


Informal Guide to Special Education Impartial Due Process Hearings



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Department of Education



Informal Guide to
Special Education
Impartial Due Process Hearings

HELPFUL HINTS

***FOR MORE INFORMATION AND EXPLANATIONS,
PLEASE REFER TO THE***

USERS' GUIDE TO ADMINISTRATIVE PROCESS



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**Words with an asterisk are explained in the Definitions Section*

NOTICE

NOTE:

The following information was prepared by the Department of Education's Governance Unit, Dispute Resolution and Constituent Complaints Section to assist parents to the special education impartial due process hearings and is meant to supplement and not in anyway replace, modify or advise participants about federal and state law or regulations. Furthermore, although the information has been carefully reviewed to ensure the accuracy of the information contained herein, the Department is unable to promise total accuracy of the information and recommends that all participants carefully review and familiarize themselves with relevant federal and state law and regulations prior to participating in a hearing. The Department of Education reserves the right to modify this information, amend or terminate any description of procedures described in this guide at any time.

ESSENTIALS



I. BEGINNING THE HEARING PROCESS

- ▶ 1. NH Department of Education, Governance Unit, Dispute Resolution and Constituent Complaints Section contact info:

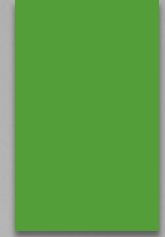
25 Hall Street
Concord, NH 03301
(603)271-2299 Telephone

- ▶ 2. The Dispute Resolution and Constituent Complaints Section does not give legal advice nor act as a representative or advocate for parties at the hearing.
- ▶ 3. The office cannot appoint a lawyer or advocate to represent a party or the student at a hearing.

ESSENTIALS

- ▶ 4. The office can only assist you with “technical assistance” regarding general information about the hearing process.
- ▶ 5. You may not talk directly to the Hearing Officer assigned to your case unless the other party or the other party’s representative is also present.
 - ▶ This is called *ex parte* communication* and is prohibited.
 - ▶ You may not have *ex parte* communication* with the Hearing Officer in any form ... on the telephone or in person or in writing.
- ▶ 6. Whenever you send a letter or other written communication to the Hearing Officer, you must also copy the other party at the same time.

ESSENTIALS



- ▶ 7. The Governance Unit's Dispute Resolution and Constituent Complaints Section has a very useful website:

<https://www.education.nh.gov/parents-and-students/appeals-and-mediation>

The website has links to:

- ▶ Forms (in the Users' Guide to Administrative Process)
- ▶ Hearing rules
- ▶ Hearing Officer decisions
- ▶ Special education statutes and regulations,
- ▶ Users' Guide to Administrative Process that explains mediations and hearings.

ESSENTIALS

- ▶ 8. It is very helpful to keep a separate file for all your communications with the Hearing Officer and the other party about your appeal.

- ▶ 9. You can negotiate directly with the other party at any time.
 - ▶ If the other party has a lawyer, you must negotiate with that lawyer or get the lawyer's permission to contact the other party directly.

- ▶ 10. You can withdraw your request for hearing at any time during the process by sending a letter to the other party and the Hearing Officer.

ESSENTIALS

- ▶ 11. If you are a parent, you should carefully consider whether it is a good idea for the student to attend a hearing. There is no child care available, nor are there separate or secure waiting rooms. Hearings typically last two full business days.

- ▶ 12. Frame the question you want to raise.
 - ▶ Prepare a list of questions for each witness prior to the hearing.
 - ▶ Remember, Hearing Officers need factual information to guide their final decision.
 - ▶ Ask appropriate questions based on facts
 - ▶ ex: What do you know about the implementation of my child's IEP?, not on opinions (ex: You don't know anything about my child's IEP, do you?) or leading questions (ex: You allowed this to happen, didn't you?) or personal commentaries (ex: You don't like this program, do you?)

ESSENTIALS

- ▶ 13. Please remember, Hearing Officers are limited in how they can assist parties in asking questions.

FILING FOR A HEARING

II. HOW TO FILE FOR A HEARING

▶ A. FORMAT

- ▶ There is a Form to Request an Administrative Due Process Hearing that you can fill out or you may write a letter. For parents, your request for hearing must:
 - ▶ 1. Be in writing
 - ▶ 2. Contain your name, address and phone number
 - ▶ 3. Contain the student's name, the student's residence, and the name of the school the student is currently attending

FILING FOR A HEARING

- ▶ 4. Contain the name and contact information of your advocate or attorney, if you have one
- ▶ 5. Contain the name of the school district responsible for the student
- ▶ 6. Explain why you want a hearing
- ▶ 7. Explain what you want the Hearing Officer to do (proposed resolution)

FILING FOR A HEARING

- ▶ B. FILING THE REQUEST FOR HEARING
 - ▶ 1. Make at least two copies of the completed Hearing Request form or letter.
 - ▶ 2. Send the original Hearing Request to the other party.
 - ▶ 3. Send a copy of your Hearing Request to the Governance Unit, Dispute Resolution and Constituent Complaints Section.
 - ▶ 4. Keep a copy of the Hearing Request for yourself.

SCHEDULING NOTICE



▶ C. AFTER THE DEPARTMENT OF EDUCATION RECEIVES YOUR REQUEST FOR HEARING:

- ▶ 1. The Department of Education will send “Scheduling Notice” generally within 5 days of receiving your request for a hearing.

- ▶ 2. The Hearing Notice has important information, including:
 - ▶ a. The name and address of the Hearing Officer assigned to the appeal;
 - ▶ b. The name and address of the mediator assigned to your appeal;
 - ▶ c. The date of an optional mediation;

SCHEDULING NOTICE

- ▶ d. The date for your pre-hearing conference with the Hearing Officer (this is usually your first contact with the Hearing Officer);
- ▶ e. The date of your two-day hearing.

AGREEMENT



III. WHAT HAPPENS NEXT ?

- ▶ 1. Agreement: The school district and the parent can reach an agreement by talking directly and informally to each other, or at a resolution session, with the assistance of an assigned Mediator or a Neutral.

PRE-HEARING

- ▶ 2. Pre-Hearing: If you do not come to an agreement, you are on the road to a hearing. A pre-hearing is helpful if you are prepared to **listen carefully** to other perspectives and to follow directions for presenting your case at the hearing.

The pre-hearing conference is a relatively informal way to meet a Hearing Officer and any lawyers involved and to have general discussion about the case, as well as ask for technical assistance in preparing for a hearing.

PRE-HEARING FORMAT

The Hearing Officer will ask questions to determine whether the matter is ready for a hearing. For example, the Hearing Officer may ask:

If you have had a resolution meeting or a mediation?

If the student is currently attending school?

If you are expecting the results of an observation or evaluation?

If you have identified all the documents and witnesses you intend to present at the hearing?

PRE-HEARING FORMAT

The Hearing Officer may also ask you to explain more about why you are requesting a hearing and what you think the solution to the dispute should be. The Hearing officer will then confirm the dates, time and location for the hearing.

MOTIONS

- ▶ 3. Motions: Motions are requests addressed to the Hearing Officer to take some type of action on the appeal.
 - ▶ You must submit Motions in writing to the Hearing Officer and at the same time to the other party.
 - ▶ The other party has ten days to submit a response.
 - ▶ The Hearing Officer will respond in writing soon afterwards.

MOTIONS



Some typical Motions are:

- ▶ requests to postpone a hearing (request for continuance);
- ▶ requests for summary judgment (decision without a hearing);
- ▶ or requests to dismiss.

STEPS BEFORE THE HEARING

- ▶ 4. Last Steps:
 - ▶ a. At least 10 days before the hearing, you may ask the Hearing Officer in writing to issue a subpoena* to anyone you want the Hearing Officer to order to testify at the hearing. What witnesses are obligated to attend and what they would provide.
 - ▶ b. You must get all the documents you want the Hearing Officer to consider to the Hearing Officer and the other party at least 5 business days before hearing date. These are your exhibits*. They must be submitted with an index. Each document must be numbered. Please check the [Users' Guide for Administrative Process](#) for an example of an index under "Exhibit List" in the back of the guide.
 - ▶ You must also include a list of all the witnesses you intend to present at the hearing.

STEPS BEFORE THE HEARING

- ▶ c. Call your witnesses to ensure they are aware of the time and location of the hearing. Alert the other party and the Hearing Officer **as soon as possible** in writing if you learn of any potential problems with witness schedules.

- ▶ d. If the hearing is postponed or cancelled, you are responsible for notifying your witnesses. The Hearing Officer does not provide any compensation for anyone who attends a hearing, including witnesses.

HEARING

IV. THE HEARING

- ▶ 1. Before the hearing formally begins, the Hearing Officer will ask if there is anything that needs to be discussed to make the hearing go more smoothly.

- ▶ You should tell the Hearing Officer:
 - ▶ If any of your witnesses have scheduling limitations,

 - ▶ If you have problems with your exhibits or the other party's exhibit packet,

 - ▶ If you need to break at certain times for medical reasons,

HEARING

- ▶ If you have a new advocate,
- ▶ Or anything else that might affect the flow of the hearing.

HEARING FORMAT

- ▶ 2. The hearing follows a trial format, but is less formal. It is recorded. The typical procedure is:
 - ▶ Hearing Officer welcomes participants and reads a formal opening statement* into the record.
 - ▶ The Hearing Officer puts the documents into the hearing record* as exhibits.*
 - ▶ You and the other party have a chance to make an opening statement*.
 - ▶ Whoever asked for the hearing goes first.

ORDER OF PROCEEDINGS

Assuming you have requested the hearing, you then present your witnesses one by one.

- First you ask the questions (direct examination).
- The other party then will ask the witness questions (cross-examination).
- The Hearing Officer may also ask questions.
- When you have finished presenting all your witnesses, the other party will present its witnesses by asking the first round of questions.
- Then you may ask questions. The Hearing Officer may also ask questions.

ORDER OF PROCEEDINGS

When all the witnesses are finished, the Hearing Officer will ask if you would like to make a closing statement*. Then the hearing will finish.

HEARING OFFICER DECISION

- ▶ 3. The Hearing Officer will not make a decision right away. The original Hearing scheduling notice will contain the date by which the decision is due; however, if you or the other party requests a continuance and it is granted, you, the other party and the Hearing Officer who will determine the date by which the decision will be sent to you by certified mail.

HEARING OFFICER ROLE

- ▶ 4. The purpose of the hearing is to gather evidence. The Hearing Officer is neutral at all times. Remember, he or she cannot represent a party or give you any legal advice.
 - ▶ The Hearing Officer's role is to:
 - ▶ manage the flow of the evidence
 - ▶ to ensure that each party can participate in the process.
 - ▶ The Hearing Officer is aware of how difficult it is to advocate at a hearing without legal assistance. The Hearing Officer will help you present your case by:
 - ▶ reminding you of the schedule,
 - ▶ rephrasing or reframing your questions to witnesses to ensure that the information is relevant,
 - ▶ and ensuring that the process is fair for all sides.

OATH

- ▶ 5. If you want to testify, the Hearing Officer will administer an oath to you. You will be questioned by both the other party and the Hearing Officer.

EXPECTATIONS

V. WHAT TO EXPECT

- ▶ 1. During all contacts with the Hearing Officer, all parties will be expected to:
 - ▶ be prepared,
 - ▶ be respectful,
 - ▶ be honest,
 - ▶ be cooperative,
 - ▶ be on time.

REMAIN CALM AND FOCUS

Although the hearing can feel overwhelming, it is important to remain calm and remain focused on your goal.

WORDS TO THE WISE

- ▶ a. Remember that the other party, the lawyer(s) and the Hearing Officer are not your enemies. Their skills and experience can be very helpful to you if you maintain a professional attitude and ask for assistance when you need it.
- ▶ b. Keep in mind that everyone else at the hearing is probably just as uncomfortable as you are.
- ▶ c. Read all documents you receive from the Hearing Officer and from the other party very carefully. Ask questions if you don't understand.
- ▶ d. Listen carefully to the Hearing Officer's directions. Ask questions if you don't understand.

WORDS TO THE WISE

- ▶ e. Follow the deadlines and the orders carefully. If you can't meet the deadline, ask for an extension, in writing. If you do not follow the Hearing officer's orders, your case may be dismissed.

FINAL THOUGHTS

- ▶ 2. Hearing Officers base decisions on facts, not opinions. Remember to always keep the facts of the case foremost in mind;

As you know, these disputes can be very emotional. Parties may be tempted to yell, to call others names, to pound the table, to accuse people of unprofessional conduct or other uncivil behavior. Please don't let the conversation veer from the actual dispute, as it will be unproductive.

Hearing Officers have the authority to delay or dismiss all or parts of a case if a party's words or behavior are out-of-line.

FINAL THOUGHTS

Please always keep in mind:

Hearing Officers do not know you and come to every case with an open mind;

Hearing Officers know you are unrepresented and will assist you as best they can without prejudicing either party;

Hearing Officers act as facilitators during the proceedings and do not have an opinion about you or your case

It is the duty of the Hearing Officer to maintain order at all times. This means they can cut testimony off if they think it is irrelevant

DEFINITIONS

VI. DEFINITIONS

You may see these terms in the Department of Education Hearing rules or in other documents about special education procedures. You may also hear them during mediation, negotiations or at hearing. The Hearing Rules can be found on the Department website:

<http://www.education.nh.gov/legislation/hearings.htm> ,

or you can ask the Office of Legislation and Hearings to send you a print copy of the Hearing Rules.

DEFINITIONS

- ▶ Admissible: Made part of the official record of the Hearing that the Hearing Officer will consider when making a Decision. The Hearing Officer can only pay attention to evidence that is “admitted” into the record.
- ▶ Burden of Proof: The moving party in a dispute has the burden of proof, which means it is that party’s responsibility to prove that what it said in the hearing request is true. If you request the hearing and you do not meet your burden of proof, you will not “win” your case.
- ▶ Caucus: A caucus is often a part of mediation. A caucus happens when the mediator speaks to one of the parties separately and apart from the other. The mediator may then return and caucus with the other party.
- ▶ Closing Statement: Your final argument in support of your hearing request.

DEFINITIONS

- ▶ Discovery: The process in which parties request and exchange information with one another after the Hearing Request has been filed and before the hearing begins. Interrogatories, requests for documents, and depositions are all different tools for discovery.
- ▶ Dismiss: The Hearing Officer closes the Hearing file. The Department will not take any more action on the hearing request.
- ▶ Dismiss with Prejudice: The case is closed and a Hearing Officer cannot consider the issues set out in the hearing request ever again.
- ▶ Dismiss without Prejudice: The case is closed, but the Hearing Officer may consider the issues set out in the hearing request if an entirely new hearing request is filed.

DEFINITIONS

- ▶ Evidence: The documents and testimony that the Hearing Officer will consider when making the Decision.
- ▶ Examination: Formal questioning. Direct examination occurs when you ask questions of the witnesses you brought to the hearing. Cross examination occurs when you question the witnesses brought by the other party.
- ▶ Exclude: To keep a document or part of a witness's testimony out of the hearing record.
- ▶ Exhibits: Documents that are accepted into the official record of the hearing.

DEFINITIONS

- ▶ Ex Parte Communication: Communication between the Hearing Officer and one of the parties when the other party is not present. Ex parte communication is not allowed. The other party must always be present, either physically or on the line in a conference call, when you speak with your Hearing Officer. Similarly, the Hearing Officer cannot receive written ex parte communication. All correspondence and documents that you send to the Hearing Officer must be copied to any other party at the same time that you send them to the Hearing Officer.
- ▶ Expedited Hearing: A Hearing that is scheduled and resolved more quickly due to pressing circumstances outlined in the Hearing Rules.
- ▶ FAPE: Free Appropriate Public Education: All children with disabilities are entitled to FAPE according to state and federal law.

DEFINITIONS

- ▶ Five Day Rule: A list of all potential witnesses as well as all documents that you want the Hearing Officer to consider must be presented to the other party and to the Hearing Officer at least five business days before the hearing date. If you miss this deadline, the documents may not become a part of the hearing record.
- ▶ IDEA: Individuals with Disabilities Education Act: The most important federal law concerning special education.
- ▶ Inadmissible: Documents or testimony that does not meet the standards for inclusion into the hearing record.
- ▶ Joinder: Adding another agency or school that may be responsible for providing some services to the student as a party to the appeal.
- ▶ LEA: The local educational agency or school district.

DEFINITIONS

- ▶ Least Restrictive Environment (LRE): The principle that students with disabilities must be educated with regular education students as much as is appropriate and possible.
- ▶ Moving / Non-Moving Party: The *moving* party is the one who asks the Hearing Officer to take action (also known as the Petitioner). The *non-moving* party is the person or agency that responds (also known as the Respondent). These terms apply to both the original Request for Hearing and to any Motion made during the hearing process.
- ▶ Oath: The speaker swears to tell the truth. There are very serious consequences for the appeal and for the person if she or he is not honest after agreeing to tell the truth.

DEFINITIONS

- ▶ Objections: A statement made when you want the Hearing Officer to ignore a document or part of a witness's testimony. There must be a good legal reason for an objection.
- ▶ Official Record / Hearing Record: The documents and the tape-recorded testimony that the Hearing Officer will consider when making the Decision.
- ▶ Opening Statement: Your formal introduction of the issues and facts to the Hearing Officer.
- ▶ Party: A necessary participant in the Hearing. Generally, the parties are the parents and the school district. Only parties must obey Hearing Officer orders.

DEFINITIONS

- ▶ Pro Se: Means “for oneself.” A *pro se* party is one who represents him/herself at Hearing, as opposed to being represented by an attorney or advocate.
- ▶ Pull Out: When the student is temporarily removed from the mainstream classroom for special education instruction or services.
- ▶ Recess: A break or pause in the hearing.
- ▶ Record: The documents and tape-recorded testimony that the Hearing Officer will consider when making the Decision.
- ▶ Show Cause: Means “tell me why”. An Order to Show Cause asks the parties to state in writing why the case should stay active. If the parties do not respond or do not provide convincing reasons for the Hearing Officer to keep the case open, a Hearing Request may be dismissed.

DEFINITIONS

- ▶ Statute of Limitations: The law setting out the “expiration date” for special education claims. Generally, you must request a hearing within two years of the date of the school district’s action that you disagree with.
- ▶ Stay Put: A special education term which refers to the program or placement the student was attending at the time the Parents rejected the IEP or the Hearing Request was filed.
- ▶ Sua Sponte: Means “on one’s own.” A legal term used when a Hearing Officer decides to take formal action without the request of either party.

DEFINITIONS

- ▶ Subpoena: An order commanding a person to appear at a certain date and time, in a certain location, in order to give testimony in a legal proceeding.
- ▶ Subpoena Duces Tecum: An order requiring that specified documents be turned over to a party for use in a legal proceeding.
- ▶ Testimony: The words of the witness who has taken an oath to tell the truth.
- ▶ Venue: Location.
- ▶ Witness: The person who is responding to questions under oath at the hearing.