

Parent and Child Rights in Special Education

Procedural Safeguards Notice

An Explanation of Procedural Safeguards Available Under Provisions of the Individuals with Disabilities Education Act (IDEA) and the Colorado Rules for the Administration of the Exceptional Children's Educational Act (ECEA)

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

Whenever a due process complaint is filed, you or the administrative unit involved in the dispute must have an opportunity for an impartial due process hearing, as described in the **Due Process Complaint** and **Resolution Process** sections.

Agency responsible for conducting the due process hearing.

The hearing described in this section must be conducted by an Impartial Hearing Officer assigned on a rotating basis by the Colorado Department of Education.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the Colorado Department of Education or the administrative unit that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each administrative unit must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the administrative unit) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the administrative unit must request an impartial hearing on a due process complaint within two years of the date you or the administrative unit knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. The administrative unit specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The administrative unit withheld information from you that it was required to provide to you under Part B of the IDEA.

HEARING RIGHTS

34 CFR §300.512

General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading **Appeal of decisions; impartial review** has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities, except that in Colorado, only an attorney licensed by the Colorado Supreme Court may *represent* a party at a due process hearing;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional disclosure of information

At least five business days prior to a due process hearing, you and the administrative unit must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the administrative unit intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

HEARING DECISIONS

34 CFR §300.513

Decision of hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child;**or**
3. Caused a deprivation of an educational benefit.

Construction clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a administrative unit to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

None of the provisions under the headings: **Filing a Due Process Complaint; Due Process Complaint; Model Forms; Resolution Process; Impartial Due Process Hearing; Hearing Rights; and Hearing Decisions** (34 CFR §§300.507 through 300.513), can affect your right to file an appeal of the due process hearing decision with the Colorado Department of Personnel and Administration, Office of Administrative Courts.

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a

separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision to advisory panel and general public

The Colorado Department of Education or the administrative unit, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.