

Basic Education Circulars (Pennsylvania Code)

Procedural Safeguards

Attachment to *Basic Education Circular*
SUBJECT: Implementation of Chapter 15
22 Pa. Code Chapter 15
DATE OF ISSUE: July 1, 1999
DATE OF REVIEW: June 2009

Dear Parent:

As part of the protections available to you if we cannot agree as to what related aids, services, or accommodations should or should no longer be provided to your child, the procedural safeguard system may be used to resolve the dispute. Following are some details of the avenues available to use.

Parental request for assistance.

Parents may file a written request for assistance with the Department of Education if the school district is not providing the related aids, services, and accommodations specified in the service agreement and/or the school district has failed to comply with the regulations in Chapter 15 of the State Board.

The Department of Education will investigate and respond to requests for assistance and, unless exceptional circumstances exist, will, within 60 calendar days of receipt of the request, send to the parents and school district written response to the request.

Written requests should be addressed to:

Pennsylvania Department of Education
Bureau of Special Education
333 Market Street
Harrisburg, PA 17126
(717) 783-6913

Informal Conference

Parents may file a written request with the school district for an informal conference with respect to the identification or evaluation of a student, or the student's need for related aid, service, or accommodation. Within 10 school days of receipt of the request, the school district shall convene an informal conference. At the conference, every effort shall be made to reach an amicable agreement.

Formal due process hearing

Parents may file a written request with the school district for an impartial due process hearing. The hearing shall be held before an impartial hearing officer.

Following are some details about the due process hearing:

The hearing shall be held in the local school district at a place reasonably convenient to the parents. At the request of the parents, the hearing may be held in the evening.

The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a closed hearing.

If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public.

If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public.

The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. The decision shall be based solely upon the substantial evidence presented at the hearing. The hearing officer shall have the authority to order that additional evidence be presented.

A written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

Parents may be represented by any person, including legal counsel.

A parent or a parent's representative shall be given reasonable access to all educational records, including any tests or reports upon which the proposed action is based.

Any party may prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing.

A parent or a parent's representative has the right to compel the attendance of and question witnesses of the school entity or agency who may have evidence upon which the proposed action might be based.

Any party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

The Secretary of Education will contract with the Right to Education Office for the services of impartial hearing officers, who preside over initial hearings on behalf of local districts on behalf of the PA Department of Education and may compensate hearing officers for their services. The compensation shall not cause hearing officers to become employees of the Department. The hearing officer may not be an employee or agent of a school entity in which the parents or student resides, or of any agency which is responsible for the education or care of the student.

The following timeline applies to due process hearings:

1. A hearing shall be held within 30 calendar days after a parent's initial request for a hearing.
2. The hearing officer's decision shall be issued within 45 calendar days after the parent's request for a hearing.

Judicial appeals

If the hearing pertains to Chapter 14 and 15 rights, the decision of the impartial hearing officer may be appealed to a panel of 3 appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. If the hearing pertains to Chapter 15 rights, the decision of the impartial hearing officer may be appealed to a court of competent jurisdiction. Under some circumstances, you may raise these claims directly under section 504 without going through the due process hearing.

If, within 60 calendar days of the completion of the administrative due process proceedings under this chapter, an appeal or original jurisdiction action is filed in State or Federal Court, the administrative order shall be stayed pending the completion of the judicial proceedings, unless the parents and school district agree otherwise.

Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Telephone: (717) 783-6134