



**Maryland Guidelines  
for  
Special Education  
Mediations  
and  
Due Process Hearings**

## MARYLAND GUIDELINES for SPECIAL EDUCATION MEDIATIONS and DUE PROCESS HEARINGS

These guidelines pertain to hearings and mediations under the Individuals with Disabilities Education Act (IDEA) 2004, and accompanying State laws and regulations that remain applicable with the reauthorization of federal law. These processes provide a forum to resolve disputes concerning the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) to students with disabilities when a public agency and parents are unable to resolve the disagreement.

### 1. Request for Mediation/Due Process Hearing

- A) A parent<sup>1</sup> or a public agency<sup>2</sup> may initiate mediation or a due process hearing concerning the identification, evaluation, educational placement, or the provision of FAPE to a student by making a written request for mediation and/or a hearing. A public agency may not initiate mediation or a due process hearing concerning a parent's refusal to provide consent for the initial provision of special education services.
- B) A request for a due process hearing must be filed no later than two years after the violation is alleged to have occurred. IDEA provides an exception to this limit only if the parent was prevented from requesting the hearing due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the complaint, or the public agency withheld information that was required to be provided to the parent.
- C) When the parent or attorney for the parent files a request, the written request shall be submitted to the contact person of the public agency that is responsible for the education of the student and the Office of Administrative Hearings (OAH).
- D) When the request is filed by the public agency responsible for the education of the student, the written request must be submitted to the student's parent and the OAH.
- E) It is advised that the request be submitted on the OAH's Request for Mediation/Due Process Hearing Form. However, any written request that includes all required information shall initiate the processes under these guidelines. The Request for Mediation/Due Process Hearing Form is available from the public agency, the OAH, MSDE, and the MSDE web site at [www.marylandpublicschools.org](http://www.marylandpublicschools.org) (choose Divisions and go to the Division of Special Education/Early Intervention Services page).
- F) Each request shall include:
  - 1) the name of the student, the address of the residence of the student, or available contact information if the student is homeless, the name of the school the student is attending;

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<sup>1</sup> A Parent means a natural or adoptive parent of a child; a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or an individual assigned to be a surrogate parent.

<sup>2</sup> COMAR 13A.05.01.03B(52) defines "public agency" as a State or local governmental or quasi-governmental entity responsible for the provision of a free appropriate public education to students with disabilities. This term includes local school systems, MSDE, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, and adult correctional facilities.

- 2) a description of the nature of the problem and the facts relating to the problem; and
- 3) a proposed resolution to the problem.

A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements. In order to facilitate the timely resolution of the dispute, the above information should be as specific as possible, to the extent known and available to the party requesting the hearing or mediation.

- G) The party must state that the request is for mediation, a due process hearing, or both.
- H) If the non-complaining party believes a due process hearing request does not meet the requirements, that party may notify the OAH and the complaining party within 15 days of receiving the request. Within 5 days of receiving the notice challenging the sufficiency of the hearing request, the OAH must, on the face of the request, determine whether the request meets the requirements and immediately notify the parties in writing of the determination. If an Administrative Law Judge (ALJ) determines that the request is not sufficient, the complaining party may submit a new request and the timeline starts over. The hearing request is deemed to be sufficient unless challenged by the non-complaining party.

2. Responsibilities of the Public Agency and the Parent when a Request for a Due Process Hearing is Made

- A) Each public agency shall designate a person who is responsible for the public agency's handling of mediation and/or due process hearing requests and serves as the primary contact for the OAH and MSDE.
- B) Upon receipt of a written request for a due process hearing by a parent, or an attorney representing a parent, the public agency shall:
  - 1) document the date of receipt as the date on which the request was postmarked, hand delivered, or transmitted by facsimile (COMAR 28.02.01.03.D);
  - 2) immediately provide the parent with a copy of the procedural safeguards document (although the statute only requires that it been given "upon the first occurrence of the filing of a due process hearing request," it is recommended that the document be provided to the parent upon the first occurrence and each subsequent request);
  - 3) within 10 days of receiving a parent's request for a due process hearing, provide the parents with prior written notice regarding the issues in the request unless already done so;
  - 4) within 10 days of receipt of a request for a due process hearing, the non-complaining party shall send a response to the complaining party that specifically addresses the issues in the request;
  - 5) within 15 days of receiving a request for a due process hearing or 15 days from initiating a due process request, convene a *resolution session*. This must occur unless both parties agree, in writing, not to conduct the session, or agree to use mediation through the OAH to resolve the dispute. If, after 30 days, the public agency and the parent are unable to resolve the issues, a hearing may be held and the timeline commences. The public agency must provide information to the OAH, immediately, regarding the resolution session (documentation that the parties agreed not to attempt to resolve the dispute using the resolution session; the parties

resolved the dispute through the resolution session; the parties agreed to attempt to resolve through mediation; or, the parties were unable to resolve the dispute within the 30 day timeline).

- C) The public agency shall forward to the OAH a completed Notice of Outcome of Resolution Session and a completed Transmittal Form within the following timelines:
  - 1) non-expedited hearings – 4 business days following the conclusion of the resolution session, or 1 business day following the signed waiver of the resolution session;
  - 2) expedited hearings (hearings requested for a student who was removed from school for disciplinary reasons, or a student not enrolled and attending school) – 1 business day of requesting the hearing or receiving the request.
- D) The party requesting the due process hearing cannot raise issues at the hearing that were not raised in the due process hearing request, and may amend the request notice only if:
  - 1) the other party consents in writing to the amendment, and is given the opportunity to resolve the issue through a *resolution session*; or
  - 2) the ALJ assigned to the case grants permission, but not later than 5 days before the hearing occurs.

### 3. Resolution Session

- A) The *resolution session* is intended to provide the parties an opportunity to resolve the disagreement in an efficient and effective manner so that a due process hearing can be avoided.
- B) The public agency must convene a *resolution session* within 15 days of receiving a parent's request for a due process hearing, or 15 days from the date that the public agency notifies the parent that a due process hearing has been requested unless:
  - 1) both parties agree in writing not to conduct a session, or
  - 2) agree to use mediation through the OAH to try to resolve the dispute  
Note: If a party requests mediation and a due process hearing simultaneously, unless the non-complaining party refused mediation, it will be construed to mean that the parties agree to use mediation.
- C) If the parent and the public agency are unable to resolve the dispute through the *resolution session* (within 30 days of the request for a due process hearing), a hearing may then be held and the timelines for issuing the decision commences.
- D) A representative of the public agency who has decision-making authority on behalf of the public agency, but may not include an attorney for the public agency, unless an attorney accompanies the parent, shall attend the *resolution session*.
- E) If the parties reach agreement through the *resolution session*, they shall execute a legally binding agreement that is signed by both the parent and the representative of the public agency who has the authority to bind the public agency.

- F) The agreement is enforceable in any State court of competent jurisdiction or in the District Court of the United States.
- G) Either party may void the agreement up to three business days of the agreement's execution.

#### 4. Mediation

- A) Any party to a dispute may request mediation at any time, if both parties agree to expedite the development of a solution for any dispute, including matters that arise prior to a formal request for a due process hearing. If the parties agree to attempt to mediate the dispute, the mediation shall be conducted by a qualified mediator selected from the list of eligible mediators maintained by OAH. Mediation can be utilized without a request for a due process hearing.
- B) Participation in mediation is voluntary, and may not be used to deny or delay any party's rights under federal or State law.
- C) Any party to the mediation process has the right to be accompanied and advised by counsel.
- D) A request for mediation should be made by using OAH's Request for Mediation/ Due Process Hearing Form provided by the public agency following the same procedures for requesting a due process hearing.
- E) If a due process hearing is requested at the same time as mediation, OAH shall make reasonable efforts to schedule a mediation session within 20 calendar days upon receipt of a written request, because mediation may not deny or delay a parent's right to a due process hearing.
- F) Mediation sessions are closed proceedings. Discussions that occur during mediations are confidential and may not be used in subsequent due process hearings or civil proceedings.
- G) An agreement reached by the parties during the mediation session shall be set forth in writing. The mediation agreement is legally binding and is enforceable in any State court of competent jurisdiction or in the District Court of the United States.
- H) All special education mediations will be held at a time and place reasonably convenient to the parties and in accordance with the requirements of law.

#### 5. Responsibilities of OAH Regarding a Due Process Hearing

- A) If the dispute is not resolved through the *resolution session* or mediation, OAH shall make reasonable efforts to schedule a due process hearing to be conducted within 30 calendar days of the date they are notified that the *parties waived the resolution session*, or it did not result in a written agreement that resolves the dispute.
- B) Because the decision must be issued within 45 days (in the event of a non-expedited hearing) of the determination that a due process hearing will be necessary to resolve the dispute, OAH will determine the date or dates that the hearing will take place.

- C) Whenever a due process hearing is initiated, OAH shall notify the parties of the date, time, and place of the hearing in a notice that comports with the requirements of State Government Article Title 10, Subtitle 2 of the Annotated Code of Maryland. An ALJ will be assigned from the list of ALJs approved to serve as Impartial Hearing Officers for special education hearings.
- D) In general, the ALJ's decision must be made on substantive grounds based on a determination of whether the child received a FAPE. In matters alleging a procedural violation, the ALJ may find that a child did not receive a FAPE only if the procedural inadequacies:
  - 1) impeded the child's right to a FAPE; or
  - 2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
  - 3) caused a deprivation of educational benefits.

#### 6. Rights of the Parties at a Hearing

All rights guaranteed under IDEA and its accompanying State law and regulations are in effect, including:

- A) Any party to the due process hearing has the right to be accompanied and advised by counsel and individuals with special knowledge or training regarding students with disabilities. If, however, an attorney represents a party, that attorney must be authorized to practice law in Maryland (State Government Article §10-206.1).
- B) Any party may present evidence and confront, cross-examine, and compel the attendance of witnesses.
- C) Any party may prohibit the introduction of any evidence at the due process hearing that has not been disclosed to all parties at least 5 business days before the hearing. This includes all evaluations and recommendations based on those evaluations that the party intends to use at the hearing pursuant to federal regulations. A business day is any day that the Maryland State Government Offices are open for business.
- D) Any party may obtain a written or, at the option of the parent, an electronic verbatim recording of the hearing.
- E) Any party shall receive written or, at the option of the parent, electronic findings of fact and decisions.
- F) Upon request of a party to the hearing, witnesses may testify under oath.

#### 7. Rights of Parent in the Hearing

All rights guaranteed to parents under IDEA and accompanying State law are in effect, including the right to:

- A) have the child who is the subject of the hearing be present;
- B) open the hearing to the public;

- C) have all those present identified for the record at the start of the hearing; and
- D) inspect and obtain copies of the student's records maintained by the public agency in accordance with federal and State requirements.

8. Hearing Requirements

- A) All due process hearings will be held at a place reasonably convenient to the parent and student, and in accordance with the requirements of law.
- B) The ALJ may not have a personal or professional interest that would conflict with his or her objectivity in the hearing.
- C) The ALJ presiding at the hearing shall conduct the hearing in accordance with Title 10 of the State Government Article and Section 8-413 of the Education Article, Annotated Code of Maryland, the Office of Administrative Hearings Rules of Administrative Procedure, and IDEA.
- D) The ALJ may:
  - 1) after review of the educational records of the student, dismiss any request for review which does not relate to a matter involving the identification, evaluation, educational placement of a student, or provision of FAPE under IDEA;
  - 2) require the parties to participate in a pre-hearing conference prior to the due process hearing;
  - 3) compel the attendance of witnesses pursuant to COMAR 28.02.01.11;
  - 4) hear any testimony that the ALJ considers relevant, and;
  - 5) find any party that received proper notice and failed to appear at the scheduled hearing in default, terminate proceedings and dismiss the case, or hear it in a party's absence and render a decision.

9. Student's Status During Due Process Hearings

- A) During the pendency of any due process hearing, the student must remain in his or her current educational placement, unless the public agency and the parent agree otherwise.
- B) If the hearing involves an application for initial admission to public school, the student, with consent of the parents, must be placed in the public school until the completion of all proceedings.
- C) If the decision of the ALJ agrees with a parent's request for a change in placement, that placement must be treated as an agreement between the public agency and the parent as described above.
- D) If a parent requests a due process hearing to challenge the appropriateness of an interim alternative educational setting (IAES), the IAES shall be considered the student's current placement pending the decision of the ALJ, or the expiration of the interim placement.

10. Use of Impartial Experts or Independent Evaluations Ordered by the ALJ

- A) The right of an ALJ to call an impartial expert witness, or order an independent evaluation as outlined in Section 8-413 of the Education Article, Annotated Code of Maryland, is within the discretion of the ALJ, and does not require the consent or support of the parties to the hearing.
- B) If an ALJ believes that an expert is needed in a case, and that the expert must conduct an independent evaluation in order to participate meaningfully in the proceedings, the ALJ may also order an independent evaluation. The cost of the evaluation shall be paid by MSDE.
- C) The independent evaluation ordered by an ALJ is not intended to obviate the public agency's responsibility to conduct a full and individualized evaluation or reevaluation of the student required by IDEA, or the parent's right to an independent educational evaluation conducted pursuant to federal regulations.
- D) The provisions of the Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99 shall apply to school records sought by the impartial expert witness.

11. The Decision

- A) The due process hearing shall be held and a written decision shall be issued within the timelines prescribed by IDEA 2004.
- B) The ALJ may grant a specific extension of time, not to exceed 60 calendar days, at the request of one of the parties.
- C) The decision of the ALJ shall be based on the testimony and documented information on the record at the due process hearing.
- D) In general, the ALJ's decision must be made on substantive grounds based on a determination of whether the child received a FAPE. In matters alleging a procedural violation, the ALJ may find that a child did not receive a FAPE, only if the procedural inadequacies:
  - 1) impeded the child's right to a FAPE;
  - 2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
  - 3) caused a deprivation of educational benefits.
- E) After the close of the due process hearing record, all parties to the hearing and MSDE (if not a party to the hearing) shall receive a copy of the decision issued by the ALJ, including a statement of the findings of fact and conclusions of law upon which it is based.
- F) The findings and conclusions in any due process hearing decision shall include, as relevant: procedural compliance, the nature and severity of the student's disability(ies), any special education needs the student has as a result of the disability(ies), and any modification of the student's individualized education program required to provide the student with an appropriate program to meet those needs.
- G) The due process hearing decision shall include, as appropriate, a time frame for the completion of any actions required of the public agency.

- H) All final due process hearing decisions must include notice of the right of further review.
- I) MSDE shall, after removing personally identifiable information, transmit the decision(s) to the State Advisory Committee and make decisions available to the public, in a manner consistent with State and federal confidentiality requirements.

## 12. Expedited Hearings

If, at the time of the due process hearing request, the student who is the subject of the hearing is not enrolled and attending an educational program, or whose placement has been changed due to disciplinary actions, expedited hearing schedules shall apply.

- A) Due process hearings for students who are not enrolled and attending an educational placement:
  - 1) Under Maryland law, the hearing shall be held within 20 calendar days of receipt of the request, and a written decision shall be issued no later than 15 calendar days after the hearing.
- B) Due process hearings for a student whose placement has changed due to disciplinary removal:
  - 1) The parent of a child with a disability who disagrees with any decision regarding placement (removal to an IAES), or the manifestation determination may request a due process hearing. In these cases, the hearing must be conducted within 20 school days of the date the hearing is requested, and a written decision must be issued within 10 school days after the hearing is completed.
- C) All requests for an expedited due process hearing will be considered by OAH.

## 13. Judicial Review

- A) Within 180 calendar days of the issuance of the final hearing decision by the ALJ, any party to the due process hearing may file an appeal to the applicable United States District Court for the District of Maryland or the Circuit Court for the county in which the student resides. OAH shall arrange for a written or electronic verbatim record of the hearing to be made available to any party, at no cost to the parent, for purposes of an appeal.
- B) Should a party file an appeal of the due process hearing decision, that party must notify the Assistant State Superintendent of the Division of Special Education/ Early Intervention Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing of the filing of the court action. The written notification of the filing of the court action shall include the OAH case name and number, the date of the decision, and the county circuit or federal district court case name and docket number. Upon receipt of this information, MSDE will transmit the record of the hearing to the court.

## 14. Implementation of Mediation Agreements and Hearing Decisions

- A) A public agency shall comply with the decision of the ALJ or the written settlement agreement within the timeframe specified unless:

- 1) either party obtains a court order granting a stay of the decision; or
  - 2) the parent appeals the decision to United States District Court for the District of Maryland or the Circuit Court for the county in which the student resides.
- B) If no timeframe is specified in a decision, the public agency shall implement that decision within 30 days unless a party exercises the right to appeal.
- C) A public agency shall comply with the written settlement agreement within the agreed upon timeframe.
- D) Written mediation agreements and due process hearing decisions may be enforced only by the United States District Court for the District of Maryland or the Circuit Court for the county in which the student resides.

15. Attorney's Fees

- A) The United States District Court for the District of Maryland may, in its discretion, award reasonable attorney's fees as part of the costs:
- 1) to a prevailing party who is the parent of a child with a disability;
  - 2) to a prevailing party who is a State Educational Agency or a local public agency against the attorney of a parent who files a due process hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
  - 3) to a prevailing State Educational Agency or local public agency against the attorney of the parent, or against the parent, if the parent's due process hearing request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
- B) Attorneys' fees may not be awarded for an attorney attending a resolution session or an IEP team meeting unless the IEP meeting is convened as a result of an administrative proceeding or judicial action.

## **FREE OR LOW COST ASSISTANCE FOR SPECIAL EDUCATION DISPUTES**

Following is a list of attorneys and advocacy organizations that may provide legal and other services to individuals in special education disputes.

### **LEGAL AID BUREAU INC.**

229 Hanover Street  
P.O. Box 943  
Annapolis, MD 21404  
(410) 263-8330  
800-666-8330

500 East Lexington Street  
Baltimore, MD 21202  
(410) 951-7777  
866-534-2524

5 North Main Street  
Suite 200  
Bel Air, MD 21014  
(410) 879-3755  
(410) 836-8202  
800-444-9529

110 Greene Street  
Cumberland, MD 21502  
(301) 777-7474

Tred Avon Square  
210 Marlboro Road  
Suite 3  
Easton, MD 21601  
(410) 763-9676  
800-477-2543

22 South Market Street  
Suite 11  
Frederick, MD 21701  
(301) 694-7414  
800-679-8813

P.O. Box 249  
Route 231  
Hughesville, MD 20637  
(301) 932-6661  
(410) 535-3278

6811 Kenilworth Avenue  
Calvert Building, Suite 500  
Riverdale, MD 20737  
(301) 927-6800  
888-215-5316

111 High Street  
P.O. Box 4116  
Salisbury, MD 21801  
(410) 546-5511  
800-444-4099

29 West Susquehanna Ave.  
Suite 305  
Towson, MD 21204  
(410) 296-6705  
[www.mdlab.org](http://www.mdlab.org)

### **MARYLAND COALITION FOR INCLUSIVE EDUCATION (MCIE)**

7484 Candelwood Road  
Suite R  
Hanover, MD 21076  
(410) 859-5400 Ext. 105  
1-800-899-8837  
[www.mcie.org](http://www.mcie.org)

### **MARYLAND DISABILITY LAW CENTER (MDLC)**

1800 North Charles Street  
Suite 400  
Baltimore, MD 21201  
(410) 727-6352  
(410) 727-6387 TDD  
800-233-7201  
[www.mdlcbalto.org](http://www.mdlcbalto.org)

### **PARENTS' PLACE OF MARYLAND**

801 Cromwell Park Drive  
Suite 103  
Glen Burnie, MD 21061  
(410) 768-9100  
[www.ppmmd.org](http://www.ppmmd.org)

### **UNIVERSITY OF MARYLAND CLINICAL LAW OFFICE**

500 West Baltimore Street  
Baltimore, MD 21201  
(410) 706-3295  
<http://www.law.umaryland.edu>

### **PARTNERS FOR SUCCESS**

You also may wish to contact the Partners for Success office in your local school system.

MARYLAND STATE DEPARTMENT OF EDUCATION  
Nancy S. Grasmick, State Superintendent of Schools  
Carol Ann Baglin, Assistant State Superintendent  
Robert L. Ehrlich, Jr., Governor  
Division of Special Education/Early Intervention Services  
200 West Baltimore Street  
Baltimore, MD 21201

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, or disability in matters affecting employment or in providing access to programs. For inquiries related to departmental policy, please contact the Equity Assurance and Compliance Branch, Voice (410) 767-0433, TTY/TDD (410) 333-3045, or Fax (410) 767-0431.

In accordance with the Americans with Disabilities Act (ADA) this document is available in alternative formats, upon request. Contact the Division of Special Education/Early Intervention Services, Maryland State Department of Education at Voice (410) 767-0858, Fax (410) 333-8165, or TDD (410) 333-0731.

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