

What is an Impartial Due Process Hearing?

An impartial due process hearing is designed to resolve differences between parents and schools regarding the identification, evaluation, placement or provision of a Free Appropriate Public Education (FAPE) to a child with a disability. Compared to other dispute resolution methods, due process is a more formal proceeding. A due process hearing is an administrative proceeding where there are certain rules in place about what types of evidence may be introduced and how that evidence can be presented. These rules are in place to assure each party a fair hearing. An administrative law judge (ALJ) presides over due process hearings and is responsible for making a final decision in each case. Parties not satisfied with the decision of the ALJ may file an appeal in court. Those participating in due process generally have an attorney present to assist them throughout the process, however, this is not required.

The Facts you should know:

- ✓ Due process must be requested within 2 years of the date the family or public agency (e.g., school system, Georgia Department of Education (GaDOE)) knew or should have known about the problem.
 - This time limit does not apply to parents who have been prevented from filing due process by a school system's specific misrepresentation that the problem was resolved or if a school system failed to provide required information to the parent.
- ✓ Due process is initiated by filing a due process hearing request that:
 - May be filed by the parent or the public agency.
 - Is confidential.
 - Contains the student's name, home address and name of the school as well as a description of the problem or dispute.
 - Proposes a resolution to the problem.
 - Is sent both to the opposing party and to the Georgia Department of Education.
- ✓ Within fifteen (15) days of receiving the due process hearing request, the other party may challenge it if they think the request does not contain the required information. To challenge it, they must notify the ALJ in writing.
- ✓ Within ten (10) days of receiving the due process hearing request, the opposing party must send a response that addresses the issues in the request. If a parent requests due process, the school system must send **prior written notice** that explains why they want to or refuse to take some action.
- ✓ Once a parent requests due process, the school system has fifteen (15) days to hold a meeting to try to resolve the dispute. This is known as a **resolution meeting**. The meeting must include the parent, relevant members of the IEP Team and a representative of the public agency with decision-making authority. School system attorneys may not participate in the meeting unless parents are accompanied by an attorney.
- ✓ The resolution meeting can be waived if both the parent and school system agree to do so in writing. The meeting may also be waived if both agree to use mediation to try to solve the problem. A parent's failure to participate in the resolution process may delay the hearing or cause the ALJ to dismiss a parent's due process hearing request.
- ✓ A resolution period of thirty (30) days is required before a due process hearing may occur. Once the resolution period ends or the parties report that no agreement is possible, a due process hearing is held and the ALJ has forty-five (45) days from the end of the 30-day resolution period to issue a written decision.
- ✓ Five (5) business days before the due process hearing, both sides must exchange all evidence they want to present at the hearing. This must include a list of all potential witnesses that may be called to testify. Failure to share this information may affect a parties' ability to present the information at the hearing.
- ✓ The party who requested due process has the burden of proof at the hearing. This means they might have to present their evidence first. This evidence must be thorough and complete enough to prove the case.
- ✓ The due process hearing must be conducted at a time and place reasonably convenient to the parents. The parents may have the child present, open the hearing to the public, and have the hearing recorded at no cost.
- ✓ Within 90 days of the decision of the ALJ, either party may appeal by filing a civil action in the appropriate court.
- ✓ For parents who win in court, attorneys' fees may be awarded. School systems can also be awarded attorneys' fees if they win and the ALJ finds a case to be frivolous or unreasonable.

Tips for Families:

- ✓ Due process is a formal legal proceeding.
- ✓ Due process should be filed only after the parties have tried to address their differences another way. You may be able to resolve a disagreement by talking to your child's teacher, the principal or the special education director. You may want to try this before using a formal step such as due process. However, there is no requirement to try to resolve the disagreement before filing for due process.
- ✓ The timeframes for due process are set by law. From the date you file due process, there will be at least ten weeks (and many times as much as 4 - 6 months) until an ALJ issues a decision.
- ✓ Both parties have the right to representation at a due process hearing. A family may choose to retain an attorney for the hearing. Most school districts will have an attorney present at any hearing.
- ✓ Due process hearings are provided at no cost. However, you will be responsible for the costs of your own attorney and any expert witnesses who may assist in your case.
- ✓ Local school systems should have a list of low-cost or free legal services. Ask for a copy of the list!
- ✓ **Drafting a Due Process Hearing Request**
 - Be specific. You must include facts that support your position.
 - Be organized. Outline your facts into a logical order. For example, the facts could be organized by date, by issue, or even by specific reference to the IDEA or state special education rules.
- ✓ **Preparing for Due Process**
 - If possible, consult with an expert on due process hearings before you begin your preparations.
 - Make sure that you have evidence to present at the hearing. Evidence can be documents that you take to the hearing. Evidence can also be live witnesses who appear at the hearing.
 - Consider using "expert" witnesses to support your evidence.
 - Prior to the hearing, you can raise any issues in a pre-hearing conference with the ALJ. Any party can ask for a pre-hearing conference.
 - Write out your opening statement, the questions for your witnesses and the questions you want to ask the school system's witnesses.
 - Review all the records that you believe are relevant to the hearing. Be prepared to speak about these documents very specifically.
- ✓ **Presenting Your Case**
 - Due process hearings are formal. You should dress and behave accordingly.
 - Be respectful of the ALJ and the opposing party. All parties are entitled to their day in court.
 - Be direct and to the point. The ALJ will appreciate a presentation that moves directly to the heart of the matter. Personality conflicts and arguments in a hearing will not be allowed by the ALJ.
- ✓ **After the Hearing**
 - The decision of the ALJ will be issued in writing and sent to you by email or mail. Check your mailbox!
 - Make sure to note the date you receive the decision so that you know when your right to appeal expires. If you do not appeal a decision within the appropriate timeframe, you will be unable to take any further legal action.

Where to go for more information:

Parent to Parent of Georgia
770-451-5484 or 800-229-2038
www.p2pga.org

Georgia Department of Education, Division for Exceptional Children
404-656-3963

<https://gadoe.org/special-education/>

Georgia Department of Education Implementation Manual
(See chapter on dispute resolution.)

Additional resources: Contact the **Special Education Director** for your school system.