

# Guide to Informal Third Party Discussion Led by Moderator



## *Helpful hints*

*For more information and explanations, please refer to the [Users' Guide to Administrative Process](#)*



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## NOTICE

NOTE: The following information was prepared by the Department of Education's Office of Legislation/Hearings to assist parents to Informal Third Party Discussions Led by a Moderator and is meant to supplement and not in any way 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. See [www.education.nh.gov](http://www.education.nh.gov) for federal and state laws and regulations.

# I. ESSENTIALS

## I. BEGINNING THE INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ 1. NH Department of Education, Office of Legislation and Hearings contact info:

101 Pleasant Street  
Concord, NH 03301  
(603)271-2299 Telephone  
(603)271-1953 Fax

- ▶ 2. The Office of Legislation and Hearings does not give legal advice nor act as a representative or advocate for you.
  - ▶ 3. The Office of Legislation and Hearings cannot appoint a lawyer or advocate to represent you or the student at the discussion.
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## 1. ESSENTIALS

- ▶ 4. The Office of Legislation and Hearings can only assist you with “technical assistance” regarding general information about the process.
- ▶ 5. The moderator assigned to your case cannot act as a legal advisor or legal representative.
- ▶ 6. The Office of Legislation and Hearings has a very useful website:

[Appeals and Mediation | Department of Education \(nh.gov\)](#)

The website has links to

- Forms
- Statutes and regulations
- Users' Guide to Administrative Process that explains the various administrative processes offered by the Department of Education.

## 1. ESSENTIALS

- ▶ 7. 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.
- ▶ 8. You can withdraw your request for an Informal Third Party Discussion Led by Moderator at any time during the process by sending a letter to the other party and the Moderator.
- ▶ 9. If you are a parent, you should carefully consider whether it is a good idea for the student to attend the session. If the session is held in Concord, there is no child care available nor are there separate or secure waiting rooms. The session typically last a full business day.

## II. FILING FOR AN INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

### ▶ A. FORMAT

- If both parties agree to enter an Informal Third Party Discussion Led by Moderator, the school district makes the request to the NH Department of Education, Office of Legislation and Hearings, on behalf of the parties. There is a form entitled Request for Informal Third Party Discussion Led by Moderator as well as Agreement to Enter Informal Third Party Discussion Led by Moderator that the school district will fill out. In addition, the school district, prior to the discussion, must fill out a form entitled Authorization to Commit Any Resources of the School District as a Result of Third Party Discussion Led by Moderator.

## II. FILING FOR AN INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

### ▶ B. FILING THE REQUEST FOR AN INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- Prior to requesting an informal third party discussion, both parties to the dispute are requested to select 2 or 3 specific days which are mutually convenient and state what the issue(s) is/are to be discussed and each party's view of what they want;
- Parties will determine whether or not they will attend with a lawyer and/or advocate. If both parties agree, the session can be held without attorney present;
- Sessions, unless specifically requested, are held in Concord at 21 S. Fruit Street, Walker Building.
- Although sessions are generally held Monday–Friday (9 a.m. – 5 p.m.), with agreement of the Moderator and parties this can be amended.

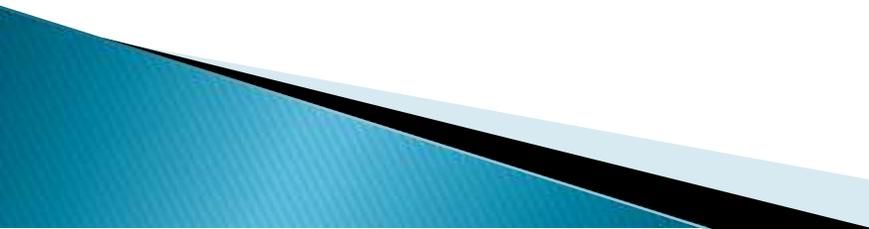
## II. FILING FOR AN INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ C. AFTER THE OFFICE OF LEGISLATION AND HEARINGS RECEIVES YOUR REQUEST FOR AN INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR:
  - 1. The Office of Legislation and Hearings will send a “scheduling notice” generally within 5 days of receiving the request.
  - 2. The scheduling notice has important information, including:
    - the name and address of the Moderator assigned to the matter;
    - the date of the discussion;
    - the name and address of the parties to the matter.

### III. AGREEMENT PRIOR TO INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ 1. Agreement: The school district and the parent can reach an agreement by talking directly and informally to each other at any time. If this occurs, parent or the school district can contact the Moderator to cancel the discussion.

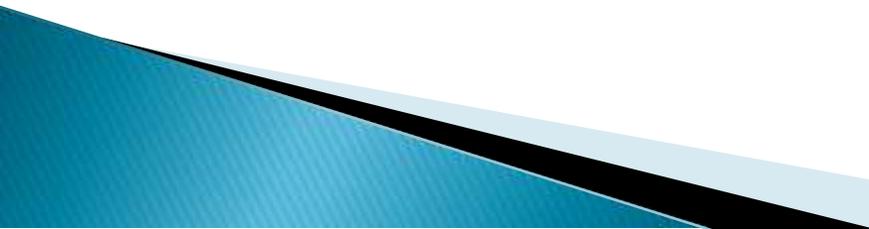
#### IV. THE INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ 1. Informal Third Party Discussion Led by Moderator: If you do not come to an agreement prior to the discussion, you are on the road to the discussion.
  - ▶ 2. The Informal Third Party Discussion Led by Moderator is a confidential non-adversarial means to discuss disagreements on a variety of matters including, but not limited to, special education, residency, manifest educational hardship, bullying, cyber-bullying, etc.
  - ▶ 3. Please remember, the discussion will be more effective to both parties if you are prepared to listen carefully to other perspectives and to follow directions given by the Moderator.
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#### IV. THE INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ 4. The Moderator's role is not to provide a decision, but, after listening to each party's perspective of the dispute, to offer options to think about as a way to possibly settle the dispute;
  - ▶ 5. The Moderator, who is also an independent contracted Hearing Officer/Mediator, can give valuable insights into how a Hearing Officer would view the matter;
  - ▶ 6. The Moderator can offer his/her opinion as to whether the remedy a party wants is allowed under the law;
  - ▶ 7. In general, the Moderators help the participants to open dialogue, search for possible solutions and present possible scenarios to arrive at a mutual solution;
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#### IV. THE THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ 8. Length of sessions varies, however, at the on-set, the matter is limited to ½ hour allowing 15 minutes for each party to talk about their perceptions. Afterward, the matter can take anywhere from 5 minutes to several hours to explore possible solutions;
  - ▶ 9. All participants should be prepared to take whatever time is necessary to discuss the matter, including, if agreed to by the parties, staying through lunch;
  - ▶ 10. Informal Third Party Discussion sessions are confidential;
  - ▶ 11. If the discussion results in a settlement, the Moderator can assist the parties in producing a written agreement, developed by them with the assistance of the Moderator, resolving the issue(s) satisfactorily to both sides;
  - ▶ 12. Settlement agreements are not enforced by the Department. Agreements are legally binding and enforceable in a court of competent jurisdiction;
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#### IV. THE INFORMAL THIRD PARTY DISCUSSION LED BY MODERATOR

- ▶ 13. As an Informal Third Party Discussion Led by Moderator may result in a settlement, each party comes to the session with authority to commit any resources (time, effort, funds, staff, equipment, services, etc.) under their jurisdiction to whatever they may agree to as a result of the discussion (i.e. parents have authority over their child; the school district representative brings written authority to commit the district's resources);
  - ▶ 14. If the Informal Third Party Discussion Led by Moderator does not result in settlement, parties are free to request an alternative dispute resolution (mediation and for IDEA matters, Neutral Conference) or an administrative hearing (for IDEA matters, a special education impartial due process hearing).
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## V. WHAT TO EXPECT

- ▶ 1. During all contacts with the Moderator and with the other party, you will be expected to:
  - be respectful,
  - be honest,
  - be cooperative,
  - be prepared,
  - be on time.
  
- ▶ 2. It is important to:
  - remain calm,
  - remain focused on your goal.

## VI. WORDS TO THE WISE

- ▶ a. Remember that the other party, the lawyer(s) and the Moderator are not your enemies. Their skills and experience can be very helpful to you if you maintain a professional attitude and ask for clarification or assistance when you need it.
  - ▶ b. Keep in mind that everyone else at the Informal Third Party Discussion Led by Moderator is probably just as uncomfortable as you are.
  - ▶ c. Listen carefully to the Moderator and the other party. Ask questions if you don't understand.
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## VII. FINAL THOUGHTS

- ▶ 1. The goal of the Informal Third Party Discussion Led by Moderator is to focus 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. You may be tempted to yell, to call others names, to accuse people of unprofessional conduct or other uncivil behavior.

**PLEASE DON'T !!**

If the Moderator senses the matter is getting out of hand, he/she has the authority to dismiss the Informal Third Party Discussion Led by Moderator if your words or behavior are out of line.

## VII. FINAL THOUGHTS

Please always keep in mind:

The Moderator does not know you and comes to every Discussion with an open mind.

The Moderator knows you may be unrepresented and will assist you as best they can without prejudicing either party.

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



## DEFINITIONS

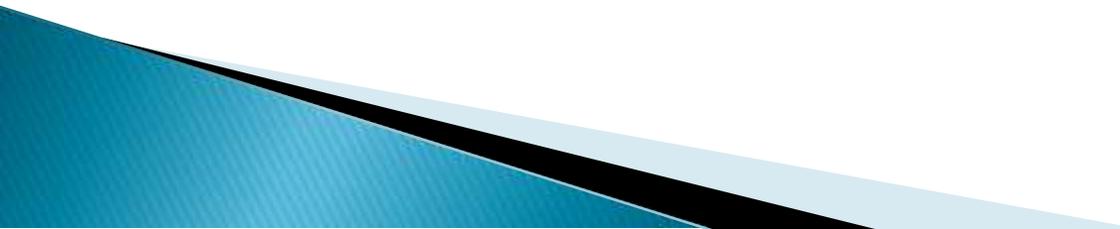
### VI. DEFINITIONS

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:

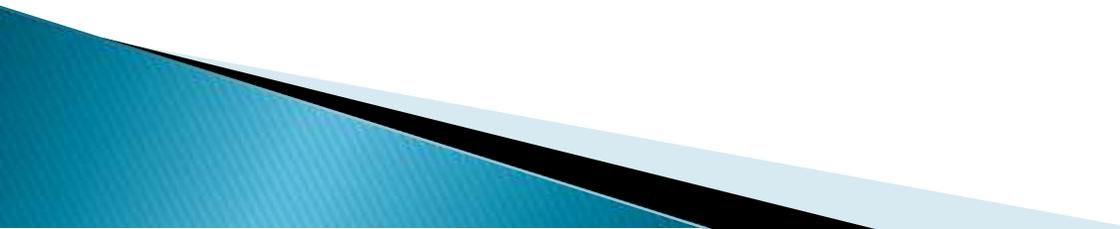
<http://www.education.nh.gov/legislation/hearings.htm> ,

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.
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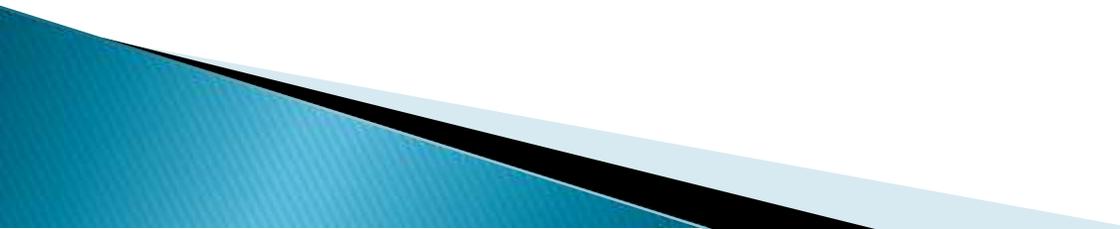
## DEFINITIONS

- ▶ 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.
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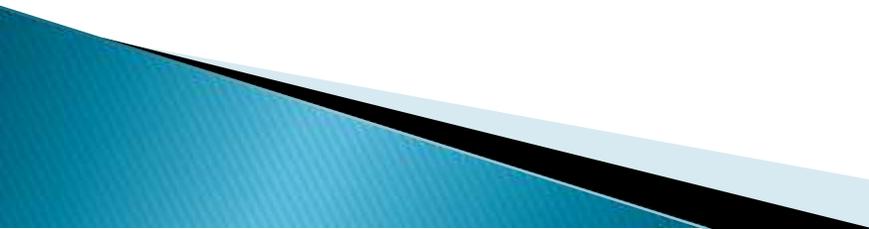
## DEFINITIONS

- ▶ 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.
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## 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.
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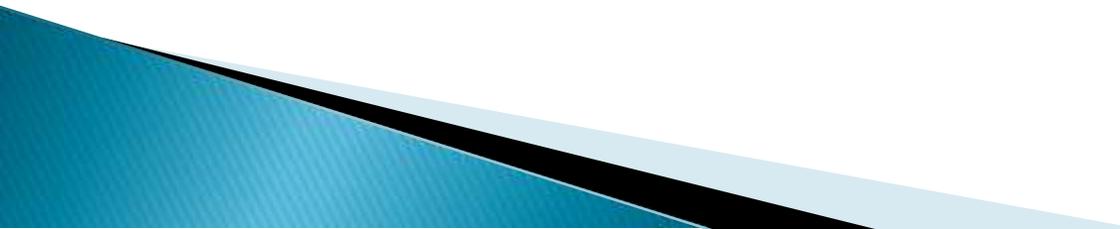
## DEFINITIONS

- ▶ 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.
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## 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.
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## 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.
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## 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.
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