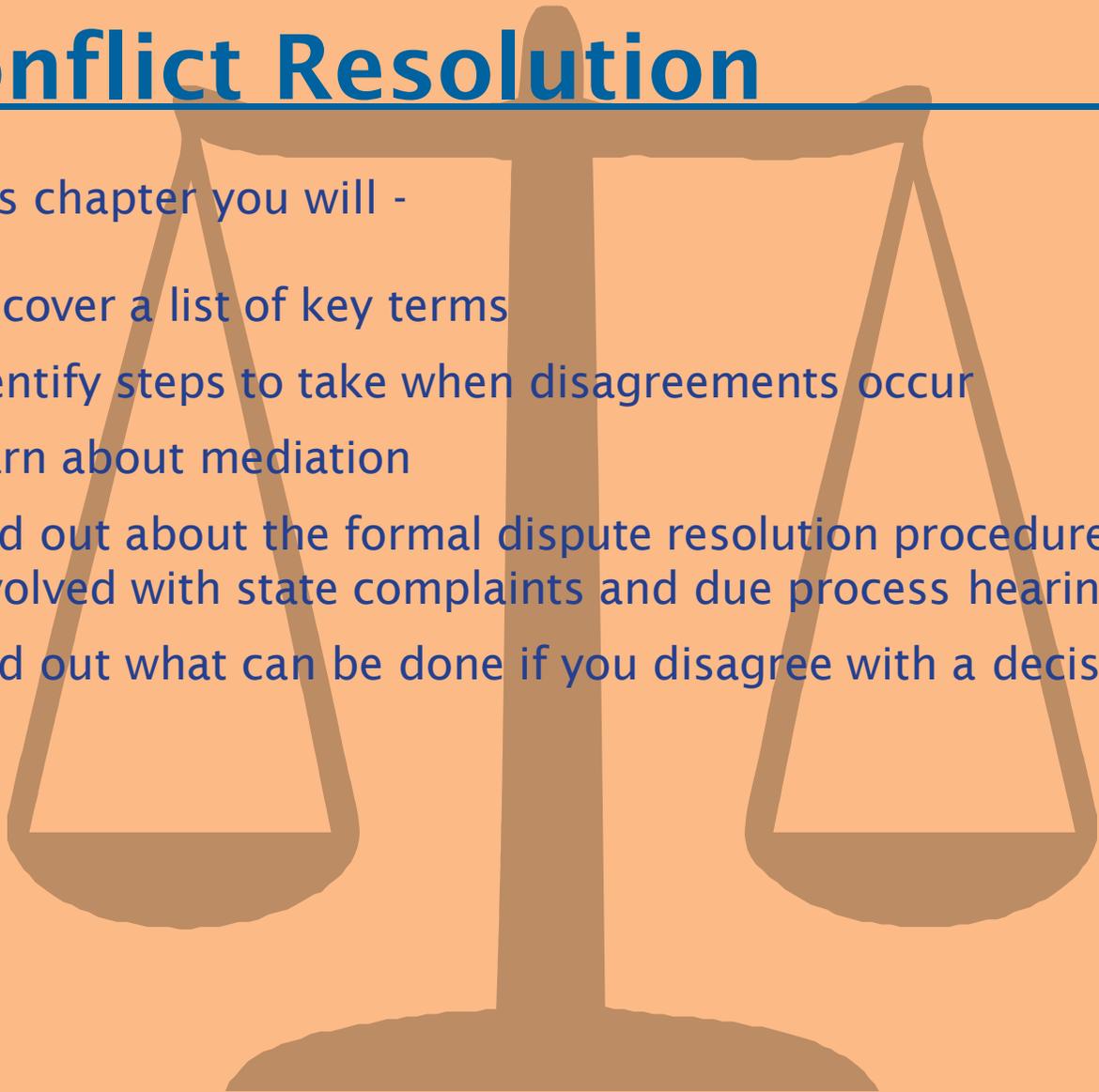


Chapter 11:

Conflict Resolution

In this chapter you will -

- discover a list of key terms
- identify steps to take when disagreements occur
- learn about mediation
- find out about the formal dispute resolution procedures involved with state complaints and due process hearings
- find out what can be done if you disagree with a decision



Introduction to Conflict Resolution

Parents and school districts want their children to be successful. In the area of special education, success usually happens because parents and school districts have become **partners** in providing an education for the child. As you may know by now, almost everything that happens in special education (evaluations, IEPs, and other things) occurs because parents and the school districts agree to them and work together as partners to make them happen. Still, even the best of partners can have disagreements about things.

This chapter is going to describe what should be considered and done if a disagreement happens. Some of the information in this chapter will even help in those times when you *think* a disagreement may be right around the corner. We will describe some informal things you can do to resolve a disagreement and some formal things that you may need to think about if you can't get your differences resolved informally. We will supply you with some important terms you need to know, followed by a description of what you can do to handle a disagreement if it happens. Finally, we will provide you a detailed description of the steps involved in each of the formal dispute resolution options.

In the following pages, we will often describe the situations in which a parent files for a hearing or a complaint against a school district. This is because over 75% of the complaints and hearing requests are initiated by parents. However, the information contained in the following sections is designed to provide *everyone* with useful tips for managing conflict.

Key Terms

In order for this chapter to make sense, it's important for you to understand some key terms before going on in this chapter. These terms will be used several times in the material that follows. Feel free to come back to this section if you can't recall the meaning of a term.

IEP Facilitation

The IEP facilitation process is intended to promote effective communication before, during, and after an IEP meeting and to prevent or resolve conflicts. Therefore, a conflict does not need to exist to make a request. However, if a conflict is likely or occurring, a request might still be appropriate.

Mediation

A mediation is a formal process of conducting a meeting led by a mediator (see page 93) to resolve a disagreement between a family and a district about the services and supports needed by a student with disabilities. A mediation can occur whether or not a formal complaint or due process hearing request is on file.

Mediation Agreement

A mediation agreement is a formal written document drafted by a mediator that describes the agreement reached by the parties to a mediation. A mediation agreement must be signed by both sides and can be enforced in a court of law if one party does not do what is required in the agreement.

State Complaint

A state complaint is a formal process where a person brings a written complaint to ISBE, claiming that the school has done something that is in violation of state or federal special education regulations. A complaint can result in a letter of finding that requires the district to correct something that is not appropriate for the student.

Settlement Agreement

A settlement agreement is a written document, signed by the family and the district, that describes what the parties have

agreed to do, and must do, in order to resolve an existing disagreement. A settlement agreement may occur outside mediation or the resolution process (see below).

Important Reminder

Requesting a due process hearing is usually the only way the child can be maintained in the current placement if a disagreement occurs over the district's proposed placement. A state complaint will not freeze the placement. See page 99 for more information.

Due Process Hearing

A due process hearing is a formal hearing that occurs if a parent (or occasionally a district) files a complaint requesting a due process hearing. The hearing may involve attorneys and advocates for each side and will result in a legally binding written decision that can be appealed to a court of law.

Resolution Process

This is a mandatory process that occurs following the filing of a due process hearing request. The process requires the parties to meet to discuss the dispute and explore ways of resolving the dispute without a hearing. The process normally does not involve an impartial person (like a mediator) and cannot involve attorneys unless the parent chooses to bring an attorney to the meeting.

Resolution Agreement

This is a formal written document that describes any agreements the parties have reached during the resolution process. The agreement must be signed by both the family and the district. The agreement can be cancelled within 3 business days if a party decides the agreement is unacceptable. The agreement can be enforced in a court of law if a party is not following the terms of the agreement.

When a Disagreement Occurs: First Steps

If you believe that there is an actual or potential dispute occurring between you and the school district, there are several things that can be done (in most cases) before a due process hearing or state complaint has to occur. Before deciding that a dispute requires the assistance of an outside party, it is important to ask yourself a few questions:

Do the Parties Understand What Each One Is Trying to Do?

If the parent does not completely understand what the district is providing, or proposing to provide, to the student, it is very important that the parent ask questions. Asking questions will not only help to define the problem, it may also assist the district in understanding why you may not agree with what the district is doing or proposing. Let's say, for example, that you are a parent and you believe your child requires more services than the district has offered. Does the district know why you believe more services are necessary? Being able to understand your position is, very often, the key to resolving a problem before it turns into a big dispute. If you are a parent, be prepared to explain exactly why you believe your child needs something different than what the district has offered. It is usually difficult for the district to see your side of the story if you cannot provide an explanation for your point of view.

On the flip side of the coin, if you work for the district, does the parent understand fully why the IEP team is recommending specific services or placement? As a district member of the IEP team, it is equally important to ask questions of the parent if you sense that the parent may not fully understand the reasons for your recommendations.

Are There Other Acceptable Options?

Is there any chance of "meeting half-way?" Sometimes the key to resolving a disagreement is finding a so-called "third option" that both sides would find acceptable. Let's say the district has offered your child 30 minutes per week of speech services, but you would prefer 60 minutes of speech. Would 45 minutes a week be a possible option that

is acceptable to both you and the district? Is 45 minutes an appropriate amount to provide to your child? Would 60 minutes cause your child to miss more class time or services in another area of need? If 45 minutes is both appropriate for your child and acceptable to you and the district, why not “meet halfway” and use this option instead of going to hearing? It’s going to be very important to decide whether there might be other acceptable options in order to know how to handle a disagreement if it happens.

If We Can’t Work It Out Among Ourselves, Would IEP Facilitation Help?

If discussions have not produced an agreeable solution to your concerns, the use of an IEP facilitator can be a very effective way of helping all members of the IEP team talk about their differences and reach an agreement about the document’s contents.

IEP facilitation is a process that can help parents and districts understand one another as they develop an IEP that is agreeable to both. A trained facilitator encourages everyone to participate in the discussion of the services a student may need. The facilitator will acknowledge and address everyone’s opinions in a respectful and neutral manner.

As a voluntary process, both the parent and district must agree to allow a facilitator to be present at the IEP meeting. Once a facilitated IEP meeting has been agreed upon by both parties, ISBE will appoint a state-sponsored facilitator who will contact the parent and school representative to prepare for the meeting, including setting the date if necessary. This individual is a neutral third party trained in IEP facilitation techniques and is not an employee of the school district. Keep in mind, the facilitator is **not** a member of the IEP team or an advocate for any person on the team. The facilitator makes sure all sides are heard so a decision can be made but does not make the decision for the group.

Important Reminder

Either party may request a facilitated IEP meeting 10 to 14 days ahead of time by submitting a completed request form which is located on the ISBE website at <https://sec.isbe.net/sems/iefacilitationrequestpublic.aspx>. You can also call the ISBE Facilitation Coordinator at (217) 782-5589.

IEP facilitation participants must include all required IEP team members to complete the IEP process, including the parent and when appropriate, the child. At the discretion of the parent or the district, participants may include attorneys, advocates, interpreters, and other relevant parties who have knowledge of the student.

IEP facilitation sessions are scheduled for no more than three hours in one day. This time should allow for a productive exchange of ideas in the development of a mutually agreeable IEP document. If not, the parties may choose to continue for a bit longer to finish the meeting, or they may choose to reschedule for another date with or without the facilitator. This is always a voluntary process.

If a facilitated IEP meeting is not progressing, the facilitator or parties may end the facilitation. The facilitator's job is then complete, and this person will not take part in any subsequent due process hearing or civil proceeding that might occur after facilitation has been concluded.

The school district retains the responsibility for following the special education requirements under the IDEA. As with any other IEP meeting, the school district is responsible for providing notification of the IEP meeting, meeting timelines, ensuring attendance of required participants, as well as developing and implementing the IEP for an eligible student. The district is also responsible for providing a copy of the IEP document to the parent, as well as sending notice to the parent regarding the provision of services. As with all IEP meetings, confidentiality is a required component of facilitated IEP meetings.

ISBE will not keep a copy of the IEP document. The only record retained of the facilitated IEP meeting is the result of the session, the date, time, and location of the facilitated IEP session.

What Other Options Are There to Handle a Disagreement?

Important Reminder

Mediation is a completely voluntary process. Both the parent and the district need to agree to participate in mediation before a mediation can take place.

If your discussions can't hammer out an agreeable solution to the problem, you might still have an option short of filing a complaint or a due process hearing request. If due process has not been filed, a request for mediation by a parent challenging a district proposal to change the child's educational placement shall invoke the "stay-put" provision. The "stay-put" placement shall be the last agreed upon placement between the parties. In the event a party declines to use mediation, the parent shall have 10 days from the date of the refusal to request a due process hearing in order to continue the "stay-put" placement. As will be discussed soon, mediation is an option that can be used to resolve disagreements whether or not a complaint or hearing request has been filed. The use of a mediator can be a very effective way of helping parties to work out their differences.

The use of the first steps described above is simply an *option*. They should not be understood as absolute requirements that you must use each and every time a dispute occurs. Still, they are options that should be viewed seriously as a way for you to avoid the time and expense of a due process hearing or state complaint. However, there may be situations where going through the first steps will simply not work (examples would include cases where timing is important or where the tension is so high that reaching an informal agreement would be nearly impossible). It is always important to think about the situation and the kind of problems when deciding to use one or more of the first steps described here.

Worth a Look

The rules for conducting mediations in Illinois can be found at 23 IAC 226.560 which are aligned with 34 CFR 300.506.

All About Mediation

As we described just above, a mediation can take place whether or not you have a pending complaint or hearing request. Mediation is a voluntary process designed to help parties reach agreements to resolve potential disputes. As

a voluntary process, both the parent and the district have to agree to engage in a mediation. Either party may initiate a request for mediation by calling the ISBE Mediation Coordinator at (217)782-5589 or by submitting via email a completed mediation request form which is located on the ISBE website at <https://www.isbe.net/Documents/34-15-mediation-request.pdf>.

Once a mediation has been agreed to by both parties, ISBE will appoint a mediator, who will then arrange the time and place for the mediation meeting. The mediator is a person specially trained to understand special education matters but who is not an employee (or has an interest in) working for either side. The mediator's only focus will be to assist the parties in the discussion of the unresolved issues to help them find a way to formulate an agreement that will work to the benefit of the child. The mediator is not a decision maker and has no authority to enforce or override any action by either party.

Prior to the mediation, the mediator will contact both parties to discuss important matters, such as the nature of the dispute and relevant documentation. Once the meeting begins, the mediator will generally ask each side to discuss the issues and what their opinions are about how the issues should be resolved. The mediator will then work with the parties to identify where the parties have areas of agreement and whether each party can find agreeable options to resolve the dispute. The mediator may ask to speak with you individually (in a private place without the presence of the other party) so that you can feel free to discuss your options with the mediator. At other times, the mediator will want to discuss matters with both parties present. In general, the mediation meeting will take two to three hours, but may take more time depending on the number of issues that need to be discussed.

If an agreement can be reached between the parties on all (or even some) of the issues, the mediator will then help the parties to write up a mediation agreement. The mediation agreement will outline exactly what each party

Important Reminder

Because each mediation is individualized to suit the needs of the parties, you may find that your mediation will differ in some ways from the process described in this guide.

must do and (if necessary) set specific timelines for the completion of the things in the agreement. Once the language of the agreement has been set down in writing, you and a representative of the district will be expected to sign the agreement. *If either side refuses to sign the agreement, the agreement will have no legal effect.* As we described above, once a mediation agreement is signed, you will have a legally binding document that can (if needed) be enforced in a court of law if the agreement is not put into effect.

If mediation fails to resolve the dispute between the parties, the parent shall have 10 days after the mediation concludes to file a request for a due process hearing in order to continue to invoke the “stay-put” provision (if due process has not already been filed.)

Important Points to Remember About Mediation

1) It’s a voluntary process.

Mediation is a completely voluntary process, so mediation will only happen if both you and your school district agree to participate. But more importantly, *any agreement you reach is also voluntary.* Even if the mediation meeting happens, you do not have to sign the final agreement if it is not something to which you agree.

2) Mediation is confidential.

One of the most important ground rules in mediation is the requirement that everything said in the mediation is confidential. In other words, you should feel free to say anything that will assist in reaching an agreement because what you say cannot be used in another context. This is very important if you’re also facing a due process hearing because it means that anything you say at a mediation cannot be used as evidence against you at hearing. But confidentiality is a two-way street. You will not be able to use statements by the other party in the hearing either, and neither party may call the mediator as a witness in a due process hearing.

3) The agreement is a binding document.

As we stated earlier, a mediation agreement is legally binding similar to a contract. Because it is legally-binding, this means that you would have the ability to go to a court of law to enforce the terms of the agreement if something is not being done or not being done correctly.

Formal Dispute Resolution

You have a major disagreement about your child's educational program. You have tried to work out your differences through conversations and informal negotiation. You've even tried to work out an agreement with the help of a mediator. At the end of it all, your major disagreement still exists. What do you do?

In most cases, once you have exhausted all the things described above, it is generally time to consider using a *formal* process for having your dispute resolved. There are two formal processes currently available in Illinois: state complaints and due process hearings.

The biggest difference between the actions described in the earlier sections and the actions we are about to describe is this: a person other than the parent and the district will now decide how to resolve the issue. In informal procedures, the parent and the district try to work out the matter between themselves. But in formal dispute resolutions, you are giving your dispute over to another person to decide it for you. In the case of state complaints, it is a complaint investigator who works for ISBE. In the case of due process hearings, it is an independent person known as an "impartial hearing officer."

The next section will discuss state complaints, while the following section will discuss due process hearings. Finally, we will try and tie all of this up by providing you with a table that compares state complaints with due process hearings, so that you can choose the best option for your situation if you need to use a formal process.

All About State Complaints

The state complaint process is a procedure that is established under both the federal and state special education laws and rules. In a state complaint, a person who has knowledge of the educational issues concerning the child may file a written complaint with ISBE. The complaint sets out who the child is (or in some cases who the children are), the facts that have led to the dispute, and suggestions for how the situation can be fixed. A sample complaint letter is provided in Appendix A to give you an idea of what a state complaint letter might look like.

Once ISBE receives the complaint, the complaint will be assigned to an investigator. The investigator is an employee of ISBE with expertise in special education issues. The investigator may do some or all of the following things in reaching a final determination:

1. Contact the person or organization to clarify the issues described in the complaint.
2. Request documentation from you to support your claims.
3. Contact the district to find out the district's position concerning the claims.
4. Request documentation from the district to support its position or positions.
5. Set up interviews with the complainant and others who have direct knowledge of the issues in the complaint.
6. If necessary, perform an on-site investigation at the school.

Worth a Look

The procedures for state complaints can be found at 23 IAC 226.570.

For information on filing a state complaint, please visit the ISBE website at <https://www.isbe.net/Pages/Special-Education-Complaint-Investigation-Process.aspx>

Much of the investigation can be done by telephone and mail, although the investigator may visit the district and meet with the complainant in person in order to reach a thorough decision if the investigator believes it is necessary.

It is important to note that although the complainant has a right to present the case to the investigator, there is not a right to question district personnel or to “argue” the case in front of the investigator. Unlike a due process hearing (described below), parties will not be allowed (or required) to participate in a formal hearing to present the case, supporting evidence, or witnesses. All procedures in the complaint will be handled by the investigator alone.

In addition to these steps, the investigator may work with you and the district to find a mutually acceptable agreement to resolve the issue or issues in the complaint. This process, called “early resolution,” is a voluntary process designed to help find an acceptable solution to the problem without requiring the formal issuance of a decision by ISBE. However, if the parties and the investigator cannot find an acceptable agreement to resolve the issue, the investigator will go forward with a full investigation and make a final decision in the case.

The investigator has 60 calendar days from the date ISBE receives the complaint to reach a conclusion. In rare circumstances, however, the investigation can be extended beyond 60 days by the investigator. The conclusion reached by the investigator is called a “letter of finding.” As the name suggests, the investigator will issue a decision in the form of a letter. This letter will outline the issues investigated, the facts found by the investigator, a determination of whether those facts comply with the law and regulations, and finally an order describing what the district needs to do in order to meet the requirements of the law and regulations. A copy of this letter will be issued to the complaining party and to the district.

One unique aspect about state complaints is the fact that a person may not only file a complaint about a single child, but a person can also file a complaint claiming a *systemic* problem (in other words, that a district's practices are in violation of state or federal special education regulation for a whole group of children). But there are also important differences between a state complaint and a due process hearing, which is another way to obtain a ruling over a special education dispute. Though due process hearings will be discussed in more detail in the next section, it is useful to look at some of the differences and similarities between the two at this point.

Action	State Complaints	Due Process Hearings
Filed with whom?	ISBE	Local School District
Filer must be parent or guardian?	No	Yes* *See page 103 for exception.
Concerning more than one student?	Yes	No (rare exception for siblings served in same placement)
Time limit to file after an alleged violation has occurred	One year	Two years
Mediation available?	Yes	Yes
Timeline for completion	60 calendar days	75 calendar days (regular hearing request with full resolution session timeline)
Timeline extensions?	Yes	Yes
Stay-put (which placement is maintained pending the final decision) applies?	No	Yes
Use of evidence	Yes	Yes
Decision maker	Complaint Investigator	Due Process Hearing Officer

Action	State Complaints	Due Process Hearings
Right of Appeal	No	Yes
Attorneys' fees	No	Yes

Another important difference between complaints and due process is also shown in the table above. If you file a complaint, you are permitted to include any issue that has arisen within one calendar year of the date you file your complaint. However, if you choose to file for a due process hearing, you are permitted to raise any issues that have occurred up to *two* calendar years prior to the filing of your due process request. This difference is set out in the IDEA. This factor may also help you to decide whether a complaint or a due process hearing is the best route to take in resolving the issues with your district.

With this information in mind, we need to turn to the procedures associated with due process hearings.

Worth a Look

The principal rules on due process hearings in Illinois can be found at 105 ILCS 5/14-8.02a and 23 IAC 226.600 through 226.675. Citations to more specific rules on the various parts of the due process system can be found in the following sections of this Chapter.

Formal Disputes: Due Process Hearings

Due process hearings are the most formal way to have a dispute between a parent and a school district decided. In general terms, due process hearings have a number of similar features to court proceedings. Just like a court of law, due process hearings can involve formal arguments (often made by lawyers), witness testimony, and the use of documentary evidence to make the case for one side or the other. And, just like court, a decision maker (called an "Impartial Hearing Officer" in the case of due process hearings) renders a written decision that is legally binding for both parties.

There are two types of due process hearings in Illinois: general and expedited hearings. The following information describes the procedures associated with general due process hearings. Expedited hearings, which focus on issues dealing with student misconduct and discipline, are discussed in the previous chapter dealing with student discipline. (See Hearings on page 85.)

In Illinois, about 85% of all due process cases are filed by parents. This is because parents have a much larger range of issues for which they can file a hearing request. Because of this fact, the following sections are mainly written from a parent's perspective. But school districts can certainly gain important insights on due process by reviewing these sections as well.

When Should I File for Due Process?

Parents are provided much broader reasons for filing a hearing request than school districts. For this reason, most of the information provided in this section deals with the more common situation of a parent filing a hearing request against a school district.

It would take pages to describe all the possible situations where a parent might need to file for a due process hearing. In fact, this document itself is a guide to help you decide whether you are facing a situation that might require you to file a hearing request. However, in most cases, it would be a good idea for you (as a parent) to ask yourself several important questions before you begin to make a hearing request:

Have the District and I Explored Other Options to Resolve Our Differences?

For many people, due process hearings should be viewed as a "last resort." Due process hearings can be very expensive in terms of time and money and should be used only when you believe you have no other option to obtain the help you believe your child needs.

Tips for Parents

Just because the term "last resort" is used does not mean that there will not be situations that may require you to file a due process hearing request very quickly. You will need to consider the particular situation you are facing to decide whether you should to file a hearing request immediately or wait until other steps have been taken.

Can I Present a Case That Makes Sense to a Hearing Officer?

The hearing officer (the person who will decide the case) may have training in special education but will have no idea about the history of your case prior to receiving your hearing request. You will need to figure out if you can present a clear story that is understandable to the hearing officer. If the hearing officer cannot understand what your issues are or why you believe you are right, it will make it much harder for the hearing officer to rule in your favor.

Do the Records Support the Position I Am Taking?

Before filing a hearing request, it is always a good idea to review the IEPs and other school records you have in order to decide if they back up your story. Documents like IEPs, evaluations, and other records in your child's student file are extremely important to the hearing officer. If they suggest a different story than the one you have, the hearing officer may have difficulty agreeing with your version of the facts.

Are There Witnesses Who Will Back Up My Understanding of the Facts?

Another important source of information to a hearing officer is what witnesses might say on your behalf. Witness testimony is a big part of due process hearings. If the witnesses, particularly those who will testify to support your case, do not have information to back up your story, it will be difficult to convince a hearing officer to support your position.

It is important for you to think about all these questions before deciding to undertake a due process hearing request. A hearing request can be an expensive, stressful, and time-consuming process, so thinking through these questions will help in your decision to go forward with a hearing request.

Can a District File for Due Process Too?

A local school district can file for due process against a parent in two situations:

- when a parent refuses to provide consent for an evaluation, and
- when the district refuses to grant a parent's request to obtain an independent evaluation of a child paid for by the district.

If a district initiates a due process hearing against a parent, it will write ISBE a letter requesting the appointment of a hearing officer. The letter will describe the reasons for the district's hearing request. In addition, the district will provide the parents with a copy of the letter it sends to ISBE.

Do I Need to Hire a Lawyer or Advocate?

There is nothing that prevents a parent or school district from presenting a case at a due process hearing, but parties frequently choose to use either an attorney or a non-attorney advocate to represent them in the hearing. There is a great deal of formality to a due process hearing, and in many ways, a due process hearing has a lot of the look and feel of a courtroom proceeding. For this reason, parties will often seek the expertise of someone familiar with special education law to represent them in this process.

If you are a parent using an attorney, it is important for you to keep in mind that some or all of your attorney's fees might be recovered from the district if you prevail in the hearing (and if the result is not appealed by the district to a court of law). However, the law has increasingly made it clear that "prevailing" means obtaining a favorable decision from the hearing officer on a major issue in the case. Without a favorable decision from a hearing officer, it is almost certain that the fees you pay to an attorney cannot be recovered from the district.

If you are interested in working with an attorney but can

Worth a Look

The rules describing when a district can file for due process are outlined at 34 CFR 300.300(a)(3) (when a parent refuses to consent to an evaluation) and 23 IAC 226.180 (when a parent requests an independent evaluation).

Worth a Look

In very limited situations, a school district can seek attorneys' fees against a parent. The right of a district to seek attorneys' fees is limited to situations where the district can show that the parent filed for due process to harass the district or for so-called "frivolous" reasons (i.e., that the parent knew in advance that he or she had no real basis for filing for due process). In the vast majority of cases, a parent's legitimate belief that he or she has a good faith due process dispute with a school district will not be considered frivolous. For more information, check out 34 CFR 300.517(a)(1).

not find one on your own, please contact the Due Process Coordinator at ISBE for a listing of attorneys who may be able to assist you.

Worth a Look

ISBE's website has a form that parents may use when filing a request for due process at https://www.isbe.net/Documents/dp_parental_19-86a.pdf

A sample letter requesting a due process hearing can also be found in Appendix A. A copy of the ISBE form that parents can use to file for due process is also found in Appendix D.

How Do Parents Request a Due Process Hearing?

If you decide to proceed with a due process hearing, your request for the hearing needs to be filed with the superintendent of your local school district. And even if your child is receiving services from a special education cooperative, you still must file your request with the local district superintendent.

You have a couple of options when writing out your hearing request: you may either use a form obtainable from ISBE's website or you can write a letter. The ISBE form can be found on the internet at this address: https://www.isbe.net/Documents/dp_parental_19-86a.pdf.

The online form permits you to simply type the information on the form. Once completed, simply print out the form on your computer printer, sign it, and send it to your district superintendent. Alternatively, you may print out the blank form and fill in the requested information by hand. In either case, please provide complete information to all questions on the form. If you need additional space, do not hesitate to attach additional pages to the form.

If you choose to write up your request in the form of a letter, you should attempt to provide all the information that is requested on the ISBE form. At minimum, your hearing request needs to contain the following information:

- Your name and contact information (phone, mail address, and if you wish, a fax number and email address)
- the name of your child and the name of the school your child attends
- a statement of the issues you want the hearing officer to consider

Worth a Look

The rules describing what information needs to be included in a due process hearing request can be found at 34 CFR 300.508(b).

- a statement of the facts that are relevant to the issues in the case
- the remedies or orders (to the extent you know what they are) that you want the hearing officer to enter to resolve the case.

It is essential for you to include all this information in your hearing request. Under IDEA, failure to include all the required information could subject your request to *dismissal* by the hearing officer. Once completed, you will need to sign your letter and send it to the district superintendent.

When the district receives your request, the district has five calendar days to forward your request to ISBE. Within three calendar days of receiving the request from the district, ISBE will appoint a hearing officer and mail both you and the district a written notice of who the hearing officer is.

Stay-Put: How a Hearing Request Affects the Child's Placement

When a party files a due process hearing request, the request triggers what is known as “stay-put” under both federal and state law. “Stay-put” is a provision designed to make sure that no changes are made to your child’s placement until issues that might affect the placement have been decided by a due process hearing officer. “Stay-put” requires a district to maintain the last placement the parties agreed to prior to filing for due process.

Because of the “stay-put” provision, it may be important that you make your decision to file for due process as soon as possible after an IEP meeting during which a placement was recommended that you strongly oppose. A district can proceed with a placement within 10 calendar days of an IEP meeting if you do not make a formal objection to the placement. Therefore, if you wait until after the placement has been implemented to file for due process, it may be difficult to go back to the previous placement as the “stay- put” placement.

Worth a Look

The “stay-put” provision in IDEA can be found at 34 CFR 300.518(a).

Worth a Look

The rules guiding the substitution of hearing officers can be found at 105 ILCS 5/14- 8.02a(f-5).

A Note about Hearing Officers and Substitutions

When ISBE receives a hearing request from a local district, a hearing officer is selected based on a fixed rotation that is maintained in a computer database at ISBE. Each hearing officer currently serving in Illinois is either an attorney or an educational professional. However, it must be noted that no one can serve as a hearing officer in Illinois if they are an employee of a local school district, a special education cooperative, a regional office of education, or ISBE. Each hearing officer has received comprehensive ongoing training in special education law and special education practices.

It is important for you to remember that the hearing officer functions in many of the same ways that a judge does in a court of law. In the same way that a court operates, you cannot discuss your case with the hearing officer without the presence of a representative of the district (likewise, a district representative cannot discuss the case without your presence). The only exception to this rule is when you are contacting the hearing officer for the purpose of scheduling a meeting with the hearing officer and the district or scheduling the hearing itself.

When parties receive notice of the hearing officer appointment, you will receive a short description of the hearing officer's professional background and work history. This information should be able to assist you in deciding whether you want to exercise your right to request a *substitution* of your hearing officer. Under Illinois law, both you and the district have a right to request one hearing officer substitution in the case. Please note that if you decide to substitute your hearing officer, you must do so in writing within *five calendar days* of receiving your written notice of the hearing officer. Your substitution request may be directed to the Due Process Coordinator at ISBE.

Next Steps: Responses and Insufficiency

A number of things may happen very quickly after you file your hearing request with the local school district. Under

both IDEA and the Illinois School Code, the district may do one or both of the following things:

1) Provide a written response to the hearing request

Within 10 calendar days of receiving your request, the district may provide you and the hearing officer with a written response to the hearing request. A written response, however, is not required if the district has already provided you with “prior written notice” of its actions that led you to file your hearing request. In many cases, the IEP and Notice of Conference Recommendations you receive at the end of an IEP meeting are considered to be “prior written notice.”

2) File a Notice of Insufficiency

Also within 15 calendar days of receiving your request, the district may file “Notice of Insufficiency” with you and the hearing officer. A Notice of Insufficiency is basically a request by the district to have your request dismissed because it lacks the required information for a hearing request. If you made sure to include all the information described earlier in writing up your hearing request, a hearing officer is not likely to dismiss your hearing request.

Worth a Look

The rules guiding the response to a hearing request and challenging the hearing request for insufficiency can be found at 34 CFR 300.508.

The Resolution Process

IDEA requires parties to attempt to discuss potential settlement of due process disputes. This procedure is called the resolution process and is now a mandatory part of all hearing requests. This procedure allows parties up to 30 calendar days following the initiation of a due process hearing to explore solutions for resolving the dispute without a full-blown hearing.

Within 15 days of the district’s receipt of your hearing request, one of three things **must** occur:

1) Conduct an initial resolution meeting

By the 15th day, you and the district must have an initial meeting to discuss your hearing request. This initial

Worth a Look

The rules guiding the resolution process can be found in both federal and state law. The federal rules can be found at 34 CFR 300.510, while the state provisions can be found at 105 ILCS 5/14- 8.02a(g-20).

Important Reminder

Unless **both** the parent and the district agree in writing not to conduct the resolution process, both parties **must** participate in the initial meeting. A party's failure or refusal to participate in the initial meeting could either significantly delay the due process hearing, or possibly result in the dismissal of the hearing request by the hearing officer. In limited circumstances, the refusal to participate in the resolution process can also result in an order granting some of all of the requested remedies in the hearing request. Please see 105 ILCS 5/14-8.02a(g-20) for more information.

Important Reminder

If you and the district decide to use mediation instead of the resolution process, it may delay the timeline for completing the due process hearing. Under federal law, the timelines for completing the hearing will not trigger until the mediation has been completed, even if the mediation extends beyond the 30-day timeline for completing the resolution process.

meeting (and other meetings that may occur over the next 15 days) is designed for you and the district to discuss your request, the facts surrounding the request, and ways that you and the district might work out an agreeable solution to the problem or problems. The initial meeting must include you, a district representative with authority to sign an agreement with you, and any members of your child's IEP team who have knowledge of the facts concerning your hearing request. You may also bring an advocate or an attorney with you, but if you bring an attorney, the district will be allowed to bring theirs.

2) Agree to Use Mediation Instead of the Resolution Process

By the 15th day, you and the district can also agree to conduct a mediation with an ISBE-appointed mediator in place of the resolution process. Both you and the district must agree *in writing* to use the mediation option. If you do agree to the mediation, your written agreement should be given to the hearing officer and the Mediation Coordinator at ISBE as soon as possible.

3) Agree to waive the whole process

Both parties can agree to bypass the whole process, so long as both agree to do so in writing by the 15th day following the district's receipt of your hearing request. If the parties agree not to do either the resolution process or a mediation, they will need to provide the hearing officer with a copy of the agreement as soon as possible. If the parties agree to waive the resolution process, the hearing procedures will begin immediately.

If the parties conduct the resolution process, please keep the following points in mind:

- **You have until the 30th calendar day following your filing of your hearing request to complete the process.** Up until the 30th day, the parties can meet again to discuss further possibilities of resolving the dispute. You also can discuss issues by phone or by mail.

- **Discussions during the resolution process are NOT confidential.** Unlike mediation, the discussions the parties have during the resolution process are not confidential and could be used as evidence during a due process hearing. It is very important that you keep this in mind when deciding to go forward with the resolution process.
- **You can continue to explore settlement of your dispute after the close of the resolution process.** Even if you do not reach an agreement before the end of the 30-day timeline for the resolution process, you can continue to discuss possible solutions to the dispute with the district up until the actual due process hearing has begun. However, if you reach an agreement after the 30th day, the rules applying to written agreements in the resolution process (see below) will not apply unless your hearing officer has ordered an extension of the timeline for the resolution process.

Resolution Agreements

So, what happens if you reach an agreement with the district on the issues that led to your hearing request? Any agreement you reach with the district during the resolution process *must* be put in writing. Also, the agreement must be signed by you and the district representative for the agreement to be valid.

One aspect about a resolution agreement that you need to remember is that you have up to three *business* days (i.e., Monday through Friday except for state and federal holidays) to void the agreement. This means that you can choose, essentially, to erase or invalidate the agreement so long as you advise the district of this decision in writing. If you choose to do so, the agreement will have no effect.

Please remember these important points about resolution agreements:

- **Try and ensure the agreement is detailed about everything needed to resolve the dispute.** When writing up the agreement it is important to make sure

Worth a Look

The rules on agreements reached through the resolution process can be found at 34 CFR 300.510(d) and (e).

Important Reminder

Either party can revoke the terms of a resolution agreement so long as it is done in writing within 3 *business* days of the agreement.

that the agreement describes in detail what you and the district need to do and *when it needs to be completed*. For example, if a new IEP needs to be written to provide more speech services to your child, the agreement should describe how much service the district will provide in the IEP and when the IEP meeting needs to occur.

- **The agreement is legally enforceable.** Assuming that neither you nor the district has exercised your right to void the agreement within three business days, the agreement is a legally binding agreement on both you and the district. This means that if needed, you can go to court (either state or federal) and ask a judge to enforce the agreement if something is not being done, or something is being done incorrectly.

Setting the Stage: The Pre-Hearing Conference

If you cannot reach an agreement in the resolution process, the hearing procedures will go forward at the 30th day or at whatever earlier date the parties agree to terminate the resolution process. If this happens, the hearing procedures will begin. Under Illinois law, the hearing officer must render a decision in the case within 45 calendar days of the start of the hearing procedures unless extensions of time have been ordered by the hearing officer. The hearing officer can only grant extensions of time at the request of one party or the joint request of both parties.

Worth a Look

The rules guiding the procedures for the pre-hearing conference can be found at 105 ILCS 5/14-8.02a(g-40).

Important Reminder

Extensions of time to complete the hearing may be granted by the hearing officer if one party requests a delay in the hearing. However, if both sides submit a joint request for an extension of time, the hearing officer must grant it. See 105 ILCS 5/14-8.02a(h) and 23 IAC 226.640(b).

The next major step in the process concerns a meeting called the pre-hearing conference. This is a meeting run by the hearing officer in order to outline how the hearing will be conducted, what the issues will be, who will likely be called as witnesses, and what documents each side is likely to use as evidence at hearing. The hearing officer will schedule the pre-hearing conference with you and the district in advance and will provide you with a written notice of the time and location of the meeting. It is also common for such meetings to be conducted by phone.

After you file your hearing request with the district, you will receive a packet of information from ISBE that includes

information on the pre-hearing conference and how to prepare for it. Once the hearing officer has set the date for the pre-hearing conference, you should review the materials you receive from ISBE carefully in order to prepare for the conference. The hearing officer will inform you about any deadlines associated with the pre-hearing conference and when you will need to submit information to the hearing officer and the district.

When preparing for the pre-hearing conference, it is helpful for you to keep a few things in mind:

- **Be prepared!** Make sure you have met the deadlines of the hearing officer and that you have done a thorough job providing the hearing officer with the information requested. Before the pre-hearing conference, it is always a good idea to sit down and review your pre-hearing conference materials so you are prepared to address any questions the hearing officer may have.
- **Are the issues I raised in my hearing request clear?** It is not uncommon for the hearing officer to ask for clarification about the issues in the case. In order to be ready to answer such questions, it is a good idea to re-read your hearing request and ask yourself whether a person who doesn't know about your situation would understand what you said in your hearing request.
- **Do all the witnesses I plan to bring to the hearing have something relevant to say?** Often, questions will be raised about why one or more of your witnesses are being called by you. Be prepared to describe to the hearing officer what the witnesses will likely discuss at the hearing and whether the witness's testimony is relevant to your issues.
- **Are all the documents I am thinking about submitting at the hearing relevant to my case?** In the same manner as witnesses, questions may also be raised about whether some of the documents you may use at hearing are relevant to the issues in your hearing request. You may need to explain the relevance of one or more documents during the conference.

The Big Event: The Due Process Hearing

At your pre-hearing conference, the hearing officer will set a final date for the hearing to take place. At the earliest, the hearing will take place 14 days after your pre-hearing conference, but the hearing officer can set a later date if the timelines permit. It is not uncommon for the hearing officer to set more than one day for the hearing, especially if there is a large number of issues the hearing officer must decide.

Hearings usually take place at the administrative offices of your local district, but occasionally they can occur at other locations if the hearing officer decides there is a good reason for holding the hearing in another place. Follow the hearing officer's guidance on where to be seated in the room.

Under normal circumstances a due process hearing is a "closed" event. In other words, it is not a meeting that can be attended by persons other than persons directly involved in the hearing. However, parents have the right to request an "open" hearing. By making the hearing "open" other persons (including members of the public) may attend (but not participate in) the hearing.

From the moment the hearing begins, you will notice a great deal of formality similar to being in a court of law. The formality is essential to ensure the hearing runs smoothly and efficiently. In cases where parents request the hearing, the typical order of a hearing is as follows:

- » Parent Opening Statement
- » District Opening Statement
- » Parent Witnesses (with district cross-examination)
- » District Witnesses (with parent cross-examination)
- » Parent Closing Statement
- » District Closing Statement

This order can sometimes vary if the hearing officer finds that it is appropriate to do so. For example, if a witness

for the district has only very limited time availability, the hearing officer can order the witness to go out of order to ensure that the witness has a chance to testify.

From the beginning, you will note that a court reporter will be present for the entire hearing. The court reporter is responsible for taking down what everyone says “on the record” throughout the entire proceeding. The court reporter will also be responsible for generating a complete written transcript of the hearing that may be available to the parties after the close of the hearing.

During the proceeding, each side will call witnesses to give evidence about the case. Each witness will be administered an oath by the hearing officer and is obligated to tell the truth while under oath. Following the initial questioning by the side who called the witness (called “direct examination”), the other side is given a chance to ask follow-up questions based on what the witness said during the initial questioning (called cross examination).

The hearing officer will close the proceeding at the end of the presentations by both sides. At that time, the hearing officer will also provide you and the district with information about when the hearing officer will issue a decision. The Illinois School Code requires the decision to be issued no more than 10 days, excluding Saturday, Sunday, and any state holiday, following the close of the hearing.

The Decision and Clarification: The Final Step?

Within 10 days after the close of the hearing, the hearing officer must issue the decision in the case. The decision will be in writing, and a copy is sent both to you and to the district. The decision itself can be a lengthy document. It will outline the issues in the case, the evidence considered by the hearing officer, a summary of the relevant law to the case, and finally the decisions the hearing officer has made when looking at the facts in light of the law.

Worth a Look

In regular hearings, the hearing officer is given 10 calendar days to issue the decision. In expedited due process hearings (see Chapter 10), the hearing officer is given 10 *school* days to issue the decision. See Section 14-8.02b of the Illinois School Code. (105 ILCS 5/14-8.02b)

The decision will outline what if anything that you and the district will need to do in order to correct the situation. If the hearing officer finds that your child has not received an education that complies with the law and the regulations, the decision will lay out the steps the district must follow to correct the situation. Unless you or the district appeal the decision to court (see below), the hearing officer's decision is binding on you and the district and can be enforced in a court of law if necessary.

If you believe that something is unclear in the decision, you do have a right to request (again, in writing) a clarification of the decision. This is designed for you to obtain further explanation from the hearing officer about the meaning of the decision. The clarification does not, however, allow you to ask the hearing officer to "reconsider" or change the decision in any way. If you believe that the decision is incorrect, it will be necessary for you to seek a review of your case in a court of law.

Court Review of the Decision

If you are dissatisfied with the decision, the only way to change the outcome is to appeal the decision to a court of law. Most typically, such appeals are made in the United States District Court, but an Illinois Circuit Court can hear such appeals too.

It is not within the scope of this manual to describe in detail how to pursue your appeal in a law court, but a couple of things should be kept in mind if you want to think about an appeal:

- **The court action to appeal the decision MUST be started within 120 calendar days of the date of the decision.** The courts keep very strict timelines on this. Even an appeal that is filed one day late can (and often is) dismissed by the court.
- **The court appeal is even more formal than the due process hearing.** Because of the sometimes complex procedures by which a court of law operates, it is

Worth a Look

The rules dealing with the appeal of hearing decision to a court of law are found at 105 ILCS 5/14-8.02(a)(i) as well as 34 CFR 300.516.

probably even more essential for you to obtain legal representation if you choose to appeal. Although you can still represent yourself in court proceedings, judges can sometimes be very strict in enforcing court rules, even for unrepresented parties.

- **The court appeal often adds a lot of time to the process.** The court is not under the stricter timelines that a due process hearing officer is, so an appeal often takes much more time than the hearing itself. If a further appeal to an appellate court occurs, it is not unreasonable to expect a year or more to pass before final resolution of the issues has occurred.

In other words, it is absolutely essential for you to think over carefully (perhaps even more than the decision you made to file a due process hearing request) whether appealing your case to a court of law is the right option.

Conclusion: Conflict Resolution in a Nutshell

As we have discussed in this chapter, the ways of resolving disputes range from very informal processes (for example, one-on-one discussions with district administration) to highly formal (for example, appeal of a due process hearing decision to court). But whether informal or formal, all of the processes described in this chapter are designed hopefully to resolve issues and disagreements that may arise between parents and districts in the complex task of providing the child with a free appropriate public education. Most disputes can be resolved (and usually are) through the simple act of talking through the issues and concerns with district personnel. However, if this doesn't happen, you certainly can (and perhaps should) use one or more of the tools we have outlined here.