Prepared by Parent Education Network

# Hiring A Lawyer

## The Special Education Due Process Hearing


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**Things to Remember:**

- Hire a lawyer with experience in special education cases.
- Set realistic hearing expectations.
- Talk to the lawyer about your role in the due process hearing.
- Get a copy of everything your lawyer sends or receives.
- Document all conversations in writing, including the content and date.
- Focus testimony on the facts. An expert witness can assist in presenting important testimony.
- Be cautious of last minute offers to settle.
- Make sure you have a complete record of your hearing. Get the file from your lawyer.
- Be willing to NEGOTIATE for a successful resolution.

## Selecting An Appropriate Lawyer

You have made the difficult decision that you are going to a Due Process Hearing and you need to hire a lawyer. You can search locally or you can contact the Pennsylvania Bar Association Disabilities Referral Service at 800-932-0311, for names of attorneys in your area who specialize in special education. You'll need to find out what course of action he or she will be taking, the estimated length of case time and his or her fees or costs.

Experience with school-age due process matters is important! While the lawyer may need to self-educate herself on the specifics of your child's disability, he or she should have a working knowledge of the special education due process system, the Individuals with Disabilities Act (IDEA) and the Special Education Appeal Process. You can determine the attorney's level of experience by asking some direct questions:

- How many due process hearings doe he or she handle each year?
- Is he or she familiar with your child's disability?
- Does he or she have a working knowledge of the educators in your school district?
- What are the merits of your case? If you don't have a case, what are your options?
- What will be the cost for legal services?
- What is the estimated hearing time frame?

After selecting a lawyer, talk candidly about how he or she wants to work with you in preparing for the due process. It may be better for the lawyer and the staff to prepare the "Five-Day" materials (the exchange of the list of evidence and witnesses 5 business days prior to the hearing.)

Family assistance is essential when organizing the files and indexing records. You can define your responsibilities by asking your attorney the following questions:

1. What preparations should the family make prior to the hearing?
2. Will the hearing be an evening or all day event?
3. Will you need an expert witness or witnesses?
4. Will the hearing be closed or open to the public?
5. Are you responsible for the lawyer's monthly expenses or will you be billed on an hourly basis?
6. In addition to the attorney's fees, will you be billed on a monthly basis for costs? Costs can include phone calls, postage, copying and fees for expert (s).

## Defining Strategies and Expectations

Be realistic when setting expectations for your due process hearing!

Discuss with your lawyer what part or parts of your dispute can be resolved successfully. Some issues are complex and will need more attention.

Work with your attorney to identify the limits of your dispute, and respect those limitations.

When contacting the lawyer's office leave a complete message, including case details or questions. This will aide your attorney in preparing for your meeting or conversation.

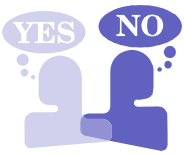
Don't waste time worrying about cases similar to yours. Each due process hearing is unique, and has its own facts and "warts". It is the attorney's job to present the facts in a clear and organized way.

# The Hearing Process

### ♦ Documentation

Talk to your lawyer about how he or she will communicate with you when correspondence is received from the school district. Get copies of everything your lawyer sends or receives, and document in writing all conversations by date and content. You will incur additional costs for copying and postage, but this may insure that you and your attorney are acting with the same knowledge when reviewing letters, commenting on strengths, finding weaknesses, and planning strategies.

### ♦ Direct and Cross Examination




As the due process hearing gets closer, you may need to go to the lawyer's office to review the file and prepare for direct examination.

**Direct examination** occurs when your attorney asks you questions and you provide a response or testimony. **Cross examination** occurs when the school district's attorney asks you questions based on testimony you gave during direct examination.

### ♦ Expert Witness

Focusing testimony on the facts will persuade the Hearing Officer to recognize the needs of your child. Remember, while you may know more about your child than anyone else, your testimony will not sway the Hearing Officer on technical issues like measurable goals, objectives and meaningful programs. An expert witness can respond to questions about whether the district administered appropriate tests, or developed a comprehensive evaluation.

**You and your attorney need to determine**: Who is going to contact the expert witness? How will the expert witness (s) be brought to the hearing? What is the role of the expert witness? How will the "expert" communicate with your lawyer, you and the district?

### ♦ Do You Settle?

At some point in the hearing process, you may receive or wish to make an offer to settle your dispute. If an office is made, don't be disappointed. Understand that it is an offer, and is subject to discussion. Review the offer with your attorney.

To determine if the offer is acceptable, consider how it addresses the weaknesses and strengths of your position. Be willing to negotiate, and determine which principle (s) need to be decided by the Hearing Officer. Disagreeing or arguing about everything makes resolution and the possibility of building a new IEP virtually impossible. While the process may need to be adversarial, it can always be amicable.

When considering a settlement offer, make a determination if the offer provides the services you were seeking. (i.e., Does the settlement offer more time in special education? Does it provide more accommodations?)

Your decision to accept or reject the offer will be based upon your child's needs and your pre-determined definition of success.

Be cautious of last minute offers to settle. They can distract from moving ahead and preparing for the hearing. If you receive a last minute offer to settle, evaluate it quickly and determine if it focuses on the strengths and weaknesses of your position.

### ♦ So You Settle, What is Next?

If you decide to settle your dispute, make sure that you have a complete understanding of the Settlement Agreement. The settlement details should include:

* Who will be responsible for implementing each item?
* What your child will receive, when your child will receive it, and hw often services will occur?
* What are you giving up?
* What will be the consequences if your child does not receive the agree upon services?

### ♦ Settlement Means Compromise

In a compromise both sides give something up. If either side refuses to give something up, the Hearing Officer will often take something away from each side. For example, your child may get a new IEP, and the district may get their placement choice.

Be wary of any offer to settle that includes a waiver of any and all fees and costs. Consider your costs and achievements. Sometimes a waiver of a small amount of lawyer's fees is enough to make the system work, especially, if you have initiated the hearing.

However, if you have been in a lengthy hearing, hired an expert and the other side now wishes to settle seeking a waiver of fees, that could be an unreasonable expectation. Recognize the limits and benefits of any settlement offer; remember, everyone wants resolution. Sometimes resolution does not make all things right, but it can allow all parties to more forward.

### ♦ The Hearing Is Done, Is it Over?

Once the hearing is completed, or you have settled, get your file from the lawyer.

1. Keep the file organized.
2. Make sure the file includes letters to and from the district, and letters to and from the attorney.

Organization is very important, particularly if something goes wrong with the settlement. An organized file will allow you to quickly resume negotiations without spending endless hours recreating files.

### ♦ Working With A Previous Adversary

Learn to disagree without being disagreeable.

Whether you prevail or lose at the hearing, you must still work with the staff that testified, in good faith, against your position. The most difficult job in a hearing is learning how to disagree without being disagreeable.

Success and winning are not the same thing. To achieve success and win, clearly define the terms of your agreement with your lawyer. Be certain about your child's needs and be prepared to negotiate to a successful resolution.