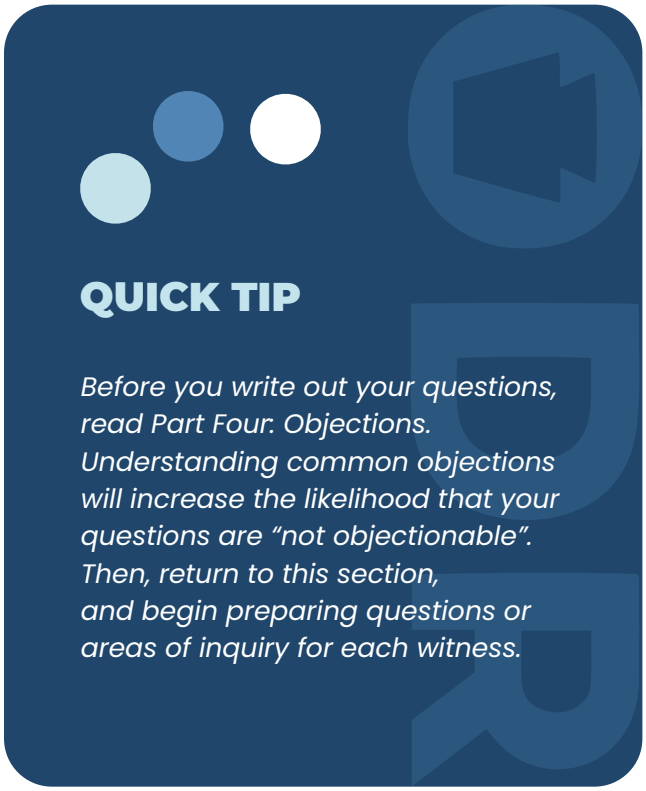
You conclude such initial questioning with, "I offer Dr. Smith as an expert in the field of [specialty area]".

Note: You may not be required to qualify your expert. If the expert is already known to the school attorney and hearing officer, you may not be required to go through this process. Sometimes the parties can stipulate, or agree, to an expert's qualifications.

> ***Always have a current copy of your expert's resume to submit to the hearing officer (with a copy for the school attorney).***

If you are presenting an expert who requires a fee to attend the hearing, you will be responsible for that fee. Talk with your expert as early as possible to determine what they will charge to attend a hearing. If you have an outside report or evaluation completed by a doctor, it is usually best to have them there to testify about the report. However, because that cost can be substantial, you will have to decide whether to have the expert appear at the hearing, ask the hearing officer to allow them to testify by telephone or appear virtually (which may save some money), or submit the

expert report only into the record. See Part Six: Expert Reports for more information on using expert reports at the hearing.



Final Hearing Preparation

- Double-check the date, time, and location of the hearing.

- Confirm with your witnesses that they know the date, time, and location of the hearing or, if it is a virtual hearing, that they have the link to log in.

- Make sure your witnesses will be available all day for the hearing. If they are not, work out the time they will be available with the hearing officer and the school attorney so the hearing will run smoothly, and your witness will be able to testify.

- Let your witnesses know what to expect. Explain to them that they will be under oath and will need to answer questions truthfully. Make them aware that the school will be allowed to ask them questions when you are done questioning them. Let them know that the hearing officer may ask them questions too.

- If it is important to you, confirm in advance arrangements for beverages/water during the hearing, the arrangements for lunch or dinner (depending on the hearing time), and anything of a special nature you or anyone attending on your behalf may require.

- Pack items that will make you more comfortable (coffee, water, snacks for breaks, lunch). Either bring your lunch or have cash available for lunch. There may not be refrigeration available for your lunch, so take that into consideration.

- Arrange time off from work.

- Arrange for childcare and/or transportation, if needed.

- There is no dress code for hearings, but because it is a legal proceeding, it is not recommended that you dress too casually (shorts, flip flops, etc.).

ADDITIONAL RESOURCES

A mock due process hearing is available on the **ODR Training Videos** page on ODR's website. It might be helpful to watch the video before your hearing.



MISCELLANEOUS INFORMATION

Requesting that a Hearing be Rescheduled

When a hearing officer is assigned a case, they will schedule the first hearing.

There will be times when you simply cannot attend a scheduled hearing. Realize that there are no particular facts that will always result in a hearing being rescheduled. Instead, the hearing officer has to consider each individual case. The only person with the authority to decide, the hearing officer, must balance numerous and frequently competing factors.

There are several common reasons that a parent may ask that a hearing be rescheduled. Whether the hearing officer agrees to reschedule the hearing should not be interpreted as reflecting on the strength or weakness of your case, or a hearing officer's preference for one party over another. Keep in mind that every case is different, and the hearing officer has many factors to consider when deciding whether a hearing should be rescheduled.

The hearing officers have rules about requesting that a hearing be rescheduled, set forth in the Prehearing Directions. When requesting that a hearing be rescheduled, you will need to follow this procedure:

1. Check with the school attorney to see if they object to the hearing being rescheduled.

2. Immediately notify the hearing officer of the need for a hearing to be rescheduled as soon as that need becomes known to the party.

3. State the **exact reason** for the request.

4. Let the hearing officer know whether the school agrees with your request that the hearing be rescheduled.

Understand that in the case of an expedited hearing, and the strict timelines for completion of the hearing, a request to have an expedited hearing rescheduled is not likely to be granted. Examples of reasons for requesting a rescheduled hearing may include:

- "My boss won't let me off work that day."
    - To the extent possible, try to clear your upcoming absence with your employer as soon as possible.
- "I am currently seeking counsel."
    - If you are trying to find an attorney, let the hearing officer know that this is why a rescheduled hearing is being requested. Do not delay your efforts to locate an attorney, because at some point the hearing officer will insist that the hearing proceed even if you cannot find an attorney.
- "I can't get childcare on that date."
    - Try to anticipate and plan for childcare prior to the date of the hearing.
- "I have a special child or family event to attend on the date of the hearing."
    - If you know of scheduled special events at the beginning of the hearing process, notify the hearing officer of your unavailability on that particular day. The hearing officer may allow for this depending on the event and status of the hearing.
- "I have an evaluation pending and the results will not be in before the hearing date."
    - When this is the situation, the hearing officer may respond in one of two ways:
        - Reschedule the hearing to allow the evaluation to be completed; or
        - Direct the party who requested the due process to withdraw the request, and re-file the complaint notice when the evaluation is complete, and they are prepared to go to a hearing.
    - It is more likely that the hearing officer will grant the request to have a hearing rescheduled when the evaluation is already underway and will be completed very soon.
- "I have another matter in court that same date and time."
    - Give the hearing officer as much information as possible regarding the other matter. The hearing officer may request proof of this scheduling conflict (such as a hearing notice or court order). Remember, the due process hearing is a legal proceeding as well, and usually just as important as any other legal matter.
- "I will be away on vacation during this time."
    - If you know of scheduled vacation at the beginning of the hearing process, notify the hearing officer of the dates of your vacation as soon as possible. It is best to alert the hearing officer to pre-planned vacations as soon as you are given the assigned hearing officer's name.
- "I am having trouble obtaining school records and need more time."
    - If you are having trouble getting your child's educational records, you should make a request to the school in writing for those records and copy the hearing officer. The hearing officer may allow the hearing date to be rescheduled and order the school to provide access to the records.

- "My witnesses are not available on the day of the hearing."
    - When this is the situation, the hearing officer may respond in several different ways:
        - The hearing officer may reschedule the hearing to a time when your witnesses are available.
        - The hearing officer may permit telephone or virtual testimony at the hearing instead of having your witness actually attend the hearing.
        - The hearing officer may direct that a deposition of your witness take place instead of having your witness actually attend the hearing. Although this is an exception in due process hearings, at deposition, witnesses may testify before a court reporter and representatives from both sides, with the transcript then submitted to the hearing officer (see Part Three, Miscellaneous Information: Depositions for more information).
        - It may also be possible in the case of an expert witness to submit their report into the record, rather than having the expert testify in person at the hearing
- "I had a sudden emergency (e.g., illness, accident, etc.)
    - Contact the hearing officer and the school as soon as possible after an emergency occurs so that everyone is notified in a timely way that you cannot attend the hearing.
- "The school and I are trying to resolve (settle) the case, but we need a little more time to talk."
    - If you and the school are trying to resolve the case without going to a hearing but need a little more time in which to talk, alert the hearing officer to this. The hearing officer may be willing to grant a short delay of the proceedings to allow time to see if agreement can be reached and the hearing request withdrawn.
- "I didn't receive notice of the hearing until right before it was scheduled to occur."
    - If you received notice shortly before the date of the hearing and do not have sufficient time to prepare, you should let the hearing officer know and request that the hearing be rescheduled. It is rare, however, that parties receive late notice of a hearing, and even if they do, preparation for the hearing should have begun before the complaint notice was filed, or as soon as the other party's complaint notice is received. In case of an expedited hearing, you will receive a notice very close to the actual hearing date because of the timelines set for expedited hearings.

Basics About Rescheduled Hearings

The following should be remembered about rescheduled hearings:

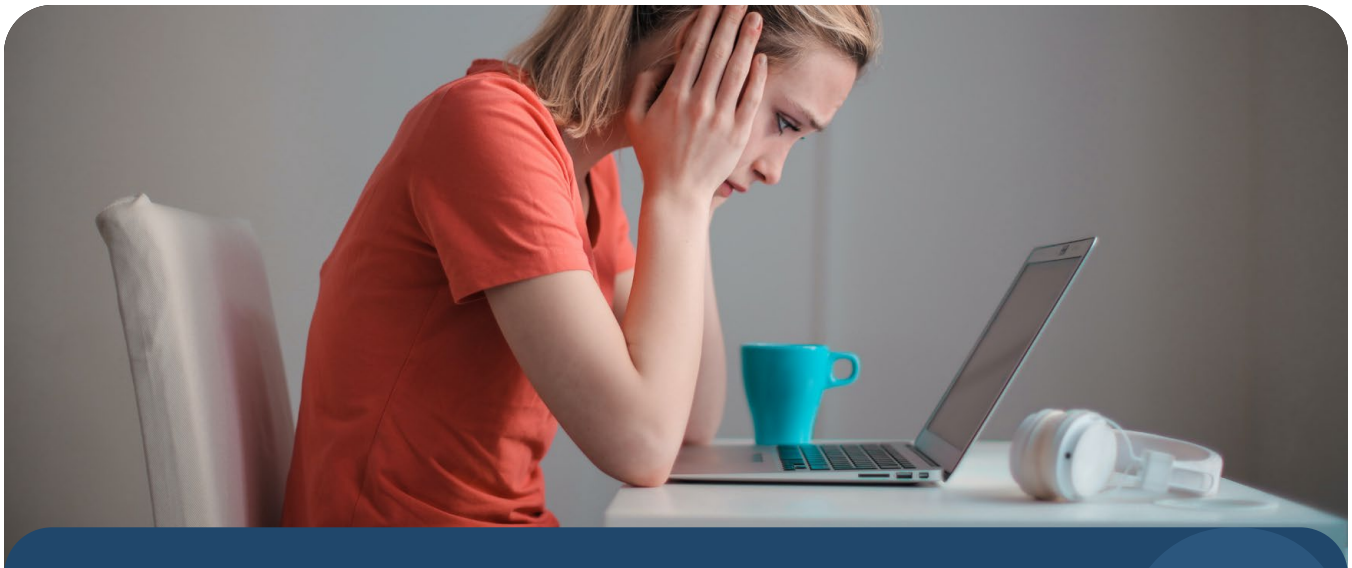
- It is more likely, but not guaranteed, that the hearing officer will grant a joint request (both you and the school want the hearing to be rescheduled).
- Either part has the right to object to the other side's request for a rescheduled hearing. If you think the hearing officer should not grant the school's request for a rescheduled hearing, an email message or letter should be sent to the hearing officer without delay (with a copy sent to the school), explaining why you feel that way.
- Remember, the hearing officers are the only

people who can decide whether a case should be rescheduled or not. Things that a hearing officer might consider include:

- The number of times the hearing has already been postponed and rescheduled;
- Whether the case is expedited because
- The amount of available time you have had to find an attorney to represent you;
- The amount of time either you or the school has had to prepare for the hearing;
- Your child's status. If your child is without an educational placement, for example, the hearing officer will likely be reluctant to postpone the proceedings except for the most compelling reasons.



The federal Department of Education, Office of Special Education Programs (OSEP), now requires that states report the length of time it takes to resolve a case; this includes from the time a due process hearing is requested, until the hearing officer issues their decision. OSEP wants cases to be resolved in a timely fashion, which means hearing officers have to balance a host of factors when deciding whether to grant an extension or not. Therefore, do not take it personally if the hearing officer does not grant your request.



QUICK TIP

A due process hearing is more like a court proceeding than a personal appointment. Because the daily schedules of the numerous individuals required to be there will almost always be in conflict, only very critical reasons are good cause for rescheduling requests. This applies to requests that you make for rescheduling, as well as requests that a school makes for rescheduling. If the rescheduling request is denied, it is important that you still attend the hearing, and do your best to present the case for the program or services you believe your child needs. If you fail to attend the hearing, it may proceed without you and decisions made without your participation.

Depositions

A **deposition** is the process of taking a witness' testimony outside the scheduled hearing process. A deposition is used when it is impossible for the witness to attend the hearing. Taking a deposition follows much of the same procedures as a hearing: a court reporter is present; the witness swears or affirms to tell the truth; all discussion is taken down by the court reporter, etc. The major difference, of course, is that the hearing officer is not present. If objections are raised, they are noted on the record for the hearing officer to rule on later. The transcript of the deposition is submitted to the hearing officer as evidence. Depositions are not frequently used in due process hearings, but they are a possible solution to scheduling problems. If you believe that you may need to take a deposition, let the hearing officer know as soon as possible.

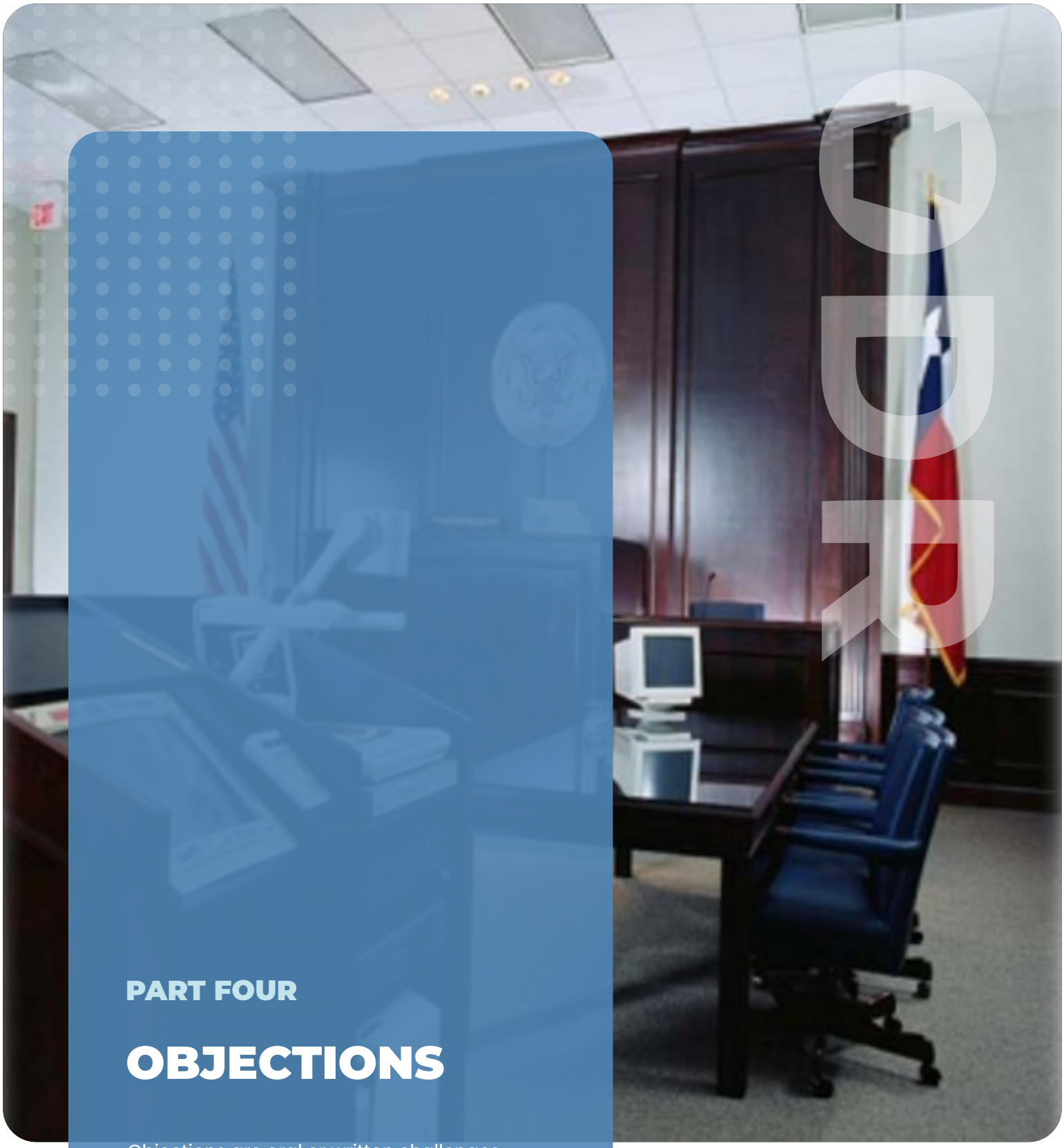
CHECKING IN

You have now done the following items to get ready for the hearing:

- Prepared for the hearing by planning:
  - Your opening statement
  - The order of your witnesses
  - Your testimony
  - The questions for the witnesses
- Reviewed the **due process hearing videos** on ODR's website to get a better idea of what might happen during the hearing
- Confirmed the date, time, and location of the hearing and reviewed this information with your witnesses.
- Became familiar with the rules the hearing officer has about rescheduling hearings in case a scheduling conflict arises. These rules are found in the Pre-Hearing Directions on ODR's Due Process: **Hearing Procedures** page.

The next section will further prepare you for the hearing by explaining objections.





PART FOUR

OBJECTIONS

Objections are oral or written challenges to witnesses and evidence presented by a party. Either the parent or the school may object to the other's evidence. This section lists the most common objections and provides a brief explanation of each.

GENERAL INFORMATION ON OBJECTIONS

A due process hearing is an administrative proceeding, as opposed to a court hearing. This means that hearing officers do not have to follow the strict rules about evidence and witnesses that a judge does. They are, however, used as a guide and can come up in connection with objections.

Nonetheless, it is likely that the school's attorney may raise objections during the hearing; this is standard procedure. You may want to raise your own objections as well. In either event, it would be helpful for you to have a general understanding about common objections made during a hearing. Both the hearing officer and the school attorney will understand that you are not an attorney and are not going to be as familiar and comfortable with objections as they are.

Relevance

The questions asked of witnesses, and the exhibits used at the hearing, must be relevant to the issues addressed at the hearing. In other words, the documents and witnesses must assist the hearing officer in deciding the case.

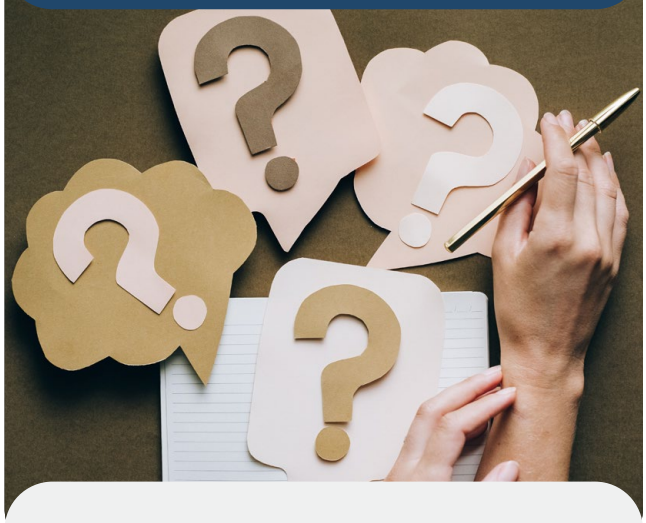
> ***Example:*** The issues at the hearing pertain to your child's speech therapy in 5th grade. Questions about your child's math class in 2nd grade are probably not relevant to the issues of the hearing. The school attorney may object to those questions based on relevance.

Repetitive (Asked and Answered)

If a witness is asked, and answers, the same question repeatedly, this can be the basis for an objection.

QUICK TIP

You will probably not agree with some of the testimony that is given. This alone does not mean you should object. Save your objections for questions and answers that truly are "objectionable". Remember that you will have the opportunity to question every witness too. If you believe that school witnesses are not taking into consideration an important fact, for example, you can point that out during your cross examination.



When thinking about the questions to ask of witnesses, ask yourself whether a particular question or series of questions helps to establish what you are trying to prove to the hearing officer.

Example: If a witness is asked the same questions repeatedly, you may hear this objection from the school attorney: "Objection. Asked and answered. This witness has already stated several times that… [whatever the witness answer is] …These questions are repetitive."

Remember that the hearing officer is listening to the testimony at the hearing and will review the transcript before writing a decision. Repeating testimony is not going to increase the odds of one party winning. If the witness has clearly stated their answer, it is not necessary to have them repeat it over again.

Hearsay

Hearsay statements are:

- Statements made by a person at some point other than at the hearing;

- Presented at the hearing to prove the truth of the statement made.

The problem with hearsay statements is that the person is not present at the hearing to question them on what they did or did not say.

Example: Mrs. Jones has relevant information for the hearing. Mrs. Jones is not at the hearing. You ask the witness, "What did Mrs. Jones say about…?" You may hear this statement from the school attorney: "Objection. The question calls for a hearsay answer."

There are numerous exceptions to the hearsay rule. However, there are three important things to remember regarding hearsay:

1. A due process hearing officer does not have to follow the hearsay rule exactly as a court does. Your hearing officer may allow some hearsay evidence.

2. A hearing officer cannot base their decision solely on hearsay evidence.

3. If the statement made by a person at some point other than at the hearing is crucially important, you should present that person as a witness during the hearing.

Calls for an Opinion

As indicated in "Fact versus Opinion" under Part Three, Step 16, only experts can testify as to their opinions. Non-expert witnesses can only testify about facts, even though they may have an opinion about the issues in the due process case.

Example: Your neighbor testifies at the hearing. You ask her this question: "Do you think the lack of a classroom aide impacted my child's education?" You may hear this objection from the school attorney: "Objection. That question calls for an expert opinion. This witness is not qualified to give that information." The hearing officer will likely agree.

Because experts can render opinions, you have more latitude (that is, more flexibility) when you are questioning your expert.

Make sure you are asking your non-expert witnesses questions about the facts of your child's situation. Do not ask non-expert witnesses their opinions about your child's situation.

QUICK TIP

To organize your evidence, list your expert witnesses separate from your non-expert witnesses in your hearing preparation materials and make sure that the questions you are asking your non-expert witnesses do not call for an opinion.

Misstates Evidence/Misquotes Witnesses

This objection is exactly what it sounds like. The question to the witness misstates the evidence that has been presented in some way.

> ***Example:*** The school's witness testifies that it is too early to determine whether a particular reading program is working with your child. In your question to the school's witness, you say "You have testified that the reading program does not work with my child, right?" You may hear this objection from the school attorney: "Objection. This question misrepresents what the witness said in her testimony."

Confusing/Misleading/Ambiguous/ Vague/Un-intelligible

It is a skill to ask appropriate questions at a hearing. This is why there are law schools to teach these skills! For your purposes, know that questions must be asked in a reasonably clear and straightforward manner. The point is not to trick a witness with a poorly worded question. The point is to ask questions that will get from each witness information for the hearing officer to consider.

The same thing applies for the answers witnesses give. If a witness gives an answer that is difficult to understand, an objection may be raised. The witness will be asked to clarify their statement.

> ***Example:*** "I didn't hear (or understand) the last part of the witness' answer. Can she please repeat it?"

Speculative Questions

Any questions that ask the witness to guess about something may be considered improper. Questions like this are generally considered to be calling for a guess:

- "So, what do you think would have happened if…?"
- Isn't it possible that…?"

Try to ask questions that will allow witnesses to talk about what actually happened, not guess about what could have happened.

Compound Questions

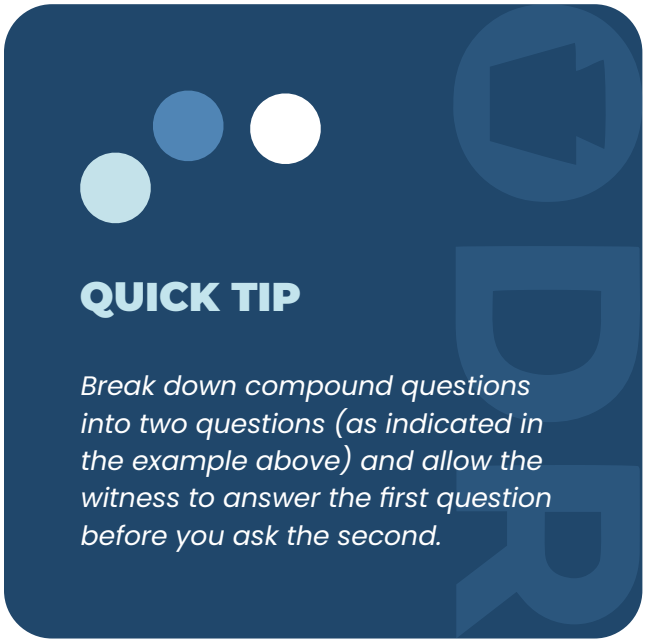
A compound question is one that brings up two separate facts within a single question. The problem with compound questions is that they can lead to confusing answers. The witness may have a "yes" answer for the first part of the question, but a "no" answer to the second.

> ***Example:*** "Did you provide speech therapy on Monday and then there was no speech therapy on Wednesday?"
>
> Instead, you would ask:

"Did you provide speech therapy on Monday?"

[Witness answers]

"Was there speech therapy on Wednesday?"



Question is Argumentative

Your question should not be an argument to the hearing officer. To figure out if your question is argumentative, ask yourself these questions:

- Will the witness' answer to my question bring forth new information? or
- Am I stating a conclusion in my questions and asking the witness to debate it with me?

Example: You may believe that because your child did not get a certain reading program that they did not receive FAPE. You need to prove with facts and, perhaps, expert opinion that this is, in fact, the case. Simply asking a witness whether they agree with your position is not likely to add much to the hearing. The following question may draw an objection from the school attorney:

Parent: "Since my child didn't receive reading program X, then she did not receive FAPE, and is entitled to compensatory education, correct?"

School Attorney: "Objection. Question is argumentative."

An objection may also be raised if the questioner literally starts arguing with the witness. This can happen when the questioner disagrees with the witness' answer. Remember that you are not going to agree with everything every witness says. You can point out problems you see in a witness' testimony and introduce your own evidence (exhibits, witnesses) which demonstrate your position, but you cannot argue with a witness with whom you disagree.

Example: The parent, Ms. Smith, asks the witness: "How can you say that my child missing speech therapy sessions is, okay?" You may hear this from the school attorney: "Objection. Ms. Smith is arguing with the witness", or simply, "Objection. Argumentative."

Answer is Unresponsive

Make sure the witness answers the question! Witnesses do not always answer the exact question that has been asked. This is why you have to listen carefully to each answer before you ask your next question. If the witness does not answer the question, an objection may be raised.

Example:

Question: "How often did the student

receive speech therapy?"

Answer: "The student got all of the speech therapy that was needed."

You may hear this objection from the school attorney: "Objection. The witness didn't answer the question."

Make sure that your witnesses answer the questions they are asked. Listen to the answer that is given and then turn to your next question. Do not be so concerned about asking the next question that you fail to realize that the witness did not answer your previous question.

Questioning is Cumulative

The hearing officer will not allow multiple witnesses to testify to the exact same thing. Therefore, if one witness can establish a fact, the hearing officer may not allow you to present five other witnesses to say the exact same thing. Remember it is not the **quantity** of evidence that decides the case, it is the **quality** of evidence.

Example: You may hear the school attorney say this: "I object to this evidence. It's already been covered by the previous witnesses."

Lack of Foundation

"Laying a foundation" for a witness to testify or for an exhibit to be used at the hearing means putting it in context. In other words, why does the witness or exhibit matter to the hearing?

QUICK TIP

When putting together your list of witnesses and exhibits to disclose to the school, consider whether you can establish the same facts with one witness or exhibit, rather than through multiple witnesses and exhibits. Remember, it is the quality of the evidence submitted to the hearing officer, not the quantity of evidence that is important.

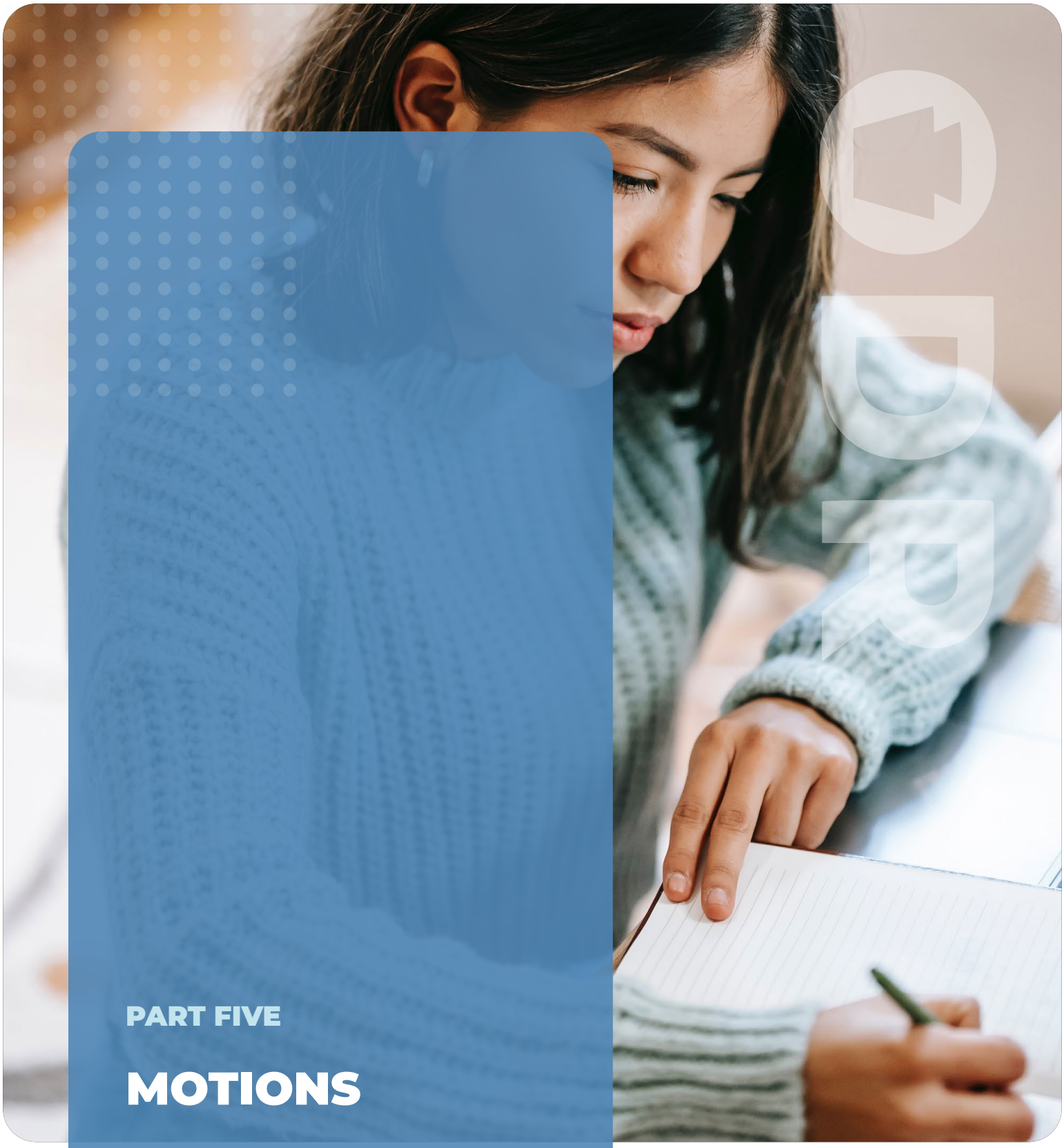
Example: You have listed you neighbor on your 5-day disclosure. It may not be apparent to the school why your neighbor is relevant to a due process hearing and your child's educational program. The school attorney may ask that a foundation be laid to establish why your neighbor has relevant information, or the school attorney may instead ask for an "offer of proof". An offer of proof explains to the hearing officer why the particular witness or exhibit is important to the issues.

Exhibits must have the necessary foundation established before they are entered into evidence. So, for example, you can't just hand to the hearing officer a paper with writing on it and say that you want it to be an exhibit. You must first establish who prepared the document, when, and what it pertains to.

CHECKING IN

- Watch the **Mock Due Process Hearing video** on the ODR website.
- Make a list of questions you would like to ask each witness to take with you to the hearing. This will help you organize your thoughts and make sure you don't miss or forget anything on the day of the hearing.
- List any evidence you would like to review with a witness or submit during the time a witness is questioned next to the witness' name on your list.
- You can't object to a document or a witness' testimony simply because you disagree with it. You establish your disagreement by producing other evidence (witnesses and documents) which supports your viewpoint, as well as through cross examination of the witness.
- You can object to a document becoming an exhibit, or a witness testifying at hearing, if you believe that there is a basis for it or them to be excluded. You must be prepared to explain why you believe this.
- Objections are raised most often at the hearing to questions being asked of the witnesses by either the parent or the school attorney or to the answer of the witness. But remember, just because a witness gives an answer that you don't like, that doesn't make it worthy of an objection.
- Regardless of whether an objection is written or oral, made before the hearing or at the hearing, you must be prepared to outline the legal and/or factual basis for your objection.





PART FIVE

MOTIONS

Motions are written or oral requests to the hearing officer asking that certain actions occur. This section discusses the most common types of motions, and the procedures to follow.

GENERAL INFORMATION ON MOTIONS

Motions may be filed by either party.

A copy of a written motion must be provided to the other side at the same time it is sent to, or otherwise provided to, the hearing officer. Motions may be directed to the hearing officer at any time during the process.

The hearing officer will decide (or rule on) the motion.

Not all motions are written; some motions are oral. The complexity of the subject matter of the motion usually determines whether it makes more sense to put the motion in writing, or to present it to the hearing officer orally. Personal preference can also determine whether the motion is written or oral. If the motion addresses complicated legal issues, a written motion is probably a good idea to be certain that all the points you want to make are listed. If the motion is straightforward, then an oral motion may be more appropriate.

Also, an unexpected issue may arise at the hearing, so that it is impossible to know that a motion needs to be prepared. There are two possible solutions:

1. An oral motion is made at the hearing; or

2. Depending on the time frame, and the hearing officer allows it, a request can be made to be given time to prepare a written motion. This is usually only necessary when the issues are complex.

There are no hard and fast rules about whether a motion should be in writing or presented orally.

Types of Motions

Motion to Limit Issues

The hearing officer will hear evidence on two types of issues:

1. The issues the hearing officer identifies at the beginning of the hearing after listening to the

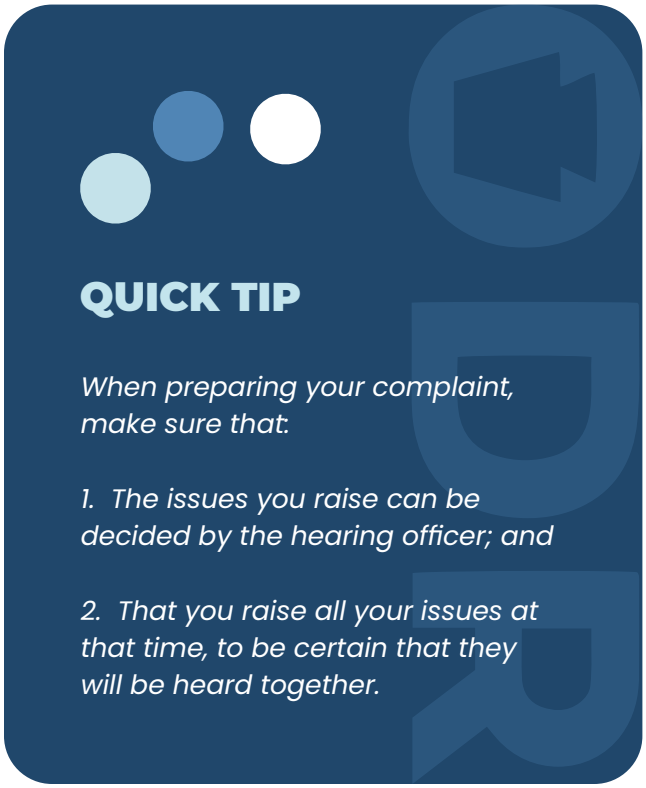


opening statements; and/or

2. The issues which are within the hearing officer's jurisdiction.

If either you or the school attempts to address issues other than the two referenced directly above, a motion to limit issues might be made (or, instead, an objection may be raised; see Part Four: Objections).

> ***Example (related to #1 above):*** At the first hearing, it is agreed that the only issue will be your child's math program. If you ask questions about your child's reading program, which has no connection to the math program issue, the school attorney may ask the hearing officer to prevent you from doing that.
>
> ***Example (related to #2 above):*** The complaint raises child custody issues. Hearing officers do not decide custody issues. The school may file a motion to ensure that this issue is not part of the case.



Motion for Reconsideration

A motion for reconsideration is exactly what it sounds like. The hearing officer has ruled on (decided on) a motion during the hearing. One of the parties, usually the one who filed the motion, disagrees with the hearing officer's decision, and asks them to reconsider the decision. A motion for reconsideration should only be filed if you believe that the hearing officer missed a critical fact or point of law. You should not make a motion for reconsideration simply because you disagree with the hearing officer's decision.

Motion to Dismiss

There are many reasons why a motion to dismiss the complaint might be filed:

1. Lack of Jurisdiction (authority). If the only issue in the complaint is about something the hearing officer cannot decide, the school will likely file a motion to dismiss.

2. Res Judicata. This Latin term means that the issue has already been decided in a previous due process hearing. This means that a due process hearing cannot be requested repeatedly to address the exact same issue.

3. Lack of Participation in Resolution Meeting. The law requires parents to participate in a resolution meeting/session unless the parties agree to waive it or use mediation instead (see Part Three, Step 6). If you do not participate in the resolution meeting, the school can ask the hearing officer to dismiss your complaint.

4. Insufficient Complaint. See Part Three, Step 4 regarding sufficiency challenges. If your complaint does not contain all the required

information, the school may file a sufficiency challenge and ask the hearing officer to dismiss your case.

5. Precluding Testimony. A motion may be filed to preclude (or prevent) testimony in these circumstances:

- The testimony is irrelevant (meaning it has nothing to do with the issues at the hearing;
- The testimony is repetitive (already testified to);
- The testimony is not permitted or allowed (for example, testimony about settlement or mediation discussions are not allowed); or
- The witness was not properly disclosed on the 5-day disclosure document.

6. Recusal. A motion for recusal is a request to a hearing officer that they step down from hearing the case. A motion for recusal should be filed in only the most serious of cases, when you believe the evidence is clear that the hearing officer cannot serve in an impartial way. The regulations list those instances where the hearing officer would be required to remove themself from a case. If any one of these circumstances exists, the hearing officer must relinquish the case back to ODR for assignment. Please note that the hearing officer, alone, decides recusal motions.

The Pennsylvania Standards of Conduct for ODR Special Education Hearing Officers (previously titled Hearing Officer Code of Ethics), available on the ODR website, describes the circumstances when a hearing officer must recuse themself, and the procedures that will be followed.

The requirements for an impartial hearing officer are:

- They must not be an employee of the state educational association or the local educational agency (LEA) that is involved in the education or care of the child; and
- They cannot have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing.



ADDITIONAL RESOURCES

See **IDEA 300 CFR §300.511** to read the federal regulations that govern due process hearings, including the requirements for a hearing officer.

The hearing officer decides all motions for recusal. If you or the school disagree with the hearing officer's decision, you may appeal this issue to state or federal court. No one, other than a state or federal judge, can overturn a hearing officer's decision on these or other issues.

Sometimes objections will work just as effectively as a motion. So, for example, if a party tries to present three witnesses who will say the same thing, either an objection can be raised (see Part Four: Objections) or a motion

can be made orally or prepared in writing. Consider the following when deciding whether an objection is enough, or whether you want to make a formal motion:

- Is the issue so straightforward that an objection will probably be sufficient to alert the hearing officer to your concern?

- Is the issue complicated so that a written motion is needed to explain all the complexities?

- Is the issue so critical to your case that it makes sense to prepare a formal motion, rather than simply raise an objection?



ADDITIONAL RESOURCES

See **Appendix D** for an example of a sample motion.

CHECKING IN

- Motions are sometimes needed during the course of a due process hearing.
- Motions can be filed by either party. They may be directed to the hearing officer at any time during the process.
- Motions can be written or oral. The complexity of the subject matter of the motion usually determines whether a motion should be in writing or presented to the hearing officer orally.
- There are different types of motions including:
  - Motions to limit issues
  - Motions for reconsideration
  - Motions to dismiss
- Sometimes an objection will work just as effectively as a motion. Consider the complexity and critical nature of the issue when determining if you should use a motion or an objection.



ODR
THE OFFICE FOR DISPUTE RESOLUTION



PART SIX

THE DUE PROCESS HEARING

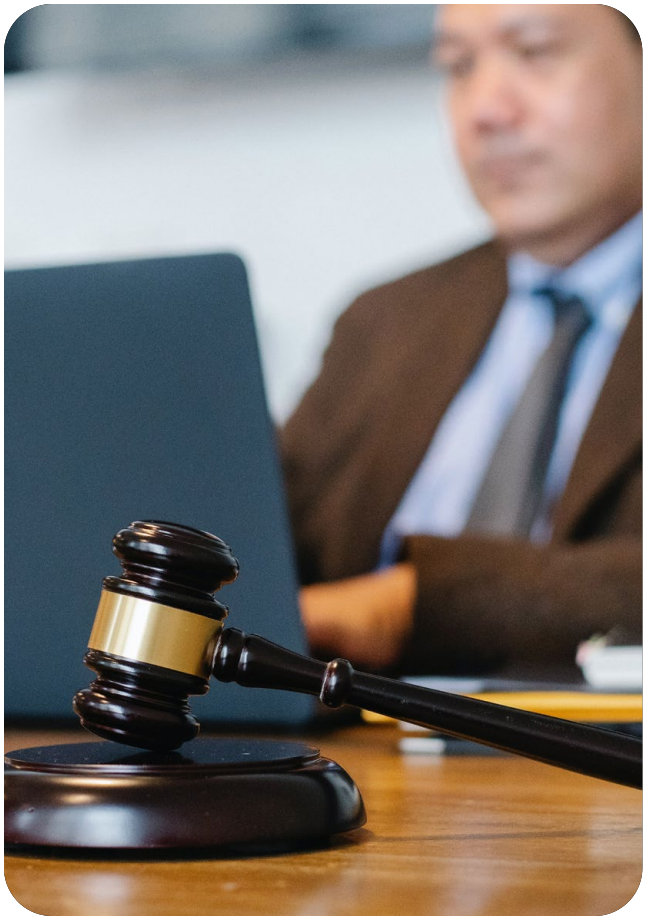
You probably have many questions about a due process hearing, from where to sit, how to address the hearing officer, to when you will receive the hearing officer's decision. This section of the Guide provides detailed information about the many aspects of a due process hearing.

ODR
THE OFFICE FOR DISPUTE RESOLUTION

LOCATION OF HEARING

The hearing is almost always held somewhere within the school district or Intermediate Unit. If the school is a cyber charter school, the hearing officer may get involved in deciding where the hearing will be. The law requires that the hearing be at a location that is "reasonably convenient" for the parent, which is most often the school. A "virtual hearing" might also take place using computers and webcams if you, the school, and the hearing officer all agree to use this method. Like everything in the hearing, you should talk to the hearing officer about how and where the hearing will take place.

The hearing usually takes place in a conference room. Before the hearing begins, the hearing officer will have the room set up the way they want it to be. The hearing officer will tell you and your witnesses where to sit.



Usually, the hearing officer sits at one end of a table with the court reporter on the one side and the "witness seat" on the other. This is to make sure that both the hearing officer and the court reporter, who is taking down all the testimony, can hear the witness. Typically, the parents and witnesses sit on one side of the table together, and the school attorney and school staff sit on the other side of the table together.

Depending on how many witnesses there are, the witnesses may have to be in chairs along the walls, back from the table where you will be sitting. Keep in mind, however, the type of building, room, and furniture available, as well as individual hearing officer preference, may slightly or significantly change how the room is set up.

Those present at the hearing usually include parties, attorneys, advocates, witnesses, s uch as teachers or psychologists as well as others, occasional observers from ODR (for purposes of hearing officer evaluation or in-service training) and representatives of public agencies beyond your school that may be involved. As a courtesy, you will be notified ahead of time if an ODR staff person will be attending.

Here are some things to keep in mind:

- On the day of the hearing make sure you have all your exhibits with you as well as the notice of hearing (which lists all participants' names, numbers and the location address and phone number), as well as any of your own notes and proposed questions for witnesses.

- Check all messages before you leave for the hearing to make sure nothing has been cancelled.

- In case of bad weather, contact the location of the hearing (if the hearing officer has not given other instructions) to make sure it has not been postponed.

- If you will be unavoidably late or unable to attend due to a last-minute emergency the day of the hearing, contact the hearing officer by whatever means they may have provided and someone at the location of the hearing (usually the school).

- A hearing session may be a few hours or last the entire day. The parties usually have an idea of hearing length in advance but be prepared for the event. Feel free to bring coffee or another beverage to the hearing, and pack snacks and lunch for breaks.

Addressing the Hearing Officer

Many of the hearing officers have name cards they place on the table. You can assume that the name on the card is how the hearing officer would like to be addressed, such as "Dr. Jones" or "Hearing Officer Jones". If there is no name card or you aren't sure how to address the hearing officer, and/or school attorney, ask at the beginning of the hearing how that should be done.

Due to the large volume of cases and the relatively small number of hearing officers, it is entirely possible and likely that the hearing officer will already know one or more attorneys involved in the case. This does not mean the hearing officer is in violation of legal standards for impartiality. If you have concerns, however, you may ask the hearing officer about it.

Length of Hearings

Part Three, Step 8 of this Guide addresses the timelines for completing a hearing. The hearing officer's Generally Applicable Pre-Hearing Directions address the length of time a hearing should last.

The timely resolution of due process hearings is not only of concern to the federal government, but in practical terms is best for the student, family, and educators. Therefore, every attempt will be made to conclude hearings within two full days. It is the intent of the hearing officers that hearings will extend no longer than four full days.

There are limited exceptions to this general rule, based upon the needs of the parties.

Some hearing officers assign a designated amount of time for each witness' testimony after conferring with the parties. The hearing officer will then monitor the time used during the hearing and notify the parties when the time frame is almost up. This keeps the proceedings moving forward and has worked successfully in many instances.

Pre-Hearing Conferences

Prior to the first hearing, the hearing officer may hold a pre-hearing conference by telephone or webcam with you and the school attorney if they deem it to be necessary. The purpose of the call is often to clarify the issues.



Hearing Officer's Opening Statement

The hearing will begin with the hearing officer's opening statement. The hearing officer will introduce themself, identify the parties, and state the general purpose of the hearing. The hearing officer will make sure you understand your right to be represented by an attorney. They will also explain the difference between an open (to the public) hearing and a closed (confidential) hearing, making sure you understand the difference. They will advise you that it will be closed unless you want it to be opened. The hearing officer will also advise the parent (or their representative) of the right to a free transcript, and the different formats for transcripts. LEAs are responsible for payment of their copy of the transcript. The hearing officer will make sure the parties exchanged witness and exhibit lists.

QUICK TIP

Sometimes before the hearing begins, the hearing officer will ask the parties whether they want informal time to discuss possible settlement. This is simply an effort to be sure that the parties have had all the pre-hearing opportunities they wanted to explore settlement. Consider taking this final opportunity to talk to the school about resolving the case, but do not feel compelled to do so, or to settle.

Opening Statement of Parties

Once the hearing officer has completed those initial aspects, each party will be asked for an opening statement, and it is likely that you will give yours first (because the parent is usually the one asking for a due process hearing). This is usually a 5 minute or less statement of the specific issues to be resolved at the hearing as well as how you want the hearing officer to rule and is like the information you provided when you requested a due process hearing. You can bring a prepared statement and read from if you choose. See Part Three, Step 16 on opening statements. After the opening statements, the hearing officer will typically re-state the issues precisely on the record, seeking confirmation from the parties of the issues. Thereafter, the hearing will address only those issues that have been identified, and the parties agreed to.

Order of Witnesses and Progression of Testimony

Typically, the party who requested the due process hearing will be the first to present its evidence. If you requested the hearing, be prepared to start with an opening statement, and then call your first witness to the stand. You can discuss with the hearing officer and the school attorney prior to the start of the hearing about the order of witnesses. Sometimes both you and the school will have filed a complaint to handle multiple issues. If that occurs, contact the hearing officer (copy the school attorney), asking how the presentation of evidence will occur, that is, whether you will be expected to go first, of if the school will.

Questioning Witnesses

Questions that a party is asking of its own witnesses is referred to as "direct examination" or "direct." Questions that a party is asking of the other side's witnesses is referred to as "cross examination" or "cross." Thereafter, you may see questions going back and forth (re-direct and re-cross). **Re-direct examination** consists of questions about information provided by the witness during cross examination. **Re-cross examination** consists of questions about information provided by the witness during re-direct examination. Here is how the presentation of a witness' testimony may proceed:

The purpose of re-direct and re-cross examinations are not to repeat what has already been addressed by the witness' testimony. Instead, re-direct and re-cross are limited to the information provided by the witness during cross examination (in the case of re-direct) and limited to the information provided by the witness during re-direct examination (in the case of re-cross).

- You call your witness. You ask them a series of questions (this is direct examination).
- When you are through questioning your witness, the school's attorney is given the opportunity to question your witness (this is cross examination).
- When the school's attorney is through asking questions of your witness, you are given the opportunity to ask questions based upon information the witness provided during cross

examination (this is re-direct examination).

- When you have completed your re-direct examination of your witness, the school's attorney may be given the opportunity to ask questions based upon the information the witness provided in response to your re-direct examination (this is re-cross examination).

When all of this has concluded, the hearing officer may ask questions. The hearing officer may also interrupt direct or cross examination to ask questions.

Beyond the Scope of Direct, Cross, Re-direct, or Re-cross Examination

Under strict rule of evidence, cross examination is supposed to be limited to facts and information addressed during direct examination. Likewise, re-direct examination (which follows cross examination) is supposed to be limited to facts and information addressed during cross examination. Otherwise, the same information is being covered again and again. It can be challenging for even the most experienced attorneys to keep track of what was covered on direct examination, as opposed to cross examination, for example. And there is often a disagreement as to whether a question is **beyond the scope** of what was covered in the prior questioning. Hearing officers are not required to follow strict rules of evidence, so you do not need to get too bogged down in this but understand generally that the same types of questions cannot be asked of a witness repeatedly.

When the hearing is proceeding, the hearing officer must have only one person speaking at a time. Otherwise, not only will it be difficult for the hearing officer to follow the case, but the court reporter will not be able to record the proceedings if there is more than one person speaking at a time.

This is more difficult than it seems! Do not be offended if the hearing officer tells you several times to wait until someone else has finished speaking before you begin. It is very common for the hearing officer to have to remind people of this.

Notes and Other Memory Refreshers

Witnesses often want to have notes in front of them when they testify to ensure they remember everything they want to say. A witness may use notes or other items to refresh their memory for the purpose of testifying. This is acceptable but be aware that the other side (and the hearing officer) is entitled to see the notes that the witness uses.

- If a witness uses notes or other items to refresh their memory the opposing party may:
    - Request to review the notes or other items;
    - Cross examine the witness on the notes or other items; and/or
    - Introduce the notes or other items as an exhibit.
- If a witness refuses to produce the notes or other items, the other party may request that all testimony based on those notes or other items be stricken from the record.

Offers of Proof

Prior to and throughout the presentation of your case, the school attorney may ask for an "offer

of proof". This means that the school attorney is not clear why you are presenting a witness or exhibit, or why you are asking particular questions of a witness. The request for an offer of proof alerts you to the fact that the attorney has a potential objection to that witness or exhibit or line of questioning. Explain to the hearing officer why you are proceeding the way you are. Likewise, an offer of proof may be asked for when a particular line of questioning seems objectionable to the other side.

> ***Example:*** "I would like an offer of proof for this line of questioning. The qualifications of the therapist are not an issue in this case; the frequency of the speech therapy is the issue."

(Mauet, 1980)



Expert Reports

By the time you get to the hearing, you will have decided how you will be presenting your expert's testimony, if you have one. You have the following options:

- Submit the expert's report into evidence as an exhibit;
- Have the expert attend the hearing and present testimony; or
- Have the expert testify by telephone or virtually at the hearing.

The Generally Applicable Pre-Hearing Directions cover expert reports as evidence. The rules about **expert reports** were made specifically for the purpose of making hearings more efficient. They explain how several different situations with respect to expert reports are handled and should be reviewed.

If your expert is not attending the hearing, you will submit their expert report to the hearing officer as an exhibit by referencing it in your testimony. This is the most cost-effective way to handle expert testimony.

On the other hand, this prevents the hearing officer from hearing directly from the expert and asking the expert questions. It prevents the school from challenging the expert's opinion through cross examination.

Many times, during direct examination of an expert, the expert will just read what they have written in the report when attending the hearing in some manner. Since the expert is not adding anything beyond what is already in the report, it does not make sense to take this time to have them do so, when the hearing officer can read the expert report on their own. It is not acceptable to have an expert simply read their

report into the record. In other words, the report "shall speak for itself".

Other times, however, the expert may need to explain certain portions of their report. This is acceptable. In other words, the expert's testimony is going to go beyond simply reading what they have written in the report.

Your expert's testimony will be handled in one of two ways:

1. Your expert has nothing to add beyond what is already written down in their report. The report, itself, will serve as the expert's direct examination testimony. The school's attorney will be permitted to cross examine the expert. (See Part Six: "Questioning Witnesses" and "Beyond the Scope of…" for information on direct/cross/re-direct/re-cross examination). You will then tell the hearing officer that you want the expert report to be an exhibit; or

2. There are areas of the report that your expert would like to explain or elaborate on. You will ask questions of your expert about these areas only. Therefore, the expert's direct testimony will consist of 1) what is written in the report; and 2) what they've testified to in response to your questioning. The school's attorney will be permitted to cross examine the expert. You will then have the opportunity to ask questions on re-direct examination (See Part Six: "Questioning Witnesses" and "Beyond the Scope of…" for information on direct/cross/re-direct/re-cross examination). You will then tell the hearing officer that you want the expert report to be an exhibit.

Taking Breaks at the Hearing

The hearing officer will determine when breaks occur and how often. If you need to take a break from the proceedings, for whatever reason, let the hearing officer know that you need to do so. Your request, if reasonable, will likely be granted. The hearing officer will also address, prior to the hearing or before the hearing begins, how mealtime breaks will be handled. Each school handles lunch breaks differently, and you may choose to participate, or not, in each instance:



- Some school will order lunch for all due process participants, with no charge to participants.

- Some schools will pass around a menu, take orders, and collect money.

- Some schools will make their cafeterias available to the participants, with each participant paying for their lunch.

- The hearing officer may allow the participants to leave school grounds and get lunch at any surrounding restaurants.

(This tends to take the most time, which cuts into valuable hearing time, so it is not the preference of some hearing officers).

- Regardless of any of the above, you may choose to bring your own lunch, if that is your preference. Do not count on having access to a refrigerator to store your lunch until lunchtime.

Closing Arguments

When all the evidence has been introduced, the hearing officer will ask for a closing statement from each party. Your closing statement should summarize the issues, the evidence presented and the remedy you seek. At the hearing officer's discretion, it may be done verbally, in which event you may read from a pre-written paper; or you may be permitted to hand the hearing officer that paper; or the hearing officer may ask that the parties submit written closing statements by a specific date.

The Decision Due Date

At the final hearing, the hearing officer will typically remind the parties when the decision due date is. This is the date by which the hearing officer will have written and distributed to the parties their decision (see Part Three, Step 8: Understand Timelines and the Decision Due Date for more information).

The Decision

You will know at the beginning of the case when the decision due date will be. Throughout the proceedings, if there are any changes to the decision due date, the hearing officer will notify you. At the final hearing, the decision due date will again be addressed so that you know the (latest) date upon which you will receive the hearing officer's decision.

Appeals

If you are dissatisfied with the hearing officer's decision, and believe that legal errors have been made, you may **appeal** it to the state (Pennsylvania Commonwealth Court) or federal district court. The hearing officer will give you appeal instructions with the decision. Although sometimes a court clerk may be able, or willing, to provide you some assistance on how to file documents, there are complexities to doing this that make it preferable that you



have an attorney do so on your behalf. At a minimum, you are encouraged to consult with any of the advocacy groups listed in the Procedural Safeguards Notice.

Parties to an Appeal

Because the due process hearing is between the parent and the school, these are typically the parties to any appeal as well. Although the hearing officer wrote the decision, they are not a party to the case. Therefore, courts typically dismiss hearing officers when they are named as a party on appeal. See Lou V Owen J. Roberts Sch. Dist. 2016 U.S. Dist. LEXIS 148908 at 19-20 (E.D. Pa. Oct. 27,2016) (Special education hearing officer entitled to quasi-judicial immunity from suit when parent challenged hearing officer's authority under the IDEA to order an independent educational evaluation). Likewise, ODR, as the administrator, is typically dismissed from any such appeals at the beginning of the case because it is not a party to a due process hearing, nor does it play a role in the due process hearing between the parent and school.

Certification of the Record

ODR will be notified by the court when it wants a copy of the due process hearing transcripts, and any exhibits entered into the record at the hearing for purposes of the appellate review. ODR will then work with the hearing officer to gather up this information and send it to the court. This is referred to as "certifying the record".

Decision of Review

ODR is not permitted, by the U.S. Department of Education, Office of Special Education Programs (OSEP), to review hearing officer decisions for the purpose of seeing if the decisions are "correct". Moreover, OSEP also prohibits offices such as ODR to change a hearing officer decision. Instead, OSEP directs ODR to review hearing officer decision to identify any hearing officer training needs. In accordance with the OSEP directives, ODR contracts with an independent attorney who reviews all final hearing officer decisions and makes recommendations to ODR on any gaps in hearing officer training. See OSEP Dispute Resolution Self-Assessment at page 22 ("While States with one-tier systems cannot review decisions for the purpose of seeing if the decisions are "correct," and States do not have the authority to change a hearing officer's decision, decisions that have been issued should be reviewed to identify hearing officer training needs.).

Final Comments

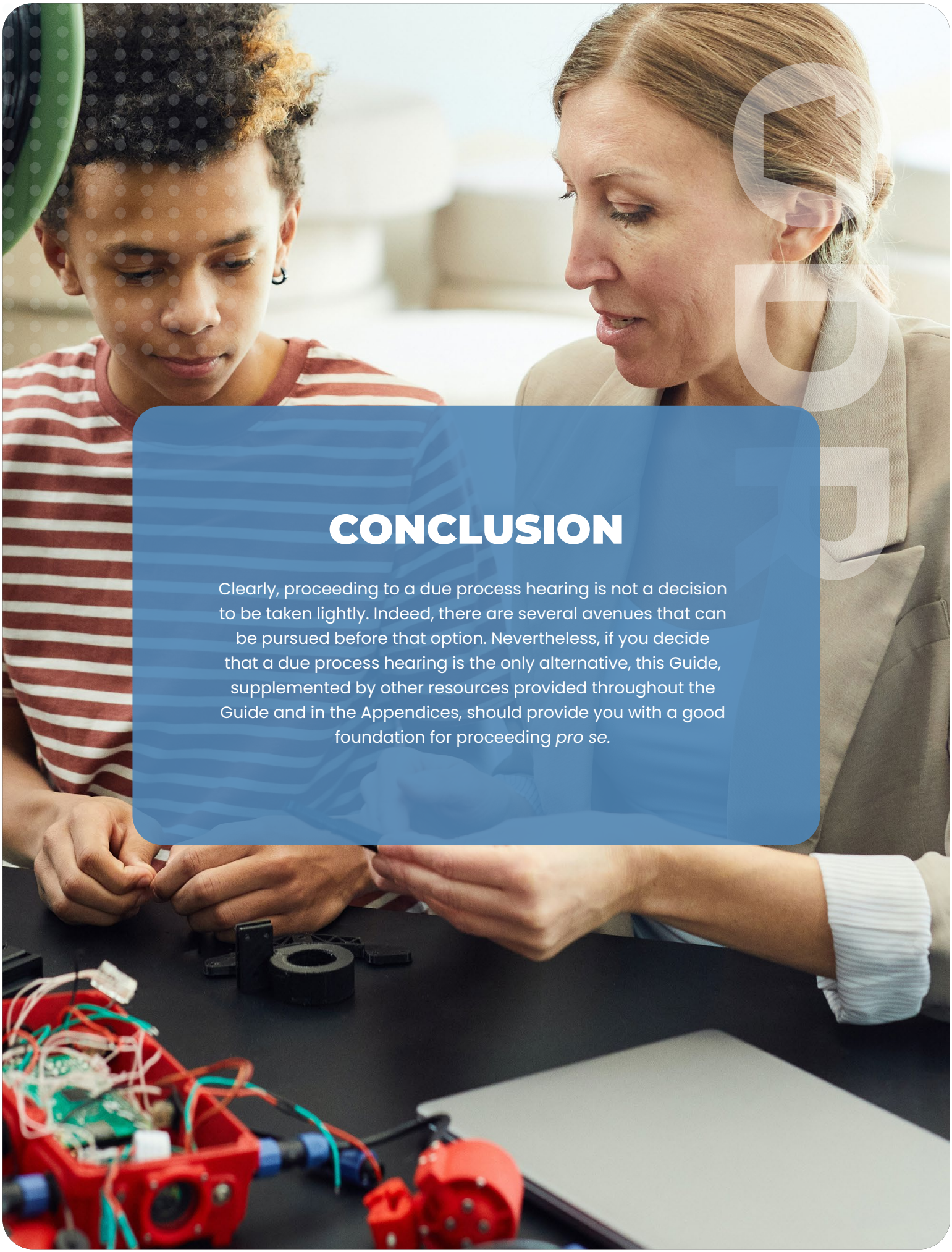
This Guide contains a lot of legal information. The hearing officer will understand that you are not an attorney and, therefore, will not be as familiar with legal proceedings as is the school attorney. Throughout the course of the hearing, you may ask questions of the hearing officer regarding procedures. However, understand that the hearing officer is legally required to remain impartial throughout the course of the proceedings. They cannot assist you in the presentation of your case, as an attorney (or advocate) would. Their assistance will be limited to explaining the procedures that will be followed during the hearing. Hearing officers cannot give legal advice to a party on how to present their case.

CHECKING IN

- On the day of the hearing, make sure you have all your exhibits, the notice of hearing, your own notes, and anything you might need during the day (beverages, snacks, etc.).
- Check your messages before leaving for the hearing to make sure nothing has been delayed or cancelled.
- Be prepared to give an opening statement that addresses the specific issues to be resolved and how you would like the hearing officer to rule.
- When questioning a witness, understand how the presentation of a witness' testimony usually proceeds. This includes direct examination, cross examination, re-direct examination, and usually re-cross examination.
- The school attorney may ask you for an offer of proof. If this happens, you will need to explain to the hearing officer why you are proceeding the way you are. You can also ask for an offer of proof if you have concerns about the opposing party's witnesses or exhibits.
- Determine how your expert's testimony will be presented.
- Have your closing arguments prepared so that you can provide them to the hearing officer in the manner he or she chooses.
- If you are dissatisfied with the hearing officer's decision, and believe that legal errors have been made, you may appeal the decision in court.



ODR
THE OFFICE FOR DISPUTE RESOLUTION



CONCLUSION

Clearly, proceeding to a due process hearing is not a decision to be taken lightly. Indeed, there are several avenues that can be pursued before that option. Nevertheless, if you decide that a due process hearing is the only alternative, this Guide, supplemented by other resources provided throughout the Guide and in the Appendices, should provide you with a good foundation for proceeding *pro se*.

GLOSSARY

5-day disclosure letter: a required letter from both parties (parent and school) listing witnesses and exhibits to be presented at a due process hearing.

Advocate: a person who is knowledgeable about the special education process and requirements and can help a parent seek a specific service or program.

Appeal: filing papers with state or federal court within a specified time frame, explaining why the hearing officer's decision is legally incorrect and asking that it be changed.

Appeals Panel: no longer in existence, the Appeals Panel decided appeals of hearing officer decisions prior to the cases being appealed to state or federal court. See Appeal above.

Beyond the scope of: a legal term that means the parent or school attorney has gone beyond the subject area to be addressed.

Chapter 14: the section of Pennsylvania's education law that provides special education regulations in compliance with federal education law, namely IDEA 2004.

Chapter 15: the section of Pennsylvania's education law based on Section 504 of The Rehabilitation Act of 1973, which apply to students who have a disability but do not qualify for special education services under Chapter 14.

Chapter 711: the section of Pennsylvania's education law that provides special education regulations in compliance with federal education law, and specifically pertains to students with disabilities who are enrolled in a charter, cyber charter, or regional charter schools.

Compensatory education: additional or supplemental educational services provided to a student who did not receive a free appropriate public education (FAPE) to make up for the loss of not receiving a FAPE.

ConsultLine: (800-879-2301) the toll-free helpline to assist parents of children with disabilities who have questions concerning their children's special education programs.

Cross examination: questions that a party asks of the other side's witnesses.

Decision due date: the date by which the hearing officer will have written and distributed their decision to the parties.

Deposition: the process of taking a witness' testimony outside the scheduled hearing process, used on the very rare occasion when there is no other way to get the witness' testimony.

Direct examination: questions that a party asks of its own witnesses.

Due process complaint notice: the written request for a due process hearing.

Due process hearing: a legal proceeding like a court proceeding wherein a hearing officer is presented with evidence by disagreeing parties and writes a decision.

Educational records: records that directly relate to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution.

Evaluation: a series of tests and observations performed by a multidisciplinary team to find out if a child has a disability and needs special education services.

Evidence: exhibits and witnesses used at the due process hearing to support the party's case and your case.

Exhibits: the documents used as evidence to support your case during the due process hearing.

Expedited hearing: a special education hearing that takes place within a much shorter timeline due to a disagreement with a disciplinary or extended school year decision.

Expert reports: a report written by an expert that includes the expert's opinion and is used as evidence in the due process hearing.

Expert witness: a person with specialized knowledge about a subject who testifies about their opinion about a matter.

Extended school year: the delivery of special education and related services during summer vacation or other extended periods when a school is not in session.

Free Appropriate Public Education (FAPE): a federal mandate that requires all children with disabilities to receive appropriate educational programs, tailored to their unique needs, from which they receive educational benefit at no cost to the families.

Generally Applicable Pre-Hearing Directions: a document prepared by the hearing officers which explains their generally accepted procedures to follow at a hearing.

Gifted Individualized Education Program: a written statement of a gifted child's current level of educational performance and of the child's individualized plan of instruction.

Hearing officer: a trained and impartial individual who conducts a due process hearing.

Hearing officer decision: the document a hearing officer writes after the hearing is completed outlining the case and the hearing officer's legal conclusion.

Hearsay: statements made by a person at some point other than at the hearing and presented at the hearing to prove the truth of a statement made.

IEP Facilitation: a dispute resolution process offered by the Office for Dispute Resolution where a trained, impartial facilitator attends an IEP meeting to assist the IEP team.

IEP Team: the group of individuals, including the parents of the child, who develop the IEP.

Individualized Education Program (IEP): a written statement of a child's current level of educational performance and of the child's individualized plan of instruction.

Individualized Family Services Plan (IFSP): a written plan for infants and toddlers receiving early intervention that identifies services and supports so that family members and early education programs are actively engage in promoting the child's learning and development.

Independent Educational Evaluation (IEE): an evaluation conducted by a qualified examiner who is not employed by the school.

Individuals with Disabilities Education Act (IDEA): a federal law that provides legal authority for early intervention and special education services for children from birth to age 21.

Interim alternative educational placement: a disciplinary placement other than the student's current educational placement.

Joint exhibits: documents that both parties intend to use in a hearing.

Jurisdiction: the authority of the hearing officer to hear and make a decision about an issue.

LEA: this refers to the local educational agency, or school providing education to your child

Leading the witness: asking a question in such a way that is suggests the answer to the witness.

Mediation: voluntary dispute resolution process where an impartial mediator facilitates problem-solving discussions between parent and school personnel.

Motions: written or oral requests to the hearing officer asking that certain actions occur.

Notice of Hearing: a document from the Office for Dispute Resolution listing the time and date of the hearing.

Notice of Recommended Educational Placement (NOREP): a document that summarizes for the parents the recommendations of the school for the child's educational program and other actions taken by the school.

Objections: oral or written challenges to evidence and witnesses presented by a party.

Offer of proof: explanation to a hearing officer as to why a party should be permitted to present a witness, use an exhibit, ask certain questions, etc.

Opening statement: the opportunity at the beginning of a due process hearing for each party to provide a brief summary of the case and explain exactly what issues the hearing officer is being asked to decide.

Party/Parties: the generic name given to the parent and school involved in a due process hearing.

Pennsylvania Code: a publication of Pennsylvania that organizes all the rules and regulation from the State Government; regulations about education are found under Title 22.

Pennsylvania Training and Technical Assistance Network (PaTTAN): an initiative of the Bureau of Special Education (BSE), Pennsylvania Department of Education (PDE), PaTTAN works in partnership with families and local educational agencies (LEAs), to support programs and services to improve student learning and achievement.

Pre-hearing conference: a telephone conference between the hearing officer and both parties to address any issues that need to be handles prior to a hearing.

Prior written notice: written notice to the parents by the school before it proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child; usually called a NOREP in Pennsylvania.

Pro se: a Latin term that means an individual is not represented by an attorney.

Re-cross examination: questions about information provided by the witness during re-direct examination.

Re-direct examination: questions about information provided by the witness during cross examination.

Reevaluation: a series of tests and observations performed by a multi-disciplinary team to find out if a child with a disability continues to require special education and related services.

Regulations: interpretation of the state or federal statute which provides more specific information about how the statute is to be followed.

Resolution Meeting: (also called a resolution session) a requirement when a due process hearing was initiated by parents (unless the parties waive this requirement or use mediation instead of the resolution meeting, this meeting occurs before a due process hearing can proceed and gives the school the opportunity to resolve the matter without the need for a hearing.

Resolution Meeting Agreement: a legally enforceable document written when an agreement is reached at a resolution meeting.

Resolution Meeting Data Form: a document used to report resolution meeting information and outcomes to the Pennsylvania Department of Education, Bureau of Special Education.
Resolution period: the first 30 days (or 15 days when the hearing is expedited) after the school has received the due process complaint form from the parent.

Section 504 of the Rehabilitation Act of 1973: a federal law that protects the civil rights of individuals with disabilities to ensure they are not discriminated against.

Settlement: a private agreement between the parent and school which resolves the dispute between them.

Special Education Director: a general term for a special education administrator who oversees school district special education programs.

Statute: a law.

Statute of limitation: the period of time a party has to file for a due process hearing.

Stenographer: also referred to as a "court reporter", this person records (types) everything that is said on the record at a hearing.

Subpoena: a legal order by a hearing officer directing a person to attend a due process hearing or provide records.

Sufficiency challenge: the process of alerting a hearing officer that a party does not believe that a due process complaint notice contains all the information required by law.

Transcript: the document prepared by the stenographer (court reporter) of everything that is said on the record at a due process hearing.

Tuition reimbursement: payment made by a school for the cost of the student's education in a private program or private school.

Witnesses: those people who testify at the due process hearing (including the parent).

ADDITIONAL RESOURCES

There are several excellent resources for tips and suggestions on effective communications between parents and schools:

- ConsultLine has a webpage of family resources https://odr-pa.org/parent-resources/parent-resource-library/

- The Pennsylvania Training & Technical Assistance Network (PaTTAN) has a section dedicated to information for parents on their website.

- CADRE, The Center for Appropriate Dispute Resolution in Special Education, has a wealth of resources for parents on their website.



APPENDICES

APPENDIX A: SAMPLE DUE PROCESS COMPLAINT

Outline of a "Due Process Complaint Notice"

Date

Method of Correspondence (Example: "Via e-mail and first class mail")

Name of School District's Attorney or Special Education Director
Address

Re: Student Name/School District Name – Due Process Complaint Notice

Dear [School District's Attorney or Special Education Director],

Paragraph 1: Introduce yourself and your child. Let the reader know that this is a Due Process Complaint, and provide the basic information required in the complaint. Example: My name is [name of parent]. This Due Process Complaint filed on behalf of my [son or daughter, first and last name], against the [name of school district]. We reside at [address].

Paragraph 2: Provide relevant information about your child's diagnoses and identification as a special education student. Write a brief statement (one or two sentences) about why you are filing the complaint.

You may want to use the following questions as a guide for this paragraph:

- Is the student identified as a special education student? If yes, when were they identified?
    - What is the date on the first Evaluation Report and your child's first IEP?
- What is the disability category under which they have been identified by the school district?
- What type of special education services do they currently receive from the school district?
- Why are you filing this complaint at this time? What made you decide to file it at this time?

Nature of the Problem

This section should describe the problem that led you to file a Due Process Complaint. It should describe the problem in enough detail that the school district will understand why you are filing the complaint and what issues you will be asking the Hearing Officer to decide. In this section, you may want to describe why you believe the school district is violating the law, or why your position is legally correct. You may need to educate yourself on the law in order to write this section of the complaint. You will find resources on how to learn about the law in this manual, as well as phone numbers for organizations you can call for assistance in understanding the law.

Proposed Resolution

This sectin should describe what you are asking the school disctrict to do in order to resolve your complaint.

For example, depending on the issues involved in your complaint, you may be asking the school district to do one or more of the following in order to resolve your complaint:

- Provide an evaluation for your child
- Provide an apprpriate placement for your child
- Provide the services necessary for your child to receive an appropriate education in the least restrictive environment
- Provide educational services to make up for the services they have failed to provide in the past
- Conclude that your child's behaviors are a manifestation of their disability and that they cannot change your child's placement for disciplinary reasons

Note: Your proposed resolution may not include any of the examples listed above. Your proposed resolution should be specific to your complaint, and should describe what you want the school district to do to resolve your complaint.

Sincerely,

Your Name

cc: Office for Dispute Resolution (via e-mail)

Important Information

You have the option of filling out the "Due Process Complaint Form" that is available through the Office for Dispute Resolution. You may also choose to write your Due Process Complaint Notice in the form of a letter to the School District or the School District's Attorney (a sample of this format is included above). To file the complaint, you must send a copy to either the School District or their Attorney. You must also send a copy of your complaint to the Office for Dispute Resolution (ODR). To file your complaint with ODR, attach it to an e-mail addressed to odr@ord-pa.org.

It is important for you to understand that your complaint must provide enough information to allow the School District to understand why you are filing the complaint and what you are asking them to do to resolve it. If you do not, your complaint may be deemed insufficient. If your complaint is deemed insufficient, you may ask the Hearing Officer for an opportunity to amend it. It is also important for you to understand that your complaint must include every issue that you would like the Hearing Officer to decide. If you fail to raise an issue in your complaint, the Hearing Officer will not permit you to raise that issue at your Due Process Hearing.

This document provides an example of one way to write a Due Process Complaint Notice. You do not have to follow this format, but you MUST include the following information in your complaint:

1. Name of Child
2. Name of School Child Attends
3. A description of the nature of the problem, including facts related to the problem
4. A proposed resolution to the problem, to the extent that you know of one and can offer one

Sample "Due Process Complaint Notice"

May 20, 2021

Via e-mail and first-class mail

Mr. Joseph Smith, Esquire
Smith & Lucas
555 Main St.
Hometown, PA 15155

Re: Jane Doe/ Hometown School District – Due Process Complaint Notice

Dear Mr. Smith,

My name is Joanna Doe. This is a Due Process Complaint filed on behalf of my daughter, Jane Doe, against the Hometown School District. We reside at 123 Main Street Hometown, PA 15155, an address located within the Hometown School District.

Jane is an 18-year-old student with Down Syndrome. She currently attends 12th grade at Hometown High School. The District has identified Jane as a student in need of special education, with a primary disability of Intellectual Disability and a secondary disability of Speech and Language Impairment. Through her IEP, Jane receives learning support, physical therapy, occupational therapy, and speech-language therapy.

Nature of the Problem

At Jane's most recent IEP meeting, on May 1, 2021, the school district recommended that Jane graduate at the end of this school year. We disagree with the District's proposal for graduation and file this Due Process Complaint seeking an order to prevent the District from graduating Jane at the end of this school year.

We agree with Jane's learning support teacher that Jane can still make progress on her transition goals and can benefit from continuing on in school past this school year. Jane has also expressed an interest in continuing her training through the school's transition to work program. The job coach reports that Jane's skills have improved, and she would benefit from continuing in this program.

After receiving the NOREP at Jane's more recent IEP meeting, we request mediation with the District. We participated in mediation on May 15, 2021 but were unable to resolve our disagreement. Following the meeting, the District again issued a NOREP recommending that Jane graduate at the end of this school year. We again disagreed and now file this Due Process Complaint Notice.

The Individuals with Disabilities Education Act (IDEA) requires public schools to provide students with IEPs a free appropriate public education (FAPE) through the age of 21. Jane is not yet 21 years old. She does not want to graduate. Her learning support teacher and job coach believe she would

benefit from continuing in school and say she can still make progress on her IEP goals. She is legally entitled to continue in school beyond this year and should not graduate.

Proposed Resolution

To resolve this complaint, we seek an order that the school district:

1. Continue to provide appropriate education to Jane until she turns 21 or until her IEP team determines that she has satisfactorily completed her IEP.

Please feel free to contact me if you have any questions or would like to discuss this with me.

Sincerely,

Joanna Doe

Joanna Doe
(Parent of Jane Doe)

cc: Office for Dispute Resolution (via e-mail or letter)

APPENDIX B: RESOLUTION MEETING OPTIONS SHEET

Resolution Meeting Options

When parents request a due process hearing, the Individuals with Disabilities Education Act (IDEA) requires the parent and local education agency (LEA) to participate in a "resolution meeting". The only exceptions to this rule are when both parties agree in writing to waive the resolution meeting, or both parties agree to use mediation instead of the resolution meeting. The purpose of the meeting is to attempt to resolve the dispute so that a hearing isn't needed.

If the parties participate in a resolution meeting, there are several choices:

- The parent and LEA may attend the resolution meeting and attempt to resolve the dispute; or

- The parent and LEA may agree to have an ODR Facilitator attend the resolution meeting to assist the parties in reaching agreement; or

- The parent and LEA may agree to participate in Mediation instead of the Resolution Meeting.

Both Mediation and Resolution Meeting Facilitation are available at no cost to the parties. Both Mediation and Resolution Meeting Facilitation are voluntary and therefore both sides must agree in order to move forward.

To initiate either Mediation or Resolution Meeting Facilitation, please complete and sign the appropriate form(s) and submit to ODR. The form(s) can be found on the ODR website along with more information about both Mediation and Resolution Meeting Facilitation.

You may also contact the following ODR staff for assistance with Mediation or Resolution Meeting Facilitation:

Lori Shafer: 800-222-3353, Option 2 (mediation assistance); or
Kati Clendenin: 800-222-3353, Option 5 (resolution meeting facilitation).

APPENDIX C: RESOLUTION MEETING DATA FORM

Resolution Meeting Data Sheet

Instructions:

The Bureau of Special Education (BSE) and the Bureau of Early Intervention Services (BEIS) have general supervisory authority for enforcement of the Individuals with Disabilities Education Act (IDEA), including the Act's resolution meeting requirements. As part of that responsibility, these Bureaus monitor the Preschool Early Intervention Program/LEA's compliance with all statutory requirements pertaining to the resolution meeting process through review of the information provided on this form.

In addition to the Bureau's use of this data for compliance purposes, The Office for Dispute Resolution (ODR) requires the information for federally-mandated statistical compilation, and the hearing officer requires the information for timeline purposes. Therefore, for all three reasons, it is essential that the LEA complete and return this form in accordance with timeframes set forth within the document. Late submission of the form may result in the Preschool Early Intervention Program/LEA being contacted by BSE or BEIS. After the form is completed, please email it to the Office for Dispute Resolution; the hearing officer; and the parent or counsel.

The *Resolution Meeting Data Sheet* applies only to parent-initiated due process hearings under IDEA. LEA-initiated hearings and hearings pertaining solely to Chapters 15 and 16 of the regulations do not have resolution meeting requirements.

***

Child/Student Name:

LEA or Preschool Early Intervention Program:

LEA Intermediate Unit Number:

ODR File No. :

Date LEA or Preschool Early Intervention Program received notice of parent's due process complaint:

I. Resolution Period Data

1. **Please answer these questions if a Resolution Meeting was scheduled and held. If not, skip this question and proceed to question 2.**

   a. Date of resolution meeting*

   * In order to be in compliance with the regulation, the date in (a) must be within 15 days of the LEA or Preschool Early Intervention Program receipt date of the due process complaint notice.

   If not, please explain:

   b. The LEA or Preschool Early Intervention Program makes the following assurances:

   - Relevant members of the student's IEP team were present at the meeting in accordance with 34 C.F.R. §300.510(a)(1).

     Yes ☐ No ☐

     If no, please explain:

- The meeting included "a representative of the (LEA/Preschool Early Intervention Program) who has decision-making authority on behalf of (the LEA)" in accordance with 34 C.F.R. §300.510(a)(1)(i).

  Yes ☐ No ☐

  If no, please explain:

- Regarding attorneys at the resolution session, 34 C.F.R. §300.510(a)(1)(ii):

  ☐ Attorneys participated at the request of both parties; OR

  ☐ Parents did not request participation of an attorney, and therefore LEA or Preschool Early Intervention Counsel was not present; OR

  ☐ Parent attorney participated but LEA or Preschool Early Intervention Program Counsel did not.

c. What was the result of the resolution meeting? (Select one)

☐ **Full resolution** reached at the meeting.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the resolution meeting.

☐ **Partial resolution** reached at the meeting.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the resolution meeting.

☐ **Preliminary agreement** reached at the resolution meeting, or

the parties are continuing settlement discussions during the resolution period. The parties will finalize the agreement in its entirety during the 30-day resolution period.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the resolution meeting.

OR

☐ **Preliminary agreement** reached at the resolution meeting, but parties cannot finalize the agreement in its entirety during the 30-day resolution period.

Note: When the parties are unable to resolve the matter in its entirety during the 30-day resolution period, due process proceedings will commence at the expiration of the resolution period unless the due process hearing request is withdrawn. Any settlement agreement occurring or finalized after the expiration of the 30-day resolution period does not constitute a resolution meeting agreement, but rather a private settlement agreement between the parent and the LEA or Preschool Early Intervention Program.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the resolution meeting.

☐ **No resolution agreement** was reached.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the resolution meeting.

☐ **After the resolution meeting started**, but before the end of the 30-day resolution period, the parties agreed in writing that no agreement was possible.

The date of the written agreement was _____

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the date upon which the non-agreement document was signed

by both parties, but in no event will the form be returned later than three (3) business days following the expiration of the 30-day resolution period.

2. Please answer these questions if the resolution meeting was not held.

The resolution meeting was not held for this reason:

☐ Both parties agreed in writing to **waive** the resolution meeting on _____

You have completed the form. Please sign and return the form to ODR, the hearing officer, and parent or counsel within three (3) business days of the waiver date.

☐ Parent **withdrew** the request for due process.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and parent or counsel within three (3) business days of the parent's withdrawal.

☐ The case **settled** prior to the expiration of the 15-day time period.

You have completed the form. Please sign and return the form to ODR,the hearing officer, and the parent or counsel within three (3) business days of the settlement date.

☐ The 30-day resolution period has ended; **parent(s) has declined to participate** in the resolution meeting after reasonable efforts have been made and documented in accordance with 34 CFR § 300.322 (d).

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days following the expiration of the 30-day resolution period.

☐ The parties **chose mediation** in lieu of the resolution meeting.

Proceed to question 3.

3. **For parties who chose mediation in lieu of a resolution session, what was the outcome?**

☐ **Agreement reached** on all issues.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the mediation, but in no event more than three (3) business days following the expiration of the 30-day resolution period.

☐ **Partial agreement** reached at mediation.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the mediation, but in no event more than three (3) business days following the expiration of the 30-day resolution period.

☐ After the mediation started, but before the end of the 30-day period, the **parties agreed in writing that no agreement was possible**. The date of the written agreement was _____

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the date upon which the non-agreement document was signed by both parties, but in no event more than three (3) business days after the expiration of the 30-day resolution period.

☐ **Preliminary agreement** was reached at the mediation session, or the parties are continuing settlement discussions during the resolution period. The parties will finalize the agreement in its entirety during the 30-day resolution period.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of complete resolution of this matter, but in no event more than three (3) business days after the expiration of the 30-day resolution period.

OR

☐ **Preliminary agreement** reached at mediation, but parties cannot finalize the agreement in its entirety during the 30-day resolution period.

Note: When the parties are unable to resolve the matter in its entirety during the 30-day resolution period, due process proceedings will commence at the expiration of the resolution period unless the due process hearing request is withdrawn. Any settlement agreement occurring or finalized after the expiration of the 30-day resolution period does not constitute a resolution meeting agreement, but rather a private settlement agreement between the parent and the LEA or Preschool Early Intervention Program.

You have completed the form. Please sign and return the form to ODR, the hearing officer, and the parent or counsel within three (3) business days of the mediation, but in no event more than three (3) business days after the expiration of the 30-day resolution period.

☐ The parties agreed in writing to continue the mediation at the end of the 30-day resolution period.

Note: If later the parent or public agency withdraws from the mediation process, the 45-day timeline begins the next day.

Date of written agreement: _____

You have completed the form. Please sign and return the form to ODR, the hearing officer and the parent or counsel within three (3) business days of the signed agreement, but in no event more than three (3) business days after the expiration of the 30-day resolution period.

☐ **No agreement** was reached at mediation.

You have completed the form. Please sign and return the form to ODR, the hearing officer and the parent or counsel within three (3) business days of the mediation, but in no event more than three (3) business days after the expiration of the 30-day resolution period.

4. **Comments:**
[If there is pertinent information about this case not otherwise captured on this form, please provide it here]:

[Print name of person completing form]

[Title of person completing form]

[Phone number of person completing form]

[Email address of person completing form]

_____
[Signature of person completing form]
[Electronic signature acceptable]

_____
[Date]

For ODR Internal Purposes Only

	Initials/Date
Received by ODR:	
Excel entry:	
Database Entry:	

Forward to Case Manager:

To BSE:

APPENDIX D: SAMPLE MOTION

Jones Law Firm
P.O. Box 388
Centery City, PA 99999
August 1, 2020

Via Electronic Mail and First-Class Mail
Hearing Officer
P.O. Box 91
Pittsburgh, PA 10000

Re: Student vs. Pennsylvania School District, ODR File No. 12345-1112 Motion to Dismiss

Dear Hearing Officer:

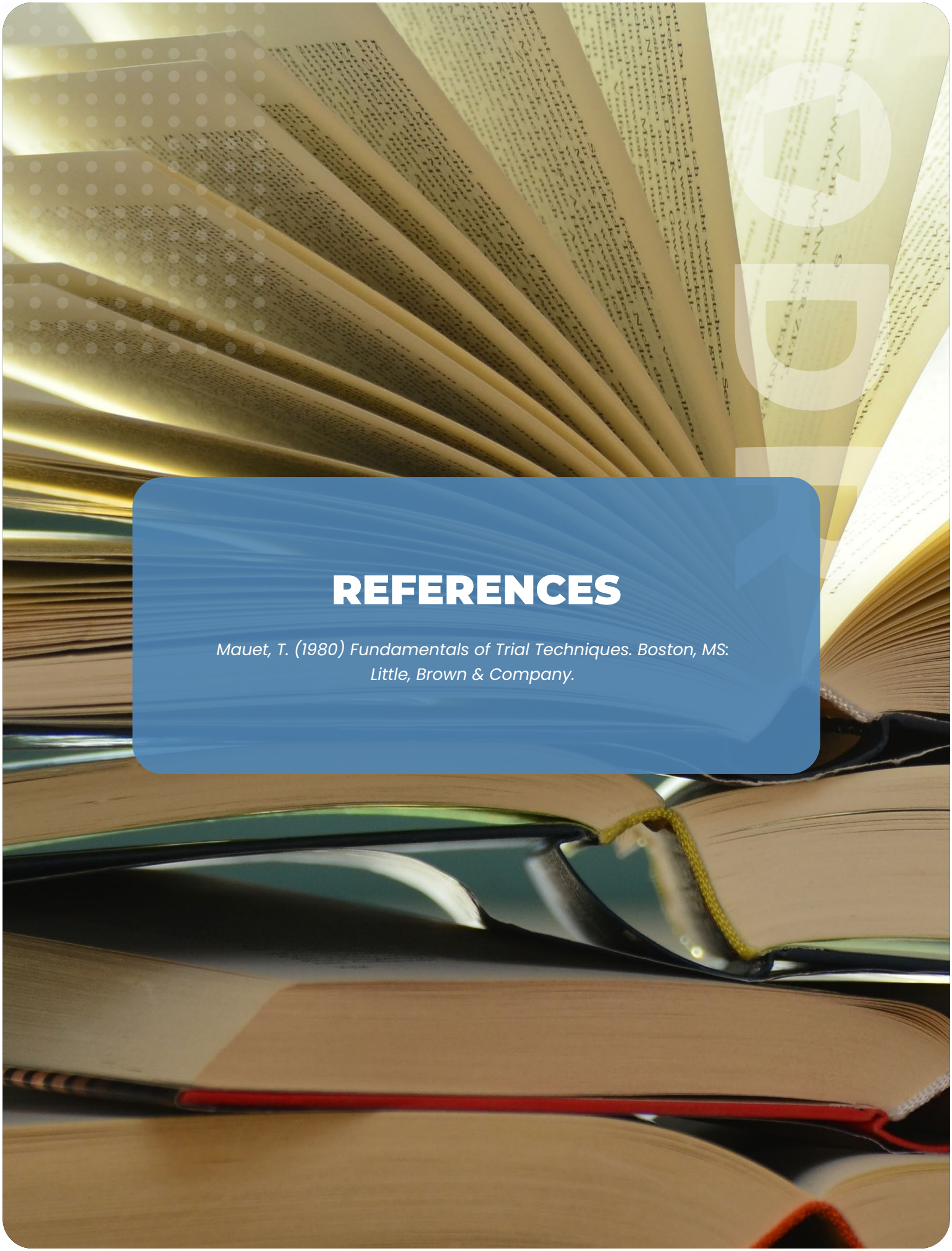
This office represents the Pennsylvania School District in this matter. Following our review of the Parents' due process complaint, we believe the Parents have attempted to raise one or more issues which do not set forth a valid claim. Therefore, please accept this Motion to Dismiss on behalf of the District or, in the alternative, a challenge to the sufficiency of the Parents' complaint.

There are specific requirements for a due process complaint. 34 C.F.R. § 300.508(a), (b), and (c). In their complaint, the Parents fail to provide a "description of the nature of the problem" as required by 34 C.F.R. § 300.508(b)(5). The Parents also fail to state a "proposed resolution of the problem to the extent known and available" as required by 34 C.F.R. § 300.508(b)(6). The District suggests that this information is necessary so that it can understand what issues the Parents are rising so that it can propose a solution. Without this information, the District is not able to conduct the required resolution meeting or properly prepare for the hearing scheduled for August 29, 2011.

The District respectfully requests that the hearing officer conclude that the due process complaint fails to state the proper claim and dismiss the complaint.

Should the hearing officer decline to dismiss the complaint, the District requests that the Parents be required to amend their complaint in conformity with 34 C.F.R. § 300.508, and that the hearing scheduled for August 29, 2020, be rescheduled according to the adjusted timelines set forth in 34 C.F.R. § 300.508(d)(4).

Very truly yours,
Mary Jones, Esquire



REFERENCES

Mauet, T. (1980) Fundamentals of Trial Techniques. Boston, MS: Little, Brown & Company.



6340 Flank Drive, Harrisburg, PA 17112-2764
(800) 222-3352; (717) 901-2145
TTY Users: PA Relay 711
www.odr-pa.org