

Mediation

Regulations: 511 IAC 7-17-51, 7-30-1

Sometimes you may disagree with us about your child's special education. Mediation is a voluntary process that may help us resolve the disagreement. The IDOE/DSE pays all costs of mediation and assigns a trained impartial mediator to assist you and us to try to resolve disagreements about your child's disability identification or eligibility, the level of services or placement, FAPE, or payment for services obtained by you. No employee of IDOE/DSE or a local school corporation or other public agency providing special education services is eligible to be a mediator. You may have a copy of the list of current mediators.

Either you or we may suggest mediation, and it begins when we both agree to participate. The process is started by sending a *Request for Mediation* form (signed by both you and us) to IDOE/DSE. Mediation forms may be obtained from our office. The assigned mediator will contact you and us to schedule a timely meeting in a convenient location. A mediator does not make decisions, s/he facilitates discussions. Those discussions are confidential and may not be used as evidence in subsequent due process hearings or civil proceedings.

If the mediation process results in full or partial agreement, the mediator will prepare a non-binding, written mediation agreement that is submitted to the student's CCC for approval.

A request for mediation may occur before or at the same time as a request for a due process hearing. Requesting mediation will not prevent or delay a due process hearing, nor will mediation deny any of your other rights. Where a due process hearing has been requested, the IHO may require the mediation agreement to be submitted to him/her for approval.

Due Process Hearings

Regulations: 511 IAC 7-17-27, 7-30-3

You or we may request a due process hearing when there is a disagreement about your child's special education. A due process hearing is a formal proceeding in which evidence is presented to an IHO to resolve disagreement(s) between you and us. The disagreement may be about us proposing or refusing to do something or changing your child's disability identification or eligibility. It may be about starting or changing your child's level of services or placement or for reimbursement of services obtained by you. Mediation is available as a means of dispute resolution for these same issues.

You may request a due process hearing whenever you do not agree with our proposed action (such as an evaluation or services) or whenever we have refused to take action that you requested. The request for a due process hearing, which will remain confidential, must:

- be in writing and signed;
- include the student's name and address, and name of the school the student attends;

- give the reasons for the hearing request, including a description of the nature of the problem and any facts related to the problem;
- include a proposed solution of the problem, to the extent known and available to you at the time; and
- be sent at the same time to us, to the State Superintendent of Public Instruction, and to IDOE/DSE at Room 229, State House, Indianapolis, IN 46204-2798; FAX: 317_232_0589.

The IDOE/DSE has created a model form to assist you in filing a request for a due process hearing. You may contact us or IDOE/DSE to obtain the form. You may choose to have an attorney represent your child. If your attorney fails to include all of the required information in the request for hearing, your right to a hearing will not be delayed or denied, but the amount of attorney's fees that you might recover may be reduced. There are additional requirements if you are seeking reimbursement for private school tuition.

We also have the right to initiate a due process hearing. We must follow the same procedure that you are required to do, and we will send a copy of our request for a hearing to you.

Due process hearings are free of charge to you, except for the fees of your witnesses, your attorney's fees, and miscellaneous expenses such as the cost of copying documents. We (or in some cases, IDOE/DSE) are responsible for payment of the IHO's fees and the court reporter's charges. Under certain circumstances, we are required to reimburse you for your attorney's fees. You may contact the following agencies regarding free or low-cost legal services:

Legal Services Org. of Ind. Inc., 242 W. 7th,
Bloomington, IN 47404 Phone: 1-812-339-7668 or
1-800-822-4774

Once a request for hearing is received, the State Superintendent of Public Instruction will appoint an IHO and send a letter notifying you of the appointment. All IHOs have been trained in due process hearing procedures and have knowledge of special education laws and regulations. IHOs must be independent, impartial and cannot serve if they have a personal or professional conflict of interest. Employees of IDOE/DSE, a local school corporation or other public agency that may be involved in the education or care of the student cannot serve as IHOs. You may ask to receive a copy of the list of current IHOs from IDOE/DSE.

Unless you and we agree otherwise, your child will remain in the current educational placement and receive the services described in the last agreed-upon IEP, until the IHO issues a decision (except in disciplinary cases). However, if the last agreed-upon placement and services cannot be determined, the IHO will decide. In addition, if the proceedings extend beyond the end of the school year, s/he will advance to the next grade unless grade advancement is at issue. Finally, if the issue of the proceedings involves initial enrollment in a public school, s/he, with your consent, will be placed in the public school program until the completion of the proceedings. If you and we cannot agree on a temporary public school placement and services, the IHO will decide as a preliminary matter before the hearing.

Before the hearing, you are entitled to a copy of your child's educational record, including all tests and reports upon which our proposed action may be based. In addition, at least 5 business days before the date of the hearing, you and we must disclose to each other the evidence that we intend to use in the hearing. Specifically, copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If you or we fail to make these disclosures on time, the evidence can be barred from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the IHO.

During a due process hearing, you have all of the following rights, and we have the first 5:

- to be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of students with disabilities;
- to present evidence, confront, cross-examine, and compel the attendance of any witnesses;
- to prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 business days prior to the hearing (as discussed in the preceding paragraph);
- to separate the witnesses so that they do not hear other witnesses' testimony;
- to be provided with an interpreter;
- to have your child attend the hearing; and
- to have the hearing opened or closed to the public.

The hearing will be held at a time and place reasonably convenient to you and to us. You will receive a written notice from the IHO regarding the time and place of the hearing as well as other procedural matters. If you asked for the hearing, you will present documents and testimony first. If we asked for the hearing, we will go first. The IHO will base the decision solely on the oral and written evidence presented during the hearing.

The IHO will mail the decision to you and to us. The decision must be mailed within 45 calendar days from the date the request for hearing was first received by the State Superintendent of Public Instruction. However, a longer period of time is allowed if the IHO has granted your's or our request for an extension of time.

You may choose a written decision or an electronic decision (on diskette) either of which is free of charge. You are also entitled to a written or electronic copy of the transcript of the hearing, free of charge. You will be asked to make your choice in advance of the hearing.

An IHO's decision is final, and the IHO's orders must be implemented, unless appealed within 30 calendar days from the date the decision is received. If you sought a change of your child's placement and the IHO agreed with you, then the placement and services ordered by the IHO will be treated as the agreed-upon placement during any appeals. In all other cases, s/he will remain in the pre-hearing placement or other agreed-upon placement, during appeals.

The timelines and certain other matters are different in due process hearings involving certain disciplinary issues including expulsions.