

Texas Education Agency
Special Education Dispute Resolution Systems Handbook
TEA | Division of Legal Services

March 2010

TERMS USED IN THIS DOCUMENT

Adult student refers to a student with a disability who is 18 years of age or older to whom rights have transferred under the IDEA and who is not under legal guardianship.

ARD committee refers to the Admission, Review, and Dismissal committee and is the term used in Texas for the group of individuals who develop an individualized education program (IEP) for a student with a disability. Federal law refers to these individuals as the *IEP Team*. Members of the ARD Committee include the student's parents, certain designated school district personnel, and the student, if applicable.

FAPE refers to a free appropriate public education that includes special education and related services that: are provided at public expense; meet state and federal standards; include an appropriate preschool, elementary, or secondary school education; and are provided in conformity with an appropriate IEP.

IDEA refers to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) Although "IDEIA" is the formal acronym based on the 2004 amendments to the IDEA, the acronym of "IDEA" is commonly used and is used in this handbook. The IDEA is designed to ensure that all students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for further education, employment, and independent living.

IEP refers to the *individualized education program* required by the IDEA for a student with a disability. The IEP is a written statement that is developed, reviewed, and revised by the student's ARD committee under the procedures set out in the IDEA.

IEP team refers to the group of individuals who develop an IEP for a student with a disability. In Texas, these individuals are referred to as the *ARD committee*.

Parent refers to a biological or adoptive parent, a foster parent, a legal guardian, a properly appointed surrogate parent, or other person as defined by the IDEA who has legal authority to make educational decisions for a student with a disability or who is suspected of having a disability.

Party refers to any person or entity that files or responds to a special education complaint or due process hearing request. With regard to special education mediation, the term refers to a parent, as defined by the IDEA, or an adult student and the local educational agency involved in decisions regarding the educational program for a student with a disability.

School district refers to a local educational agency involved in decisions regarding the educational program for a student with a disability, including public charter schools.

Student with a disability refers to a student who is eligible for special education and related services as defined by the IDEA.

TEA refers to the Texas Education Agency.

INTRODUCTION

The Individuals with Disabilities in Education Act (IDEA) is a federal law designed to ensure that students with disabilities receive a free appropriate public education (FAPE). The Texas Education Agency (TEA) is responsible for ensuring that school districts in the state meet the various requirements set out in the IDEA. To this end, TEA is required, among other things, to provide three programs for resolving disagreement that may arise between parents or adult students and school officials regarding the educational program for a student who is eligible for special education and related services under the IDEA. A party may seek resolution of the disagreement by participating in: (1) a voluntary mediation session; (2) an informal special education complaint investigation; or (3) a formal due process hearing.

Because the parties will need to work together in the future on matters relating to a student's educational program, TEA's policy is to encourage resolution of disputes at the local level if possible. As long as a student remains in the school district, the parties will need to maintain a cooperative relationship to make future decisions about a student's special education program. Often, parties are able to resolve disagreements by holding an ARD committee meeting or a meeting that includes other school personnel, such as a campus administrator, the special education director, or other school district administrators or support personnel. Some school districts have begun using neutral meeting facilitators to assist ARD committees with resolving disagreements.

SCOPE OF THIS HANDBOOK

This handbook is designed to assist parents, school officials, and other interested parties in understanding and working through TEA's special education dispute resolution system. The handbook is not intended to be legal advice. A party needing legal advice concerning a special education matter should contact a private attorney as TEA cannot provide legal assistance.

PART 1: SPECIAL EDUCATION MEDIATIONS

The Frequently Asked Questions (FAQs) discussed in this part are as follows:

1. What is mediation?
2. Why choose mediation?
3. If the parties couldn't solve their problems at an ARD committee meeting, why might mediation work?
4. How does someone request mediation?
5. Who may request mediation?
6. What happens after someone files a mediation request?
7. What if the other party does not want to participate in mediation?
8. Can the parties extend the deadlines for a pending due process hearing or complaint investigation while trying mediation?
9. Who are the mediators under contract with TEA?
10. How are mediators assigned?
11. What is the mediator's role?
12. Who can attend mediation?
13. Where are mediations held?
14. What happens during mediation?
15. What happens if the parties settle the disagreement at mediation?
16. What happens if the parties do not settle the disagreement at mediation?
17. Are mediations confidential?
18. May a party record the mediation?
19. If my child has a 504 plan, can I request mediation?

1. What is mediation?

Mediation is a process during which the parties, facilitated by a trained mediator, work toward a mutually agreeable solution to a dispute involving any matter related to a student's special education eligibility or educational program under IDEA. The mediator is a neutral third party who helps the parties communicate effectively with each other. With the assistance of the trained mediator, all parties are involved in the decision-making process, and everyone has an opportunity to express concerns, offer opinions, make suggestions, and generate solutions. The focus of the mediation is on solving the disagreements between the parties and arriving at a solution that meets the needs of the student and the parties involved.

TEA is required by state and federal law to offer mediation to parties who have a dispute involving the educational program for a student with a disability. Mediation is voluntary, meaning that both parties must agree to participate in mediation, and is provided at no cost to either party. TEA's mediation program has been very successful at resolving special education disputes. In fact, nearly 80 percent of the parties that have used TEA's mediation services during the last several years have reached an agreement as a result of the mediation. For this reason, TEA strongly encourages all parties to consider mediation.

TEA automatically offers mediation services each time a special education complaint or due process hearing request is filed with TEA, but mediation may be requested by a party at any time.

2. **Why choose mediation?**

Mediation has proven to be a highly successful method for resolving disputes. As noted above, a majority of the cases that go to mediation are settled. In addition, the parties are more likely to maintain a cooperative relationship in the future if the settlement of the dispute is by mutual agreement. Mutual agreements generally result in greater satisfaction for all parties because the parties decide the outcome. Other benefits of mediation are that it may be less formal, less costly, and less time consuming than the other dispute resolution processes.

3. **If the parties could not solve their problems at an ARD committee meeting, why might mediation work?**

The parties to mediation often reach a different outcome than they reached in previous ARD committee meetings. Since mediation is conducted by a neutral third party, it allows all participants to express their perspectives while being treated fairly and impartially. The mediator listens to each party's concerns and ideas and provides feedback, suggestions, and guidance to enable the parties to communicate more effectively and reach a common solution. In addition, the questions that a mediator asks can encourage new thoughts or approaches and uncover new options for resolving disputes.

4. **How does someone request mediation?**

TEA has created a model [mediation request form](http://www.tea.state.tx.us/index4.aspx?id=5087) that may be found on TEA's website at: <http://www.tea.state.tx.us/index4.aspx?id=5087>. A party is not required to use the form, but TEA encourages its use.

A written request for mediation must be mailed, hand-delivered, or faxed to:

Texas Education Agency
Division of Legal Services
1701 North Congress Avenue
Austin, TX 78701-1494
Telephone: (512) 463-9720 | Fax: (512) 463-6027

A party requesting mediation should also mail or fax a copy of the mediation request to the other party.

5. **Who may request mediation?**

Mediation may be requested by:

- a student's parent, guardian, or other person who has legal authority to make educational decisions for a student;
- an adult student;
- a school district; or
- the authorized representative of any of the above.

6. **What happens after someone files a mediation request?**

When TEA receives a mediation request, it will contact the other party to determine its willingness to participate in mediation. TEA assigns a mediator and sends each party and the mediator a *Notice of Mediation*. The mediator then contacts the parties to begin the mediation process.

7. **What if the other party does not want to participate in mediation?**

Since the mediation process is voluntary, the other party may decline to participate. There is no requirement that a party provide any reason for its decision to decline to participate in the mediation process. Mediation does not occur unless both parties agree to participate.

8. **Can the parties extend the deadlines for a pending due process hearing or complaint investigation while trying mediation?**

If a due process hearing (see Part 3) has been requested, the law sets specific timelines for when the hearing officer must issue a decision. Because the IDEA specifically states that mediation must not delay the right to a due process hearing, the mediator and parties typically work to quickly complete the mediation process so as to allow a timely resolution of the due process hearing (if one is still necessary following the mediation). If an extension is necessary, the parties must present a request for extension to the hearing officer. A hearing officer must make a finding of *good cause* in order to extend a hearing deadline. It is up to the individual hearing officer to determine whether good cause exists in a particular case.

If a special education complaint (see Part 2) is pending, TEA must issue a written decision within 60 calendar days of the date on which the complaint was filed. The parties, however, may agree to extend the 60 calendar day timeline in order to engage in mediation.

9. **Who are the mediators under contract with TEA?**

TEA contracts with private practice attorneys who have received extensive training both in mediation and special education law. Most of the contract mediators are also special education due process hearing officers. The mediators are not TEA employees or school district employees and cannot have any personal or professional interest that would conflict with their impartiality. TEA maintains a list of the current mediators and their qualifications which is available upon request and on TEA's website at <http://www.tea.state.tx.us/index4.aspx?id=5087>.

10. **How are mediators assigned?**

If both parties agree to mediate, they may agree to use a specific mediator under contract with TEA. If the parties do not select a specific mediator, TEA will assign a mediator by rotation from its roster of mediators. If there is a pending due process hearing involving the same parties, the person who is serving as the hearing officer may not be assigned as the mediator.

11. **What is the mediator's role?**

The mediator does *not* act as a judge, make findings, and/or reach legal conclusions about the issues. Instead, the mediator's role is to focus on the following:

- facilitating open communication between the parties by creating a safe environment in which the parties feel free to communicate their differences as well as their points of agreement;
- assisting the parties in understanding each others' positions; and
- assisting the parties with identifying options to resolve the matter.

A mediator has no stake in the outcome of the case and is merely there to assist the parties with reaching a mutually acceptable agreement for resolving the dispute. The parties will not receive any pressure to settle the dispute at mediation and have discretion to determine if the agreement is appropriate. Either party is free to accept or decline any proposed settlement. If the matter cannot be resolved, the mediation will conclude, and the parties can determine whether to seek resolution informally or through another TEA dispute resolution process.

12. **Who can attend mediation?**

Parents or guardians and school personnel with decision-making authority usually attend mediation. The parties may choose who they bring to the mediation. The participants may include attorneys, advocates, interpreters, and other relevant parties. The parties may agree to limit the number of participants. The mediator will confirm the identity of participants before the mediation session.

13. **Where are mediations held?**

Mediations are held at locations which are convenient to the parties. Possible meeting places include the school, school district offices, regional education service centers, and libraries.

14. **What happens during mediation?**

Different mediators have different ways of conducting mediations. In addition, a mediator may conduct each mediation session somewhat differently based on his or her opinion of what is needed for a given situation. Nonetheless, most mediation sessions have certain elements in common that are described below.

Typically, the mediation will begin in a joint session with the mediator greeting the people at the mediation, facilitating introductions, and seating everyone at a table. The mediator may then make some introductory remarks explaining the purpose of mediation, the mediator's role, confidentiality of the mediation discussions, and how the mediation will proceed.

The mediator may next ask the parties to summarize the issues that are still in dispute and explain what they hope to accomplish through mediation. Afterward, the mediator will assist the parties in discussing each issue and exploring ideas for resolving the dispute.

The mediator may suggest that one party speak with him or her outside the presence of the other party. This is called a *caucus* or *separate session*. When a parent is in caucus with the mediator, the school district staff will generally leave the room so that the parent may have a private discussion with the mediator. The mediator may then caucus with the school district personnel and continue to go back and forth between the two parties until he or she decides it is appropriate to bring the parties back into a joint session. At times, the parties may ask to speak privately without the other side or the mediator present. It is possible that throughout the course of the day, the parties will caucus alone or with the mediator several times during the mediation or remain in a joint session. Settlement offers may be discussed during the caucuses, and the parties may ask the mediator to convey offers and counteroffers to the other party.

Mediation may last several hours or an entire day. The mediator and the parties may agree to take a meal break depending upon the progress being made during a mediation session. In rare cases, a mediator will continue the mediation to another day if settlement discussions are ongoing and the parties believe that another day of mediation will be beneficial. If so, the mediator works with the parties to select the date to reconvene the follow-up mediation session and usually confirms the date by letter to both parties.

15. **What happens if the parties settle the disagreement at mediation?**

If the parties reach an agreement, they will work together to write down the terms of the agreement. After the parties and their representatives have all agreed on the terms and language of the settlement agreement, the parties will sign the document. The mediator does not sign the settlement agreement because he or she is not a party to the agreement. Once the parties have signed a final written mediation agreement, the agreement becomes a legally binding contract that is enforceable in a state court or a federal district court.

16. **What happens if the parties do not settle the disagreement at mediation?**

If an agreement is not reached but the parties feel they have made progress, the parties and the mediator can discuss whether another mediation session should be scheduled. If there is a pending request for a due process hearing or a complaint investigation, the hearing or complaint process will proceed after the mediation concludes.

17. **Are mediations confidential?**

Discussions that occur during the mediation process are automatically confidential and may not be used as evidence in any subsequent due process hearing or court proceeding. The mediator will ask each party to sign an agreement at the beginning of the mediation stating that confidentiality is understood and agreed to by those participating in the mediation process. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that includes a statement that all discussions that occurred during the mediation process will remain confidential. In addition to discussions, all notes, draft settlement agreements, and any other document prepared during the mediation are confidential. Some parties ask the mediator to collect all the mediation notes and documents for shredding at the end of the mediation session while others may choose to shred the documents themselves. Information that was available before the mediation or that may be obtained from another source, such as an IEP that was revised due to the mediation settlement agreement, is not confidential.

Neither the IDEA nor its regulations specifically address whether a mediation settlement agreement must remain confidential. However, the U. S. Department of Education has advised that the confidentiality provisions in the IDEA regulations and the Family Educational Rights and Privacy Act (FERPA) and its regulations apply to mediation settlement agreements. Generally, this means that a school district must have written permission from the parent or the adult student in order to release any information from a mediation settlement agreement. FERPA, however, allows school districts to disclose student records, without consent, to certain parties or in certain circumstances that are described in the law and its regulations. For example, consent is not required to disclose student records to school officials that have a legitimate educational interest in the records. The parties may agree to include a confidentiality provision that outlines or limits disclosure of the agreement, in whole or in part, to third parties.

18. **May a party record the mediation?**

No. As stated above, all discussions at mediation are confidential, and no one may record any portion of the mediation.

19. **If my child has a 504 plan, can I request mediation?**

No. TEA's mediation process can only be used to resolve issues under the IDEA. Allegations of violations under Section 504 of the Rehabilitation Act of 1973 should be directed to the U.S. Department of Education's Office of Civil Rights (OCR).

PART 2: SPECIAL EDUCATION COMPLAINT RESOLUTION

The FAQs discussed in this part are as follows:

1. Who can file a special education complaint?
2. What are the reasons a complaint may be filed?
3. How is a complaint different from a due process hearing?
4. Is there a time limit for filing a complaint?
5. Can a complainant file a complaint and request a due process hearing at the same time?
6. What information must be included in a complaint letter?
7. How does someone file a complaint?
8. How long does TEA have to resolve a complaint?
9. What are the steps to complaint resolution?
10. How does TEA decide if there has been a violation of the IDEA?
11. What action will TEA take if it finds a violation?
12. What are *compensatory services*?
13. What is *reimbursement*?
14. How does TEA ensure implementation of corrective action?
15. What can parties do if they disagree with part or all of an Investigative Report?

1. Who can file a special education complaint?

Any person or organization may file a special education complaint with TEA's Division of IDEA Coordination. The person filing the complaint is referred to as the *complainant*.

When a complaint is filed by a third party (someone other than the parent, legal guardian, or adult student), the complainant will be informed of the requirements of confidentiality. A third party complainant will be required to submit written authorization signed by the parent (or adult student) for the release of personally identifiable information about the student subject to the investigation.

2. What are the reasons a complaint may be filed?

A special education complaint may be filed when there is a concern that a school district has violated federal or state requirements related to the identification, evaluation, or educational placement of a student with a disability, and/or regarding the provision of FAPE to a student with a disability. Parents also have the right to file a complaint, request mediation, and request a due process hearing at any point when they disagree with decisions of the ARD committee. A complainant may allege violations affecting a group of students or a specific student.

If it is determined that there are any issues in a complaint that are not matters covered by the IDEA, TEA will notify the complainant that those issues cannot be investigated by TEA's Division of IDEA Coordination. Where appropriate, TEA will inform the complainant about other options for addressing those concerns.

3. **How is a complaint different from a due process hearing?**

As discussed in Part 3 of this document, a due process hearing is a formal hearing that is much like a trial in a court. An impartial hearing officer, who is not a TEA or school district employee, presides over a due process hearing. The parties in a due process hearing have an opportunity to bring and cross examine witnesses, to have a record of the proceedings, and to submit and object to evidence. When a due process hearing is filed, the student must generally remain in the current placement (referred to as *stay put*) pending the results of the hearing (and sometimes longer). Finally, the hearing officer's final order can be appealed to state or federal court.

A complaint investigation is much like a program audit and is intended to be less formal than the due process hearing procedures. The complaint investigation process is conducted by TEA staff members who review the paperwork, talk to parents and school district staff, and evaluate whether the school district actions comply with the IDEA. There is no formal testimony by witnesses and no formal record of the proceedings. Furthermore, there is no requirement that a student remain in his or her current placement while TEA is investigating a complaint.

4. **Is there a time limit for filing a complaint?**

TEA may only investigate allegations regarding events that happened not more than one calendar year before the filing of the complaint. A complainant, therefore, must file a complaint within a year of the action on which the complaint is based. For example, if a complaint is filed on June 1, 2009, TEA may only investigate allegations regarding events that occurred between June 1, 2008, and June 1, 2009. If TEA determines that any allegation occurred more than one calendar year before the complaint was filed, TEA will notify the complainant that it will not investigate that allegation.

5. **Can a complainant file a complaint and request a due process hearing at the same time?**

Yes, but TEA is required to hold in abeyance (set aside) any issues that are the subject of a pending due process hearing until the conclusion of the hearing. TEA will resolve the issues that are not part of the due process hearing according to the standard complaint procedures and timelines. TEA will notify the parties in writing of the specific issues that must be set aside until the hearing is completed and those that may proceed.

After the due process hearing concludes TEA will determine whether any issue that was set aside was not addressed in the hearing. If any issue was not addressed in the hearing, TEA will resolve the issue through the complaint resolution process within 60 calendar days from the date of the hearing officer's decision unless the complainant withdraws the complaint.

If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding, and that issue cannot be reconsidered through the complaint resolution process.

6. **What information must be included in a complaint letter?**

In order for TEA to conduct an investigation, all complaints must be in writing, signed by the complainant, allege a violation that occurred not more than one year prior to the date TEA receives the complaint, and contain the following information:

- the complainant's contact information (such as address, telephone number, e-mail address, etc.);
- a statement alleging that a school district or other public agency violated a special education law;
- supporting facts, including detailed information describing the alleged violation (such as when, where, and how the alleged violation took place);
- an assertion or documentation demonstrating that a copy of the complaint has been sent to the school district or other public agency.

Complaints alleging a violation regarding a specific student must, in addition to all of the requirements above, include:

- the student's name, address (or, if the student is homeless, the name and available contact information), and name of the school district that the student attends; and
- a proposed solution to the problem.

A complaint is not considered filed until the complainant has provided all of the information specified above.

If it is determined that any issues are not supported by sufficient facts, TEA will inform the complainant that insufficient facts have been provided and that it will investigate only the allegations that include supporting facts. If the complainant desires that TEA investigate the unsupported allegations, the complainant may file a new complaint that includes sufficient facts to support the allegations.

A model [complaint form](#), in English and Spanish, is available on TEA's website at: <http://ritter.tea.state.tx.us/special.ed/medcom/compform.html>. Though not required, the form is very useful for ensuring that a complainant provides all of the information needed for TEA to investigate the complaint. The form also includes a [checklist](#) that was developed to ensure that all necessary information is included in a complaint, even when the form is not used.

7. **How does someone file a complaint?**

A complaint must be mailed, hand-delivered, or faxed to:

Texas Education Agency
Division of IDEA Coordination
1701 North Congress Avenue
Austin, Texas 78701-1494
Telephone: (512) 463-9414 | Fax (512) 463-9560

8. How long does TEA have to resolve a complaint?

Under federal law, TEA must issue a written decision within 60 calendar days of the date on which the complaint was filed. The timeline does not begin until all requirements for filing a complaint have been met. Exceptions to the deadline are as follows:

Extended

TEA may extend the 60-day timeline for exceptional circumstances which may include: (1) an unforeseen crisis, such as a natural disaster or emergency; and (2) a complaint that involves a large number of students.

In addition, the 60-day timeline for TEA's response can be extended in order for the parties to engage in mediation provided that both parties agree to the extension. The timeline cannot be extended by just one of the parties or in order for the parties to engage in other types of dispute resolution. If the parties are attempting to resolve the issues through local resolution, mediation, or an early resolution proposal, the parties should notify TEA of the status of their resolution efforts as promptly as possible.

Expedited

Under state law, a complaint alleging that a school district has refused to provide special education or related services to an eligible student must be expedited to ensure that any services due to the student are promptly provided. Expedited complaints will be resolved in less than 60 calendar days, if possible. Once the issue of providing special education or related services to the eligible student is resolved, any remaining allegations in the complaint will be investigated according to the standard procedures and timelines.

9. What are the steps to the complaint resolution process?

The steps to the complaint resolution process are described below.

Intake

TEA intake staff will review the complaint, determine if it contains all initial requirements necessary for a complaint, and contact the school district to verify that it received a copy of the complaint. Once it is determined that all initial requirements for filing a complaint have been met, the complaint will be logged in and assigned to a complaint investigator. Complaint investigators are employees of TEA's Division of IDEA Coordination.

Investigator Assessment

The assigned complaint investigator will assess the complaint to determine if TEA has the authority to consider the allegations through the complaint resolution process. Specifically, the complaint investigator will evaluate the following issues:

- whether the alleged violations occurred within the last calendar year;
- whether the alleged violations are matters covered by the IDEA;
- whether the complainant has provided supporting facts for each alleged violation; and
- whether any allegations in the complaint are the subject of a pending or previous due process hearing.

Notice of Investigation and Request for Response

If TEA determines that it has the authority to investigate the allegations through the complaint resolution process, it will send the parties a *Notice of Special Education Complaint Investigation and Request for Response* letter that includes the allegations to be investigated, a request for information needed to conduct the investigation, the timelines associated with the investigation, and other relevant information pertaining to early resolution or mediation.

The school district will typically have 14 calendar days from the date of the notice to respond and provide the requested information to TEA. The school district may send a copy of its response and documentation to the complainant unless doing so would violate relevant laws regarding confidentiality. The complainant may also provide additional information about the allegations to TEA and the school district.

If the school district does not provide the complainant with a copy of its response and documentation, the complainant may submit a written request for the information to either TEA or the school district under the [Texas Public Information Act](#).

However, if the complainant is a third party (someone other than the parent, legal guardian, or adult student), TEA may not release any personally identifiable student information unless the third party submits written authorization signed by the parent, legal guardian, or adult student.

Investigation

The assigned complaint investigator will review the information from the school district and any additional information provided by the complainant. The complaint investigator may also gather information through informal fact finding and telephone or personal interviews. If TEA decides an on-site investigation is required, the complaint investigator will make arrangements with the parties for an on-site visit. The complaint investigator's interviews are informal and are typically not recorded electronically. The complaint investigator may, however, take notes of the interviews.

Investigative Report

TEA will issue a written decision called an *Investigative Report* within 60 calendar days of the date on which the complaint was filed unless the timeline has been extended. The complaint investigator and other complaint investigators are involved in developing the final Investigative Report which, upon completion, is sent to the school district and the complainant unless doing so would violate relevant laws regarding confidentiality.

The Investigative Report includes the following:

- a description of the allegations in the complaint;
- TEA's findings of fact and conclusions;
- a discussion of how the findings of fact and the applicable law support TEA's conclusions;
- any technical assistance that TEA determines may help the school district avoid such situations in the future; and
- any corrective actions imposed against the school district if TEA substantiates an allegation (finds that a violation occurred).

10. **How does TEA decide if there has been a violation of the IDEA?**

To determine if the school district has violated a requirement in the IDEA, TEA will examine whether the school district has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data.

11. **What action will TEA take if it finds a violation?**

If TEA determines that there has been a violation, it will impose what are referred to as *corrective actions*. The type of corrective action will depend on the type of violation found and must be appropriate to address the needs of the specific student as well as the future provision of services for all students with disabilities. Examples of corrective actions TEA may require include, but are not limited to, the following:

- an evaluation;
- compensatory services;
- monetary reimbursement for educational expenses;
- a requirement that the ARD committee meet to determine what a free appropriate public education (FAPE) for the student includes (if TEA has concluded that what was offered does not meet the definition of FAPE);
- a requirement that the ARD committee meet to work out the details of compensatory services, reimbursement, or other corrective action;
- staff training or development;
- a review and/or revision of policies, practices, and/or guidelines;
- a self-assessment regarding compliance with IDEA; or
- periodic monitoring or reporting on implementation of corrective actions.

TEA may not charge penalties or fines as part of the corrective action.

In situations where there has been ongoing conflict, some parties have found it beneficial to use a meeting facilitator to assist with an ARD committee meeting ordered by TEA as part of the corrective action.

12. **What are *compensatory services*?**

Compensatory services are future services to be provided to a student to make up or *compensate* for a school district's failure to provide the student with appropriate services in the past. The length or amount of a student's compensatory services award will be determined by either TEA or the ARD committee and is based on the student's individual needs and circumstances. A compensatory services award must be reasonably calculated to bring the student to the position the student would have been in if the appropriate services had been provided in the first place.

Compensatory services are an *equitable* remedy and not required in every instance of an IDEA violation but only when the violation results in a loss of educational benefit or opportunity to the student.

13. **What is *reimbursement*?**

Reimbursement means paying the parent back for services that the parent purchased privately because the school district did not provide appropriate services to the student.

14. **How does TEA ensure implementation of corrective actions?**

TEA has procedures in place for the effective implementation of the corrective actions. When any allegations in a complaint are substantiated, TEA will require the school district to implement corrective actions to address the issues. The Investigative Report will include timelines for implementation of the corrective actions, and TEA staff will monitor the implementation to ensure that it is completed within the required timelines.

TEA typically requires the school district to submit a plan and timeline for implementation of the corrective actions within 30 calendar days of the date of the Investigative Report. Under federal guidelines, all noncompliance must be corrected as soon as possible but in no case later than one year from the date of the Investigative Report. If circumstances arise that might prevent a school district from completing the corrective actions within the one year time period, the school district should contact TEA's Division of IDEA Coordination as soon as possible to determine how to resolve the matter. A school district that fails to implement corrective actions as ordered will be subject to interventions and sanctions under the Texas Administrative Code.

15. **What can parties do if they disagree with part or all of an Investigative Report?**

The IDEA does not require that state complaint resolution processes provide parties with a right to appeal a decision made in an Investigative Report. TEA's complaint resolution process does not include an appeal procedure for parties who disagree with a decision. TEA's process does, however, allow parties the opportunity to request that any errors in an Investigative Report be corrected.

A party who believes that an Investigative Report contains an error must inform TEA in writing within 10 calendar days of the date of the Investigative Report. A request for correction must be timely submitted and contain the following to be considered:

- the assigned complaint number;
- the page and section of the Investigative Report on which the error appears;
- an explanation of why the specific finding or conclusion is an error;
- a statement of how the error affects the conclusions in the Investigative Report; and
- any documentation that supports the party's contention that an error was made.

A party submitting a request for correction must also send the request to the other party who may respond within 10 calendar days after the date TEA received the request. TEA will respond within 30 calendar days of receipt of the request. If TEA determines that an error occurred and that correcting the error would change the result of a decision, it will issue an Amended Investigative Report.

Filing a request for correction does not delay the implementation of corrective actions ordered in an Investigative Report. Accordingly, a school district must implement any corrective actions ordered even if it files a request for correction.

PART 3: SPECIAL EDUCATION DUE PROCESS HEARINGS

The FAQs discussed in this part are as follows:

1. What is a special education due process hearing?
2. Who can request a due process hearing?
3. How does someone request a due process hearing?
4. What information must be included in a request?
5. Is there a time period for requesting a due process hearing?
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1. What is a special education due process hearing?

A special education due process hearing is a formal, adversarial legal process similar to going to trial in a court. A due process hearing may be requested when a disagreement arises regarding the identification, evaluation, educational placement or services of a

student with a disability, and/or regarding the provision of FAPE to a student with a disability.

In addition, a parent or an adult student may request an *expedited* due process hearing when there is a disagreement with the decision made in a manifestation determination review or a change in placement resulting from a school's disciplinary action with regard to the student.

2. **Who can request a due process hearing?**

A parent of a student with a disability or an adult student with a disability may request a due process hearing when a disagreement arises regarding the identification, evaluation, educational placement of a student with a disability or regarding the provision of a FAPE to the student.

School districts may also request due process hearings in certain situations. For example, a school may, but is not required to, request a hearing if the parent of a student with a disability does not provide consent for an evaluation. A school district may also request a hearing to determine that its evaluation is appropriate when a parent has requested an independent educational evaluation at public expense. Finally, a school district may request a hearing to appeal the decision from a disciplinary proceeding to maintain the student's current placement if the school district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others.

The person filing a hearing request is called the *petitioner* and the other party is called the *respondent*.

3. **How does someone request a due process hearing?**

A party requesting a hearing must send a *written* request to TEA. TEA has developed a model due process hearing request form that is available on TEA's website at: <http://www.tea.state.tx.us/index4.aspx?id=5090>. A party is not required to use the model form, but TEA encourages its use. The form is also available on request from TEA, all regional education service centers, and all school districts.

The written request must be filed by mail, hand-delivery, or fax to:

Texas Education Agency
Division of Legal Services
1701 North Congress Avenue
Austin, TX 78701-1494
Telephone: (512) 463-9720 | Fax: (512) 475-3662

The petitioner must send a copy of the written request to the respondent.

4. What information must be included in a due process hearing request?

TEA's model form contains all of the basic information that must be included in a request for a due process hearing. If a party does not use the form, the party must include the following information in the hearing request:

- the student's name, date of birth, and address (or available contact information if the student is homeless);
- the name of the student's school;
- a description of the nature of the problem and facts relating to the problem; and
- a proposed resolution of the problem (to the extent known and available to the party at the time).

5. Is there a time period for requesting a due process hearing?

Yes. A party must request a due process hearing within one year of the date the party knew or should have known about the matter that is the subject of the hearing. There is an exception to the one-year timeline if the parent was prevented from requesting the due process hearing because of specific misrepresentations by the school district that it had resolved the problem or the school district's withholding of information from the parent that was required to be provided to the parent under the IDEA.

6. Can a party amend a due process request?

A party may amend the due process request only if the other party consents in writing to the amendment and is given the opportunity to resolve the amended request through a resolution session or if the hearing officer grants permission. All requests to amend a due process request must be filed at least five calendar days before the date of the hearing to be considered. If a party amends a request, the timelines for resolution begin again.

7. Does a party need to have an attorney?

No. The parties to a hearing may represent themselves. Because of the legal nature of the proceedings, however, parties are often represented by attorneys. As required by federal regulations, TEA maintains a list of free and low-cost legal service providers. This list is sent to all parents who request a due process hearing and is also available upon request or on TEA's website at <http://www.tea.state.tx.us/index4.aspx?id=5093>. TEA also maintains a list of parent attorneys and advocates that is sent to all parents who request a due process hearing and is also available upon request.

The parties must pay their own attorney fees. Hearing officers do not have the authority to award attorney fees or litigation costs to either party. A prevailing party in a due process hearing may file a claim for attorney's fees and litigation costs in state or federal court.

If a party does not have an attorney, the hearing officer cannot give the party legal advice or help the party present evidence during the hearing. A party without legal representation is responsible for knowing the laws and rules that apply to the hearing which include:

- [Individuals with Disabilities Education Act \(IDEA\) of 2004](#)
- [Federal regulations \(implementing IDEA\)](#)
- [Texas Administrative Procedures Act](#)
- [Texas Education Code](#)
- [Texas Administrative Code Rules Concerning Special Education Services](#)
- [TEA's Hearing rules](#)
- [Texas Rules of Civil Procedure](#)
- [Texas Rules of Evidence](#)¹

8. What is a special education hearing officer's role?

The hearing officer is in charge of the due process hearing, just as a judge is in charge of a trial. The hearing officer controls the due process hearing, listens to the evidence and arguments of the parties, and writes a final decision and order. Additionally, the hearing officer has the authority to administer oaths, call and examine witnesses, rule on motions, determine admissibility of evidence, maintain decorum, schedule and recess the proceedings from day to day, and make any other orders as justice requires, including sanctions as necessary to maintain an orderly hearing process. The hearing officer typically has telephone conferences with the parties before the hearing to develop a schedule for the hearing process and to discuss any legal matters that should be addressed before the hearing.

9. What are the required qualifications of hearing officers?

The IDEA provides that a hearing officer must be impartial and cannot be an employee of TEA or any agency involved in the education or care of the student or someone having a personal or professional interest that conflicts with his/her objectivity in the hearing.

The IDEA further requires that a hearing officer must possess knowledge of federal and state special education laws and regulations in addition to the knowledge and ability to conduct hearings and render decisions in accordance with standard legal practice.

10. How are hearing officers assigned to a case?

TEA assigns hearing officers on an automated alphabetical rotation. When TEA receives a hearing request, it identifies the next hearing officer on the rotation list and confirms his/her availability and eligibility. If that hearing officer is unavailable or is disqualified from serving due to a conflict of interest, TEA contacts the next available hearing officer on the rotation list. The process is repeated until a hearing officer is assigned. An exception to this process is when the parties to the hearing were involved in another hearing filed within the last calendar year. In these situations, TEA will assign the hearing to the same hearing officer who presided over the previous hearing.

¹ Unless they are affected or changed by the federal regulations (34 CFR §§300.307-300.514, 300.52, or 300.528) or the Commissioner of Education Rules (sections 19 TEX. ADMIN. CODE §§89.1151-89.1191.)

11. What happens after a hearing officer is assigned to a case?

Once a case has been assigned to a hearing officer, TEA will send the parties a written notice that provides the hearing officer's name, address and telephone number. The hearing officer will contact the parties to discuss procedures and schedule the case for a prehearing conference, where the parties will discuss the issues and the arrangements for the hearing.

The parties should send all written communications about the case to the hearing officer and to the other party or the party's representative (usually an attorney). Hearing rules prohibit a hearing officer from talking to a party about the case outside the presence of or participation by the other party except for communications about routine scheduling or administrative matters.

12. Can a party request that a hearing officer be removed from a case and that the case be reassigned to another hearing officer?

Yes, a party may ask that a hearing officer be removed from a case. If the party believes that the hearing officer has a conflict of interest or a personal bias, the party may file what is called a *motion to recuse*. The motion should be filed with the hearing officer (not TEA) at least ten days prior to the hearing. The motion must be based on personal knowledge and evidence which would be admissible at a hearing. The motion must also state the reasons why the hearing officer should be removed. A copy of the motion should be sent to the opposing party.

If the hearing officer grants the motion, the case will be assigned to a new hearing officer. If the hearing officer does not grant the motion, another hearing officer will consider the motion at a hearing (usually on the telephone) where the parties may present evidence and argue the grounds for or against the motion. If the motion is granted, another hearing officer will hear the case. If it is not granted, the original hearing officer will proceed with the case.

13. Who are the hearing officers under contract with TEA?

TEA contracts with private practice attorneys to conduct hearings. TEA maintains a list of the current hearing officers and their qualifications on TEA's website at: <http://www.tea.state.tx.us/index4.aspx?id=5090>, and which is available upon request.

14. Are there any situations that allow or require an expedited hearing?

Yes. The IDEA provides limited circumstances under which expedited hearings can occur. A parent who disagrees with any decision regarding placement under the IDEA's disciplinary provisions or a manifestation determination may appeal the decision by requesting an expedited due process hearing. In addition, a school district may appeal a decision by requesting an expedited hearing when it believes that maintaining the student's current placement is substantially likely to result in injury to the student or others.

Expedited hearings must occur within 20 school days of the date the hearing is requested. Furthermore, the hearing officer must issue a written decision and order no

later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.

15. **What is a *resolution session*?**

A resolution session is a mandatory meeting between parents and school district personnel. Under IDEA the school district must hold a resolution session within 15 calendar days of its receipt of TEA's notice that a hearing request has been filed (or 7 days in the case of an expedited due process hearing), unless the parties waive the meeting in writing or agree to use mediation instead. The purposes of the resolution session are to give the parents a chance to talk about the reasons for requesting the hearing and to give the parties an opportunity to resolve the issues without the necessity of going further with the formal hearing process.

16. **How long do the parties have to try to resolve the disagreement before the hearing timeline begins?**

Generally, the parties have 30 calendar days to resolve the disagreement before the hearing timeline begins. This 30-day period is called the *resolution period*. If the parties agree, however, that progress is being made and they want to extend the resolution period, it is permissible to do so. In this situation, the parties must notify the hearing officer of their agreement.

In the case of an expedited hearing, a resolution session must be held within 7 calendar days of the school district's receipt of TEA's notice of the due process complaint, and the resolution period lasts 15 calendar days. The regulations do not provide for any adjustments to the 15-day resolution period for expedited hearings.

17. **Who can attend the resolution session?**

The parties determine who should attend the resolution session. The resolution session must include the parents of the student and someone from the school district who has the authority to make a decision for the school district. The meeting may not include the school district's attorney unless the parent is accompanied by an attorney. Other participants may include the student and a parent's non-attorney advocate, along with relevant members of the ARD committee. The assigned hearing officer does not attend the resolution session.

18. **What happens if a school district fails to hold a resolution session or the parent fails to attend a resolution session?**

If the school district fails to hold a resolution session within the required time period, the parent may request that the hearing officer start the hearing timeline. If the school district is unable to obtain the parent's participation at the resolution session after reasonable efforts have been made to arrange a mutually agreed upon time and place (as set forth in 34 C.F.R. § 300.322(d)), it may request that the hearing officer dismiss the hearing.

19. **What happens if the parties reach an agreement at the resolution session?**

After the parties and their representatives have all agreed on the terms and language of the settlement agreement, they will work together to finalize the resolution in a written agreement, and then sign and date the agreement. The parties must notify the hearing officer whether all or some of the issues have been settled. The hearing officer will then dismiss any settled issues or the entire hearing if all issues were settled. The settlement agreement is a legal document and is enforceable in a state or federal district court. The parties each have three business days after the settlement agreement is signed to cancel the agreement. If the agreement is canceled, then the due process hearing moves forward.

20. What happens if the parties do not reach an agreement in the resolution session?

If the parties do not come to an agreement, they can:

- agree to extend the resolution period and continue to meet to reach a satisfactory resolution;
- agree to participate in mediation; or
- proceed to a hearing.

21. Are resolution sessions confidential?

Unlike mediation, there is no requirement that the discussions during a resolution meeting remain confidential. However, the confidentiality provisions in the IDEA regulations and in FERPA and its regulations apply. Therefore, unless the parties have an agreement to the contrary, either party may introduce information discussed during the resolution meeting when presenting evidence and confronting or cross-examining witnesses at a due process hearing. Nothing prevents the parties from voluntarily agreeing that the resolution meeting discussions will remain confidential, including prohibiting the introduction of those discussions at any subsequent due process hearing.

22. May a party withdraw a hearing request?

Yes. If a party decides to withdraw a hearing request, the party should mail, fax, or hand-deliver a signed letter or a Motion to Dismiss the hearing to the hearing officer and the other party as soon as possible. However, if a party requests dismissal of a due process hearing after the Disclosure Deadline has passed, and then requests a hearing involving the same or similar issues within one year, the Disclosure Deadline shall be the same date as was established for the hearing that was dismissed.

23. What is the due process hearing timeline?

Unless the parties agree otherwise or the case involves discipline, the timeline will involve a 30-day resolution period followed by a 45-day hearing period. A hearing officer may grant an extension of the hearing timeline at the request of either party for good cause.

The table below illustrates the general hearing timeline:

30 Day Resolution Period	Day 1	The resolution period begins on the day the respondent first receives notice of the hearing request from TEA.
	Day 5	The hearing officer will usually contact the parties within the first five days of the resolution period to schedule the prehearing conference. This may be in the form of an order, written notice, by letter, email or by telephone.
	Day 10	By day 10 of the resolution period, the school district must send a parent who requested a hearing a response that meets the IDEA requirements of prior written notice, unless it has already done so.
	Day 15	By day 15 of the resolution period, the respondent must notify both the petitioner and the hearing officer if it believes the hearing request does not contain all the required information. The hearing officer has 5 days to rule on whether the request is sufficient. Within 15 calendar days of receiving a due process hearing request (or within 7 days in the case of an expedited hearing), the parties must convene a resolution session.
	Day 30	The parties have a total of 30 days to seek a resolution of the dispute through the resolution process, informal settlement discussion, ARD committee meetings, or mediation.

45 Day Period	Day 1	<p>The 45-day due process hearing timeline begins:</p> <ul style="list-style-type: none"> • at the expiration of the 30-day resolution period if there is no resolution of the dispute; • the day after the parties agree in writing to waive the resolution session; or • the day after the parties agree in writing that no agreement is possible following mediation or a resolution session.
	Prehearing Conference	The hearing officer will schedule a prehearing conference no less than 14 calendar days before the due process hearing. It is often scheduled during or right after the initial 30-day resolution period. The prehearing conference is held by telephone unless the hearing officer determines that circumstances require an in-person conference.
	5 Business Days Before the Due Process Hearing	<p>The parties have until 5 days before the hearing to:</p> <ul style="list-style-type: none"> • ask the hearing officer for permission to submit an amended complaint; • disclose and provide copies to all other parties of all the documents (including all evaluations completed by that date and recommendations based on the evaluations) that each side intends to use at the hearing, as well as an index of the documents; and • provide to the other party a list of all witnesses (including names, addresses, telephone numbers, and professions) who will testify at the due process hearing, either in person or by telephone.
	Conclusion of Due Process Hearing	The hearing officer shall issue a final decision, signed and dated, no later than 45 days after the expiration of the 30-day resolution period, unless the deadline for a final decision has been extended by the hearing officer. A copy of the decision is sent directly to each party or their legal counsel (if represented by an attorney).
	Extended Timeline	The 45-day timeline may be extended by order of the hearing officer upon a finding of good cause. If the parties have questions about the timeline in the case, they should contact the hearing officer.
10 days after an Adverse Decision	If the hearing officer issues an adverse decision against a school district, the school district must implement the decision within 10 school days even if it appeals the decision (except that any monetary reimbursement for past expenses ordered by the hearing officer can be withheld until the appeal is resolved).	
Appeal	The school district or parent may appeal a hearing officer's decision to federal or state court within 90 calendar days of the date of the decision.	

24. **May a party watch a hearing to prepare for the party's own hearing?**

A party will not usually be able to watch a hearing to prepare for the party's own hearing because hearings deal with confidential information about students. A party may only watch a hearing if he or she has the permission of the parents of the student who is the subject of the hearing or if the hearing is "open" by parental request. The hearing officer may set rules for those attending who are not witnesses or parties.

TEA is required to make hearing decisions available to the public after deleting any personally identifiable information. Redacted copies of prior decisions can be found on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=6728>.

25. **What happens to the student while a case is pending?**

During a due process hearing and any court appeals, the student generally must remain in the current educational placement (i.e., the last agreed upon placement), unless the parent and the school district agree otherwise. Remaining in a current placement is commonly referred to as *stay put*. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

In the case of a disciplinary placement, the student must remain in the interim alternative educational setting pending the hearing officer's decision or until the expiration of the time period applicable to the interim placement, whichever occurs first, unless the parent and the school district agree otherwise.

26. **What is a prehearing conference?**

A prehearing conference is a discussion with the hearing officer, the parents, designated school district personnel, and the parties' representatives and/or attorneys. The hearing officer usually issues a written order setting the prehearing conference for a specific date and time. Parties should contact the hearing officer if they have a scheduling conflict with the date or time set by the hearing officer for the conference.

The purposes of the prehearing conference are to:

- clarify the issues to be discussed at the due process hearing and/or consider the need for any amendments to the complaint;
- set the time, date, location, and length of the due process hearing;
- determine whether the due process hearing will be open or closed, and whether the student who is the subject of the due process hearing will be present;
- identify which witnesses must be compelled to attend and the need for subpoenas, if any;
- establish any limitation of the number of witnesses and the time allotted for presenting each party's case;
- establish a timeline for "discovery" or the exchanging of documents (at a minimum the parties must exchange documents at least five business days before the due process hearing.); and
- discuss any other matters which may dispose of or settle matters in dispute, or aid in simplifying the proceedings.

The prehearing conference is recorded and transcribed by a certified court reporter. The hearing officer makes the arrangements for the court reporter. Each party receives a copy of the prehearing conference transcript at no charge.

27. What happens if a party cannot attend the hearing when it is scheduled?

If a party cannot attend the due process hearing at the scheduled time, the party or its attorney should file a written *motion for continuance* with the hearing officer. A motion for continuance is a request for the due process hearing to be scheduled at another time. The motion must say why the party cannot come to the due process hearing on the day that it was scheduled, and it must ask for the due process hearing to be scheduled on another date. The motion should be sent to the hearing officer, and a copy of the motion must also be sent to the other party. The other party has a right to respond to the motion. The hearing officer will rule on the motion in a written order and will either grant or deny the motion.

If a party in a due process hearing does not attend, the hearing officer may rule against that party on every issue. If a party attends the due process hearing but does not participate, the hearing officer may rule against that party on every issue.

If a party has an emergency at the last minute and cannot go to the due process hearing, the party must call the hearing officer and the other party as soon as possible and explain the situation.

28. What issues can be raised at a due process hearing?

At the due process hearing, parties will be restricted to the issues raised in the original request and/or clarified at the prehearing conference. If either party amends the due process complaint, the timelines for the resolution session and the time period for resolution start again on the date the amended complaint is filed.

29. What are the parties' rights at the due process hearing?

IDEA grants the parties the rights to:

- be accompanied and advised by an attorney or other representative and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- present evidence and confront, cross examine, and compel the attendance of witnesses;
- receive in either written or electronic form a record of the hearing at no cost;
- receive written or electronic findings of fact and decisions; and
- ask the hearing officer to exclude any evaluation that has not been disclosed at least five calendar days before the hearing.

IDEA grants parents the rights to:

- have the student who is the subject of the hearing present at the hearing; and
- open the hearing to the public.

30. What happens at a due process hearing?

A due process hearing is similar to a courtroom trial but is not as formal. The people who come to the hearing include the hearing officer, the parties and their attorneys, the witnesses, and a court reporter. Hearings can last anywhere from a few hours to several days. There is no dress code for the hearing, but most people dress as if they were going to a business office. The party asking for the hearing will have what is referred to as the *burden of proof*, which means that he or she has the responsibility of proving to the hearing officer that his or her version of the facts is true. Parents usually have the burden of proof since they are usually the party requesting the hearing.

The table below illustrates the possible format of a due process hearing.

Call to Order	The hearing officer generally starts by making some introductory/opening remarks. The hearing is called to order, the purpose of the hearing is explained, and the procedure is described.
Opening Statements	Each party is given the opportunity to generally describe or summarize their side of the case, reviewing the key facts and how those support the legal claims or defenses submitted by each party in the case. Opening statements are not evidence and cannot be used to prove facts in the case; rather, opening statements describe what the evidence in the hearing will show. The party with the burden of proof will be asked to make its opening statement first and the other party may follow, although some respondents choose to reserve the opening statement until after the conclusion of the petitioner's case. Opening statements are generally limited to 5 to 10 minutes.

Presentation of Evidence

The party with the burden of proof must present evidence and witnesses first. Evidence may be in the form of testimony by a witness and/or by submitting documents called *exhibits*. When the party with the burden of proof has finished introducing evidence, the other party will present evidence.

Each party may have witnesses attend the hearing. The witnesses are placed under oath. Witnesses first answer questions from the party who called them (*direct examination*). Then they may be asked questions by the other party (*cross examination*). The party who first called the witness will be given the chance to ask more questions (*redirect examination*). The hearing officer may also question the witnesses. If the parties request it, witnesses may have to wait outside the hearing room until they are called in to testify. This rule is to ensure that a witness will not be influenced by hearing the testimony of other witnesses. Persons with specialized training or knowledge may be considered expert witnesses by the hearing officer. Upon request and order of the hearing officer, experts may remain inside the hearing room during the testimony of the witnesses in order to advise a party and his or her attorney or to consider information that will serve as the basis for the expert's opinion.

A party may ask a witness to come to the due process hearing, but the witness may choose not to appear voluntarily. To make sure a witness attends, a party may submit a request to the hearing officer for a *subpoena*. A subpoena is an order stating a witness must attend a due process hearing at a specific location and on a certain date and time. A *subpoena duces tecum* is an order that requires the witness to bring specific papers, documents, or other information to the hearing or to produce the papers, documents or information ahead of time. Parties should request subpoenas in writing from the hearing officer well in advance of the due process hearing or according to any dates established by the hearing officer's scheduling order.

If a party wants the hearing officer to look at particular papers that they have at the hearing, they must offer the documents into evidence. Those documents will be marked as exhibits. The party must provide a copy for the hearing officer, a copy for the other party, and they must keep a copy. Sometimes, the person who prepared the document may need to testify about it before it can be admitted as evidence. Parties who are not represented by an attorney should become familiar with the *Texas Rules of Evidence* and the *hearsay rules* before the hearing.

The parties may object to questions, testimony, or exhibits that they do not think the hearing officer should use as evidence to judge the case. An objection must have a legal basis. The hearing officer must *sustain* (agree with) or *overrule* (disagree with) an objection. If an objection is sustained, the testimony or exhibit will not be used as evidence in the case. If the objection is overruled, the testimony or exhibit will be admitted as evidence in the case.

Closing Statements	<p>After all of the evidence has been presented, the hearing officer usually gives each party the chance to make a closing argument. This is a party's last chance to summarize its case and explain how the evidence introduced shows that the party is entitled to the relief that it is seeking.</p> <p>The closing statement may be presented orally at the close of the due process hearing. Post-hearing briefs may be filed only if ordered by the hearing officer.</p>
Record of the Case	<p>The due process hearing will be recorded by a certified court reporter. The court reporter will provide the parties with a free copy of the transcript of the due process hearing. The transcript will be a written copy of everything that was said on the record at the due process hearing. It is usually prepared within 10 calendar days or 2 weeks of the due process hearing.</p>

31. What is the difference between a *procedural* violation and a *substantive* violation?

Procedural violations relate to a school's failure to follow procedures outlined in IDEA. Two examples of procedural violations are a late evaluation and a failure to include the necessary members at ARD committee meetings. Substantive violations relate to a school's failure to perform its duties under the IDEA. Two examples of substantive violations include failure to identify a student with a disability and failure to provide a FAPE to a student with a disability. The hearing officer's decision must be made on *substantive* grounds based upon a determination of whether a student received a FAPE.

There is a high standard for prevailing on allegations of procedural inadequacies because the hearing officer must find that the inadequacies resulted in substantive harm to the student by:

- impeding the student's right to a FAPE;
- impeding the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or
- causing a deprivation of educational benefit.

32. What types of relief can hearing officers award?

Due process hearing officers have authority to award most of the types of relief commonly recognized in special education law, including:

- orders for a school district to implement an educational program, conduct an evaluation, or change an educational placement;
- awards of reimbursement for private services and tuition;
- awards of compensatory education;
- relief pertaining to disciplinary sanctions; and
- orders for a school district to comply with the procedural requirements under the IDEA and its regulations.

33. How is a hearing officer's decision implemented?

When a hearing officer has ordered the school district to take some form of action in an IDEA case, that portion of the order is called *adverse to* (against) the school district. TEA's Division of IDEA Coordination monitors the implementation of adverse decisions. A school district must implement a hearing officer's adverse decision within 10 school days of the date of the decision. If a parent or adult student believes that a hearing officer's decision has not been fully implemented, he or she should contact TEA and not the hearing officer who issued the decision. The IDEA regulations permit a parent alleging that a school district failed to implement a hearing officer's decision to file a special education complaint.

34. Can the parties appeal the hearing officer's decision?

A party may appeal the hearing officer's findings and decision to state or federal court no more than 90 calendar days after the date the decision was issued. As part of the appeal process, the court must receive the records of the due process hearing, may hear additional evidence at the request of either party, base its decision on the preponderance of the evidence, and grant any appropriate relief.

If a school district appeals a hearing officer's decision, it must still implement the hearing officer's decision within 10 school days of the date of the decision, except that it may withhold a reimbursement award while appeals are pending.

Questions regarding the **complaint investigation** process may be addressed by contacting:

Texas Education Agency
Division of IDEA Coordination
1701 North Congress Avenue
Austin, Texas 78701

Telephone: (512) 463-9414
Fax: (512) 463-9560

Questions regarding requesting **mediation services** or **due process hearings** may be addressed by contacting:

Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, Texas 78701

Telephone: (512) 463-9720
Main Fax: (512) 463-6027
Alternate Fax: (512) 475-3662 (if main fax busy)

The following toll free message line is reserved for parents and other family members who have questions about student rights and regulatory requirements as they relate to special education:

Toll Free Parent Information Line: 1-800-252-9668

For Individuals who are Deaf or Hard of Hearing:

TTY Number: (512) 475-3540
Relay Texas 7-1-1