



STATE OF NEW JERSEY

DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: May 8, 2024
To: Local Educational Agency Leads, Administrators of Approved Private Schools for Students with Disabilities
Route To: Directors of Special Education
From: Kathy Ehling, Assistant Commissioner
Division of Educational Services

Procedures for Special Education Due Process Hearings

The purpose of this broadcast memorandum is to provide information on special education due process hearings. The Office of Special Education (OSE) encourages parents and local education agencies (LEAs) to work collaboratively, in the best interests of children, to resolve disagreements that may occur when working to provide a positive educational experience for students with disabilities. To that end, the OSE offers [facilitated IEP meetings](#) to promote effective communication and assist the Individualized Education Program (IEP) teams in developing a mutually acceptable IEP, while also addressing conflicts and disagreements that may have occurred before or emerge during the development of the IEP. When efforts to resolve disagreements are unsuccessful, the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and N.J.A.C 6A:14 provide specific options for resolving disputes between parents and LEAs.

Resolution Meetings

When a parent requests a due process hearing or expedited due process hearing, LEAs are afforded an opportunity through a resolution meeting to resolve the matter before proceeding to a due process hearing. For a due process hearing initiated by a parent or a representative of a parent, the district must convene a resolution meeting within 15 days of receipt of the request for a due process hearing, or within seven days of receiving a request for an expedited due process hearing. The parent or parent representative can waive this requirement for a local resolution session in writing to the OSE. The LEA is reminded they must notify the OSE of the date the resolution conference will occur. If the parties reach an agreement, written notice that the matter has been resolved must be forwarded to the OSE. Please note that in the event a determination is made that a resolution meeting was not offered within 15 days or seven days of receipt of the request for a hearing, a finding of noncompliance will be issued by the OSE to the LEA, and a corrective action plan will be required.

In place of a resolution meeting, the parties may agree to participate in mediation. The parties may also agree, in writing, to waive the resolution meeting and proceed directly to a due process hearing. As a reminder, when a district board of education files a request for a due process hearing, no resolution meeting shall be held. The matter shall be mediated if the parties agree and, if necessary, transmitted to the Office of Administrative Law (OAL) for a due process hearing.

Timelines For Due Process Hearings

In New Jersey, special education due process hearings are conducted by Administrative Law Judges (ALJs) within the Office of Administrative Law (OAL). Under the IDEA, a final decision in a special education due process hearing must be issued and provided to the parties within 45-days after the expiration of the resolution period. While extensions of the 45-day timeline may be granted at the request of either party, the extension must be limited to a specific period of time. The purpose of resolving a due process hearing within the 45-day timeline is to ensure the timely resolution of disputes relating to the identification, evaluation, placement, or program of a student with a disability. As such, ALJs are strongly encouraged to limit granting of requests to extend the 45-day timeline.

Emergent Relief

N.J.A.C. 6A:14-2.7(r) allows for a temporary order of emergent relief as a part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. Case law requires that the regulation conforms to standards utilized in judicial proceedings for consideration of requests for emergent relief. This broadcast reminds parties an ALJ will grant emergent relief if the petitioner will:

- suffer irreparable harm if the requested relief is not granted;
- the legal right underlying the petitioner's claim is settled;
- the petitioner has a likelihood of prevailing on the merits of the underlying claims; and
- when the equities and interests of the parties are balanced, the petitioner has a likelihood of prevailing on the merits of the underlying claim.

Parties are also reminded that any appeal of an interim decision of an ALJ are subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.

For more information regarding due process procedures, please contact the Office of Special Education at (609) 376-9060 or OSEinfo@doe.nj.gov.

c: Members, State Board of Education
NJDOE Staff
Statewide Parent Advocacy Network
Garden State Coalition of Schools
NJ LEE Group
Administrative Law Judges