

Any party has a right to Due Process. However, this right is limited to two years from when the parents or school system knew or should have known of the alleged violation.

To file for any form of Due Process, the requesting party must obtain and complete a complaint notice from the HCPSS Department of Special Education. The notice requires:

- Name of the student
- Address of the student
- Name of the school the student is attending
- Name of the local school system
- A description of the problem as it relates to the proposed initiation or change, including facts related to such problem
- A proposed resolution to the problem to the extent known and available to the party at the time of the notice

The notice of Due Process is considered sufficient unless the receiving party notifies the State Office of Administrative Hearings (OAH) and the complainant within 15 days of receipt that the notice does not meet the required notice contents. Within five days of receiving the notice of the deficiency, the OAH will determine whether the Due Process hearing request notice meets the content requirements and will immediately notify the parties in writing.

In a Due Process Hearing, the Administrative Law Judge will make a decision on substantive grounds based on a determination of whether the student received a free and appropriate public education and/or whether a procedural violation occurred.

More information regarding each of these resolution processes is available in the *Procedural Safeguards Parental Rights Handbook* published by the Maryland State Department of Education.

The Howard County Public School System does not discriminate on the basis of race, color, creed, gender, age, national origin, religion, sexual orientation, or disability in matters affecting employment or in providing access to programs. For more information, contact the Equity Assurance Office of the Howard County Public School System at 10910 Route 108, Ellicott City, MD 21042, or call 410.313.6654.

HOWARD COUNTY PUBLIC SCHOOL SYSTEM
Department of Special Education
10910 Route 108 • Ellicott City, MD 21042
410.313.5350
www.hcps.org

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A Parents' Guide to **Due Process in Special Education**



The Howard County Public School System promotes the involvement of parents, families and community members as active partners in education. There may be times when a parent, guardian, or custodian will have a concern related to his or her child's education. This document outlines the steps for addressing concerns specifically related to special education. For issues or concerns outside of special education, see *A Parents' Guide to Resolving School Concerns & Complaints*.

The Individuals With Disabilities Education Act (IDEA 04) provides parents with procedural protections when a disagreement arises over the identification, evaluation, placement or program of their child regarding special education and related services. The Howard County Public School System, in accordance with IDEA 04 and Maryland State regulations, provides parents with several means to address special education concerns:

- Dispute Resolution
- Mediation
- Due Process Hearings

Dispute Resolution

Dispute Resolution is an informal process through which issues that have been raised, but not resolved, in an Individual Educational Program (IEP) meeting can be addressed. When a parent requests Dispute Resolution, a meeting will be scheduled at a time convenient to both parties.

A representative of the Department of Special Education, as well as a representative from the child's school, will meet with the parent to review any matter not resolved in the IEP meeting. Also in attendance will be a representative of the school system who has the

authority to obligate the system to fully implement any decision reached in the process. Only the involved parties meet. An attorney of the school system will not be included in a dispute resolution meeting unless the parent brings an attorney.

The parent and the representative from the school will have an opportunity to present the unresolved issue(s).

Dispute Resolution must occur 15 days prior to any party requesting a Due Process Hearing. Dispute Resolution must be used unless both parties involved agree in writing to waive such a meeting or agree to use the mediation process.

This informal process often results in a compromise resolution. When a compromise agreement is reached, the terms of the agreement will be put in writing for the parties involved to sign. The agreement is considered legally binding and can be enforced by any state court or district court of the United States. Any party involved has the right to withdraw or void the agreement within three school days of the agreement's signing or execution.

If you wish to use the Dispute Resolution process, without requesting a Due Process Hearing, contact the HCPSS Department of Special Education at 410-313-5358 or 410-313-5359.

Mediation

Mediation is a more formal process, in that the issues, which may or may not have been discussed in a Dispute Resolution, are presented before an Administrative Law Judge. When an impasse has been reached in an IEP team meeting, a parent may request this more formal review. The school system will not have an

attorney present during mediation and, although it is discouraged, the parent and student may be represented by an attorney.

During the mediation process, the Administrative Law Judge acts only as a mediator and does not determine fact or make a decision. If a compromise resolution is reached, the judge will draft an agreement for signatures. The resolution is binding on all parties and, if not fully implemented, can be considered in a court of law.

Due Process Hearings

A Due Process Hearing is the most formal way to resolve special education concerns. As part of the Hearing, the case is heard before an Administrative Law Judge. Generally, each party is represented by legal counsel. The judge follows all rules of evidence and renders a formal decision. Either party has the right to appeal the judge's decision to federal or state court, or as far as the Supreme Court.

The Due Process hearing can be financially costly for all parties. The decision to request a Due Process Hearing requires thoughtful consideration and should be contemplated only after all other options have been exhausted.

Within 15 days of receiving the Due Process notice, both parties to a Due Process Hearing are obligated by law to meet and discuss the issues and the facts that form the complaint. The school system is given the opportunity to resolve the complaint through Dispute Resolution unless the parents and the school system agree in writing to waive this meeting or to use mediation.

A Due Process hearing will be held within 20 days of the receipt of the notice.