

Quick Tips

quick tips...

Essential information and/or interesting facts from Special Education Services, Alabama State Department of Education.

for Dispute Resolution

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UNDERSTANDING DUE PROCESS

Receiving a due process hearing request presents a challenge that, on first reflection, is overwhelming. The following information was prepared to help Superintendents, Special Education Coordinators, and other pertinent staff make decisions to assist in a resolution of the matter that appropriately benefits the student.

The parent, the attorney or a designated person representing the parent, or an official from the public agency may request an impartial due process hearing by sending an email to dph@ALSDE.edu or a *signed* written request to the State Superintendent of Education, Attention: Special Education Services (SES), Post Office Box 302101, Montgomery, Alabama 36130-2101. The violation(s) alleged must have occurred within two years of filing. Exceptions are when there have been specific misrepresentations by the agency that it had resolved the problem or the public agency's withholding of information required by IDEA to be provided to the parent. Additional information may be found on the Alabama State Department of Education's website.

Quick Reference to the Alabama Administrative Code (AAC) 290-8-9.08(9)(c)

15 Day Resolution Meeting- page 549

AAC 290-8-9.08(9)(c)3.(i)(iii)

30 Day Resolution Process- page 549

AAC 290-8-9.08(9)3.

45 Day Due Process Hearing Timeline- page 549

AAC 290-8-9.08(9)(c)3.(v)

Agreements- page 550

AAC 290-8-9.08(9)(c)3.(vi)(vii)(viii)

Amendment- page 548-549

AAC 290-8-9.08(9)(c)1.(iv)

Appeal- page 555

AAC 290-8-9.08(9)(c)15. & 16.

Attorney's Fees- pages 555 & 556

AAC 290-8-9.08(9)(c)17.

DPHO Responsibility- page 552

AAC 290-8-9.08(9)(c)12.

LEA Responsibility- page 551

AAC 290-8-9.08(9)(c)10.

Parent's Responsibility- page 551

AAC 290-8-9.08(9)(c)9.

Prehearing Conference- page 552

AAC 290-8-9.08(9)(c)12.(i)(VII)

Prior Written Notice- page 549

AAC 290-8-9.08(9)(c)2.

Records- page 551

AAC 290-8-9.08(9)(c)10.(V.)

AAC 290-8-9.08(9)(c)8.

Requesting Dismissal- page 549

AAC 290-8-9.08(9)(c)3.(iii)

Required components- page 548

AAC 290-8-9.08(9)(c)1.(ii)

SEA Responsibility- page 552

AAC 290-8-9.08(9)(c)11.

Stay Put- page 555

AAC 290-8-9.08(9)(c)14.

Sufficiency- page 548

AAC 290-8-9.08(9)(c)1.(iii)

Timeline Extension- page 555

AAC 290-8-9.08(9)(c)12.(v)

Reminder



The LEA **MUST** convene the 15-Day Resolution Meeting, or waive the 15-Day Resolution Meeting, or schedule mediation in lieu of the 15-Day Resolution Meeting, within 15 calendar days of receiving the parent's hearing request.

IN GENERAL

- Each year, an average of 1 of every 500 student who receives special education services in Alabama is involved in a due process hearing (DPH) request.
- **Having a district-wide plan in place that identifies personnel and procedures to respond to DPH requests can reduce stress and save time and money.**
- DPH requests impact districts throughout the state. Whether your district is large, small, rural, suburban, or urban, it is probable that at some point in time your district will have to respond to a DPH request.
- **It is expected courtesy that, in regards to matters specifically addressed within the DPH request, all communications between the school system should be made between the attorneys.**
- While the DPH request is open, the Hearing Officer should be contacted for questions about a specific case.

THE 30 DAY RESOLUTION PROCESS

- It is best practice to convene the 15-Day Resolution Meeting. By waiving this meeting you lose the opportunity to quickly resolve the issues raised in the DPH request. You also miss an opportunity to limit attorney's fees.
- **When appropriate, be prepared to make a written offer of settlement. Work closely with your attorney to prepare this legally binding document and consider including fees for the parent's attorney that reasonably reflects the hourly rate prevailing in the community.**
- If the parent cannot or will not meet with you within the 15-Day Resolution Meeting timeline, be sure to document your reasonable attempts to schedule this meeting. It is permissible to have the parent participate via telephone or video conference. You still **MUST** convene the meeting within the 15 CALENDAR days. However, if the parent is not present, the meeting will adjourn shortly after convening. Continue to make reasonable attempts to schedule a resolution session during the 30-Day Resolution Process.
- **If the parent has not met with you during the 30-Day Resolution Process, you may ask the Hearing Officer to dismiss the DPH request. Be ready to show all the attempts that have been made to schedule this meeting with the parent.**
- If mediation is used in lieu of the 15-Day Resolution Meeting, the mediation must be assigned during the 15 day timeline and held prior to the conclusion of the 30 day timeline.
- **If the 15-Day Resolution Meeting timeline is violated, SES will issue a citation and require the LEA to provide a letter of assurance indicating the LEA's intent to comply with the regulation in the future. This letter is considered a finding of noncompliance and must be corrected with 100% completion no later than one year from identification.**
- Both the citation letter and the LEA's assurance are maintained separate from the DPH request case file.

THE DUE PROCESS HEARING

- Use the required prehearing conference call to help you to identify the specific issues to be addressed in the upcoming hearing.
- **Work closely with your attorney to help prepare your witnesses and submit documentation requested by the parent.**
- You may still work toward a settlement during the 45 day timeline. However, be aware that frequent extensions of the timeline are not generally in the best interest of the student. Whenever possible, provide your best and final offer of settlement during the 30-Day Resolution Process.
- **Either party may appeal the decision. When an appeal has been made, any corrective actions indicated in the specific findings are placed on hold pending the completion of the appeal or specific order by the appellate court.**
- If the decision contains specific findings of violation, SES will issue a Letter of Findings and require the LEA to provide documentation of compliance with the corrective actions indicated by the Hearing officer. This letter is considered a finding of noncompliance and must be corrected with 100% completion no later than one year from identification.
- **The Letter of Findings and documentation of LEA compliance are maintained separate from the DPH request case file.**

This information is provided as a general guide to understanding Due Process, under IDEA, in the State of Alabama. It is not provided as specific legal advice.