TEXAS EDUCATION AGENCY

SPECIAL EDUCATION DISPUTE RESOLUTION SYSTEMS HANDBOOK

TEA | OFFICE OF GENERAL COUNSEL

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TERMS USED IN THIS DOCUMENT

Adult student refers to a student with a disability who is at least 18 years old to whom rights have transferred under the Individuals with Disabilities Education Act (IDEA) and who is not under legal guardianship.

Allegation refers to a claim that a school district has violated a specific requirement of the IDEA or state special education law or rule. This term is used frequently in the special education complaint resolution process to refer to the issues in a complaint that will be investigated.

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 appropriate.

Expedited due process hearing refers to a hearing with shortened timelines. An expedited hearing is available when the parent and school district disagree on a disciplinary matter that results in a change in the student's placement.

FAPE refers to a free appropriate public education for a student with a disability. FAPE includes the special education and related services in a student's IEP that the ARD committee determines are necessary to provide the student with an appropriate education at public expense.

IDEA refers to the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). The IDEA is the federal law designed to ensure that all students with disabilities have the opportunity to receive a FAPE, which includes the special education and related services necessary 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 of the educational program designed to meet the student's individual needs. The IEP has two general purposes: to set measurable learning goals for the student and to state the services that the school district will provide for the student. The IEP is developed, reviewed, and revised by the student's ARD committee using the procedures set out in the IDEA. The IEP must be reviewed periodically, but at least once a year, and revised as appropriate.

IEP team refers to the group of individuals who develop an IEP for a student with a disability. In Texas, this group is 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 the key participants in special education complaints, due process hearings, mediations, and IEP facilitation. In all four of these dispute resolution processes, a party includes the parent, as defined by the IDEA, or an adult student, and the school district involved in decisions regarding the educational program for a student with a disability.

Procedural violation refers to a school district's failure to follow the specific procedures outlined in the IDEA or in state special education law and rules. For example, if a school does not follow the timeline for conducting evaluations, this would be a procedural violation.

School district refers to a local educational agency (LEA) involved in decisions regarding the educational program for a student with a disability. Public charter schools are also considered school districts. In the IDEA, the school district is referred to as an LEA or public agency.

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

Substantive violation refers to a school district's failure to provide a student with a disability with a FAPE. For example, if a student's IEP does not provide the student with a meaningful educational benefit, this would be a substantive violation.

TEA refers to the Texas Education Agency, the state educational agency (SEA) responsible for ensuring that the IDEA is implemented in Texas.

INTRODUCTION

The Individuals with Disabilities 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. TEA is required, among other things, to provide three programs for resolving disagreements that may arise regarding the educational program for a student who is eligible for special education and related services under the IDEA. These three programs are: (1) special education mediation; (2) special education complaint resolution; and (3) special education due process hearings.

In addition, TEA offers a fourth method of alternative dispute resolution that is not required under the IDEA. State law requires TEA to offer a state IEP facilitation project to provide independent IEP facilitators to assist with certain admission, review, and dismissal (ARD) committee meetings with parties who are in dispute about decisions relating to the provision of a FAPE to a student with a disability.

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 disagreements 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, which the parent may ask for at any time, or a meeting that includes other school personnel, such as a campus administrator or the special education director, or other school district administrators or support personnel. Some school districts use neutral meeting facilitators to assist ARD committees in resolving disagreements. Parents interested in having a locally provided facilitator at an ARD committee meeting should begin by contacting their school district to learn what their options are and to ask about availability.

SCOPE OF THIS HANDBOOK

TEA designed this handbook 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 who needs legal advice about a special education matter should contact a private attorney because TEA cannot provide legal assistance.

PART 1: INDIVIDUALIZED EDUCATION PROGRAM FACILITATION

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

1. What is individualized education program (IEP) facilitation?
2. Are school districts required to offer IEP facilitation?
3. Is TEA required to offer IEP facilitation?
4. How much does it cost to have an independent facilitator?
5. How does someone request an independent facilitator from TEA?
6. What if only one party wants an independent facilitator?
7. Are there any conditions that must be met in order for TEA to provide an independent facilitator?
8. Who are the independent facilitators?
9. Are any of the independent facilitators also special education mediators or hearing officers?
10. What is the independent facilitator's role?
11. How does IEP facilitation differ from mediation?
12. Where is a facilitated IEP meeting held?
13. How are the parties notified of whether TEA will provide an independent facilitator?
14. If TEA declines to provide an independent facilitator, may the parties appeal the decision?

1. What is individualized education program (IEP) facilitation?

IEP facilitation is a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively.

2. Are school districts required to offer IEP facilitation?

No. School districts are not required to offer IEP facilitation as an alternative dispute resolution method. However, a state law establishes certain requirements for IEP facilitation offered by school districts. School districts that choose to offer IEP facilitation as specified in the state law must provide parents with information about facilitation, including information on how to request facilitation. This information must be included with other information that the school district provides to the parent of a student with a disability, although the school district may provide it as a separate document and in either a written or electronic format.

In addition, some school districts that do not offer IEP facilitation as outlined in state law may nevertheless have staff members who are trained in facilitation techniques and who use those techniques routinely in ARD committee meetings. There are also school districts that do not offer an IEP facilitation program but may be willing to provide a facilitator in certain situations. Therefore, parents interested in having a facilitator attend an ARD committee meeting should contact their school district to discuss the matter.

3. Is TEA required to offer IEP facilitation?

State law requires TEA to offer IEP facilitation under certain conditions to assist an ARD committee in reaching agreement when the committee is in dispute about decisions relating to the provision of a FAPE to a student with a disability. The conditions that must be met for TEA to provide an independent facilitator are discussed below in Question 7.

4. How much does it cost to have an independent facilitator?

When TEA provides an independent facilitator, there is no cost to the parties for the independent facilitator's services.

5. How does someone request an independent facilitator from TEA?

To request an independent facilitator, the school and the student's parent must complete and sign the Request for an Independent Individualized Education Program (IEP) Facilitator form on TEA's website at: http://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Individualized_Education_Program_Facilitation/. Parties may also contact TEA's Division of IDEA Support at 512-463-9414 to request a copy of the form.

Once the parties have completed and signed the required form, it must be mailed, hand-delivered, or faxed to:

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

6. What if only one party wants an independent facilitator?

If only one party wants to use an independent facilitator, TEA will not be able to provide one. TEA's IEP facilitation project is voluntary. Therefore, both parties must agree to the use of an independent facilitator. Furthermore, one of the conditions for TEA to provide an independent facilitator is that both the parent and school complete and sign the required request form.

7. Are there any conditions that must be met in order for TEA to provide an independent facilitator?

Yes. For TEA to provide an independent facilitator, the following conditions must be met:

- both the parent and the school must complete and sign the required request form;
- the dispute must relate to an ARD committee meeting in which the committee did not reach mutual agreement about the required elements of the IEP and in which the ARD committee has agreed to recess and reconvene the meeting in accordance with 19 Texas Administrative Code (TAC) §89.1050;
- the parties must file the request for an IEP facilitation within five calendar days of the ARD committee meeting that ended in disagreement, and there must be a facilitator available on the date set for reconvening the meeting;
- the dispute must not be about a manifestation determination (a meeting to determine if a student's behavior is substantially linked to the student's disability) or determination of interim alternative educational setting;
- the parties must not be involved in special education mediation at the same time;
- the issues in dispute must not be the subject of a special education complaint or due process hearing; and
- the parties must not have participated in state IEP facilitation concerning the same student within the same school year of the filing of the current request for IEP facilitation.

The only exception to these requirements is that if a special education hearing officer's order or a special education complaint decision requires a school to provide an independent facilitator to assist with an ARD committee meeting, the school may request that TEA provide an independent facilitator. If TEA declines the school's request, the school must provide an independent facilitator at its own expense.

8. Who are the independent facilitators?

TEA contracts with independent contractors for IEP facilitation services. An independent facilitator may not be a TEA employee, an employee of the school district that the student attends, an employee of an education service center, or someone who has a personal or professional interest that conflicts with his or her impartiality. In addition, an independent facilitator:

- must have demonstrated knowledge of federal and state special education laws and regulations;
- must have demonstrated knowledge of and experience with the ARD committee meeting process;

- must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution; and
- must complete continuing education.

9. Are any of the independent facilitators also special education mediators or hearing officers?

No. TEA does not contract with special education mediators or hearing officers as independent facilitators.

10. What is the independent facilitator's role?

An independent facilitator is not a member of the student's ARD committee and does not have any decision-making authority over the ARD committee. The independent facilitator must remain impartial about the topics that are discussed and assist with the overall organization and conduct of the ARD committee meeting. The role of the independent facilitator may include the following:

- assisting the ARD committee in establishing an agenda and setting the time allotted for the meeting;
- assisting the ARD committee in establishing guidelines for the meeting;
- guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;
- ensuring that each committee member has an opportunity to participate;
- helping to resolve disagreements that arise; and
- helping to keep the committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

11. How does IEP facilitation differ from mediation?

In both IEP facilitation and mediation, a neutral third party is assigned to assist the parties with communicating and resolving a disagreement. IEP facilitation, however, involves reconvening an ARD committee meeting with the goal of reaching agreement about the required elements of the student's IEP. In contrast, mediation does not involve holding an ARD committee meeting and may be used to resolve any disagreement arising under the IDEA, not just disagreements over elements of a student's IEP. Furthermore, mediation can be requested at any stage of a disagreement and is available even if the disagreement is the subject of a pending special education complaint investigation or due process hearing. (See Part 2 for more information on mediation).

12. Where is a facilitated IEP meeting held?

As with any ARD committee meeting, a meeting at which an independent facilitator will be present must be held at a time and place agreed upon by the school district and the student's parents. The form for requesting an independent facilitator requires that the parties provide the scheduled date, time, and location for the reconvened ARD committee meeting so that TEA can determine whether an independent facilitator is available to attend the meeting.

13. How will the parties be notified of whether TEA will provide an independent facilitator?

Within five business days of receipt of a request for an independent facilitator, TEA will determine whether the required conditions (see Question 7) have been met and will notify the parent and the school district in writing of its determination and the assignment of the independent facilitator, if applicable. If an independent facilitator is assigned, the independent facilitator will promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

14. If TEA declines to provide an independent facilitator, may the parties appeal the decision?

No. TEA's decision not to provide an independent facilitator is final and is not subject to review or appeal.

PART 2: SPECIAL EDUCATION MEDIATION

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

1. What is mediation?
2. Why choose mediation?
3. How much does it cost to go to mediation?
4. If the parties could not solve their problems at an ARD committee meeting, why might mediation work?
5. How does someone request mediation?
6. Who may request mediation?
7. What happens after someone requests mediation?
8. May TEA or a hearing officer require the parties to participate in mediation?
9. May the parties extend the deadlines for a pending hearing or complaint investigation while trying mediation?
10. Who conducts the mediation?
11. How are mediators assigned?
12. What is the mediator's role?
13. Who may attend the mediation?
14. Where are mediations held?
15. What happens during the mediation?
16. What happens if the parties settle the disagreement at mediation?
17. What happens if a party does not follow the terms of the settlement agreement?
18. What happens if the parties do not settle the disagreement at mediation?
19. Are mediation discussions confidential?
20. Are mediation settlement agreements confidential?
21. May a party record the mediation?
22. If my child has a 504 plan, may I request mediation?

1. What is mediation?

Mediation is a process where the parents of a student with a disability and the school district responsible for educating the student work with the help of a trained mediator toward a solution to a disagreement involving any matter related to a student's special education eligibility or educational program under the IDEA. The mediator does not take sides. Rather, the mediator is a neutral third party who helps the parties communicate with each other. With the assistance of the trained mediator, all parties are involved in the decision-making process, and everyone has a chance to express concerns, offer opinions, make suggestions, and come up with solutions. The focus of the mediation is on solving disagreements and arriving at a solution that meets the needs of the student.

TEA is required by state and federal law to offer mediation to parents and school districts who disagree about the educational program for a student with a disability. The decision to mediate is completely voluntary, meaning that both parties must agree to participate in mediation.

TEA automatically offers mediation to parents and the school district each time a special education complaint or due process hearing request is filed, but mediation may be requested at any time. In other words, a parent or school district may request mediation *before* filing a complaint or a due process hearing request.

2. Why choose mediation?

Parties are more likely to have a good working relationship in the future if they can agree on how to solve a disagreement. Mutual agreements generally result in greater satisfaction for all parties because the parties themselves decide the outcome. Other benefits of mediation are that it is less formal, less costly, and less time-consuming than the other dispute resolution processes. TEA's mediation program has been very successful at resolving special education disagreements. 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.

3. How much does it cost to go to mediation?

There is no cost for parents and school districts to participate in mediation.

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

Because mediation is conducted by a neutral third party, it allows everyone to express their concerns while being treated fairly. The mediator listens to each party and provides feedback and suggestions to help the parties communicate more effectively and reach a common solution. In addition, the questions that a mediator asks may encourage new thoughts and ideas for resolving disagreements.

5. How does someone request mediation?

If you want to request mediation, your first step is to file a written mediation request with TEA. TEA has created a mediation request form that you can find on TEA's website at: http://tea.texas.gov/index4.aspx?id=5087. You are not required to use the form, but TEA encourages you to do so.

You must submit your written mediation request by mail, hand-delivery, or fax to:

Texas Education Agency
Office of General Counsel
1701 North Congress Avenue
Austin, TX 78701-1494
Fax: (512) 463-6027

Please provide a copy of the mediation request to the other party as well.

6. 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 the student;
- an adult student;
- a school district; or
- the authorized representative, such as an attorney or advocate, of any of the above.

7. What happens after someone requests mediation?

When TEA receives a mediation request from a party, it will contact the other party to ask if the party is willing to mediate. Parties may also submit a joint request for mediation.

If the other party does not agree to mediate, TEA will send a letter to both parties telling them that one party declined to mediate. Since mediation is available at any time, one or both parties may request mediation at a later date.

If both parties are willing to mediate, TEA will assign a mediator and send each party an *assignment letter*. TEA will also send a copy of this handbook, the Free and Low Cost Legal Services List, and a list of attorneys and advocates who provide assistance and guidance to parents.

After TEA issues an assignment letter, the mediator will contact the parties to discuss the mediation process and to schedule the mediation. Please do not contact a mediator before you have submitted a written mediation request and have received an assignment letter.

8. May TEA or a hearing officer require the parties to participate in mediation?

No. The IDEA requires mediation to be voluntary. Therefore, TEA and hearing officers may not require parties to participate in mediation. In addition, when a party chooses not to participate, the party does not have to give a reason for the decision.

9. May the parties extend the deadlines for a pending hearing or complaint investigation while trying mediation?

If a special education complaint (see Part 3) 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 participate in mediation. If they want to do this, they should contact the complaint investigator as soon as possible.

If a due process hearing (see Part 4) has been requested, the IDEA 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 that the due process hearing will be resolved timely (if a hearing is still necessary after the mediation). If the decision due date needs to be reset to a later date, the parties must ask the hearing officer for an *extension of time*. A hearing officer must make a finding of *good cause* in order to extend a decision due date. It is up to the hearing officer to determine whether good cause exists.

10. Who conducts the mediation?

TEA contracts with private practice attorneys who have experience in mediation and special education law. Several of the mediators are also special education due process hearing officers. The mediators are not TEA or school district employees and must not 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://tea.texas.gov/index4.aspx?id=5087.

11. How are mediators assigned?

TEA is required to select mediators on a random, rotational, or other impartial basis. If the parties agree that they would like to use a specific mediator from TEA's list of mediators, they must include the name of the preferred mediator on the mediation request and TEA will assign the mediator if the mediator is available. The parties must not contact a mediator before they receive an assignment letter from TEA (see Question 7).

Several mediators also serve as hearing officers. If there is a pending due process hearing involving the same student who is the subject of the mediation, the person who is serving as the hearing officer may not serve as the mediator. In addition, a person who was the hearing officer in a previous due process hearing involving the student who is the subject of the mediation may not serve as the mediator.

12. What is the mediator's role?

The mediator's role is to focus on the following:

- working toward open communication between the parties by creating a safe environment in which the parties feel free to communicate;
- assisting the parties in understanding each others' positions; and
- assisting the parties with finding options to resolve the disagreement.

The mediator is not a judge and does not have decision-making authority. The mediator is not there to provide legal advice. The mediator is there to assist the parties in reaching an agreement and will not pressure the parties to settle the disagreement in a certain way.

13. Who may attend the mediation?

Parents and school personnel with decision-making authority usually attend the mediation. The parties may choose who they bring with them. 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 participants before the mediation session.

14. Where are mediations held?

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

15. What happens during the mediation?

Different mediators have different ways of conducting mediations. A mediator may conduct each mediation session somewhat differently based on the situation, but most mediation sessions have things in common.

The mediation may begin in the same room with the mediator greeting everyone. This is called a *joint session*. The mediator will explain the purpose of mediation, the mediator's role, the confidentiality of the mediation discussions, and how the mediation will proceed.

The mediator may ask the parties to summarize the issues that are 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 disagreement.

The mediator may want to speak with the parties separately. This is called a *caucus* or a *separate session*. For example, if the mediator and the parents want to meet alone, the school district staff would leave the room so that the parents and the mediator can talk in private. Then the mediator would talk to the school district staff in private. This sort of back-and-forth might go on until the mediator thinks it is a good time to bring the parties together again.

There might also be times when the parents, for example, would want to talk to each other alone, without the mediator or the school district staff in the room. Likewise, the school district staff might want to talk to each other in private. Thus, throughout the day, there might be meetings of the entire group, meetings between the mediator and one party, and meetings between just the members of one of the parties. Settlement offers may be discussed during these meetings, and a party may ask the mediator to share those settlement offers with the other party.

Mediation may last for several hours or an entire day so it is important to set aside the full day for mediation. In rare cases, a mediator may continue the mediation to another day. If so, the mediator works with the parties to select the date for the follow-up mediation session.

16. What happens if the parties settle the disagreement at mediation?

If the parties reach a settlement agreement, they will work together to write down the terms of the agreement. After the parties have agreed on the terms and language of the agreement, the parties will sign the agreement. The mediator does not sign the agreement because he or she is not a party to the agreement. Once the parties have signed an agreement, it becomes a legal contract.

17. What happens if a party does not follow the terms of the settlement agreement?

A written settlement agreement that the parties have signed is a legally binding contract. This means that if, for example, a party does not do something that the agreement says the party will do, then the other party may file a lawsuit in state or federal court and ask the judge to make the party follow the agreement. The parties are also free to try to work out their differences on their own or with the help of a mediator.

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

If the parties do not reach an agreement, the parties and the mediator may discuss whether another mediation session should be scheduled. If there is a pending request for a complaint investigation or a hearing, that process will move forward after the mediation ends.

19. Are mediation discussions confidential?

Yes. The IDEA states that discussions that occur during the mediation process are confidential and may not be used later as evidence in a due process hearing or court case. The mediator may ask each party to sign an agreement at the beginning of the mediation stating that they understand and agree that the discussions are confidential. Please note, however, that neither TEA nor the school district may require a parent to sign a confidentiality agreement, notice, or pledge in order to participate in the mediation. The discussions that take place during the mediation must be kept confidential even if the parties do not sign one. Furthermore, if the parties resolve the disagreement through mediation, the IDEA requires that the parties' written settlement agreement include a statement that all discussions that occurred during the mediation process will remain confidential. In addition to discussions, all notes and draft agreements prepared during the mediation are confidential. The mediator may collect all the documents for shredding at the end of the mediation session. 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.

20. Are mediation settlement agreements confidential?

A settlement agreement is a student record. As a general rule, a school district may not give out any information from student records, including settlement agreements, without the parent's or adult student's written permission. However, under a law known as the Family Educational Rights and Privacy Act (FERPA), school districts may sometimes give out student records without permission to certain parties in certain cases. For example, a school district does not need the parent's permission to give student records to a school official if the official has a legitimate educational interest in the records. In some cases, the parties may agree to put a confidentiality statement in the settlement agreement to keep the parties from sharing all or part of the agreement with third parties.

21. May a party record the mediation?

No. As stated in Question 19 above, all discussions at mediation are confidential. Therefore, no one may record any part of the mediation.

22. If my child has a 504 plan, may I request mediation?

TEA's mediation process should only be used to resolve disagreements involving special education matters under the IDEA, such as the identification, evaluation or educational placement of a student who is eligible for special education services or the provision of a FAPE to the student. If a disagreement relates only to alleged violations of Section 504 of the Rehabilitation Act of 1973, the parent may file a complaint with the local school district. The parent and the school district can also agree to hire a private mediator to conduct mediation at their own expense. In addition, a parent may file a complaint under Section 504 with the U.S. Department of Education's Office of Civil Rights (OCR). OCR may offer to facilitate mediation, referred to as "Early Complaint Resolution," to resolve a Section 504 complaint. Information regarding OCR's complaint process can be found at: http://www2.ed.gov/about/offices/list/ocr/504faq.html.

PART 3: SPECIAL EDUCATION COMPLAINT RESOLUTION

The FAQs discussed in this part are as follows:

1. Who may file a special education complaint?
2. What are the reasons a complaint may be filed?
3. May a complaint be used to address the problems of a group of students?
4. How is a complaint different from a due process hearing?
5. Is there a time limit for filing a complaint?
6. May someone file a complaint and request a hearing at the same time?
7. What information must be included in a complaint?
8. How does someone file a complaint?
9. How long does TEA have to make a determination about a complaint?
10. What are the steps in the complaint process?
11. How does TEA decide if there has been a violation of the IDEA?
12. What action will TEA take if it finds a violation?
13. What are *compensatory services*?
14. What is *reimbursement*?
15. How does TEA ensure that the school district or other public agency completes the corrective actions?
16. What may parties do if they disagree with TEA's findings of fact and conclusions?

1. Who may file a special education complaint?

Anyone may file a special education complaint with TEA. The person filing the complaint is referred to as the *complainant.*

A complaint that is filed by someone other than the parent, legal guardian, or adult student is referred to as a "third party complaint." Because students have a right to confidentiality, TEA will inform third party complainants that they must submit written permission signed by the parent, guardian, or adult student for the release of confidential information about the student. If the parent, guardian, or adult student does not grant permission, TEA will not be able to provide the third party complainant with a copy of any findings that TEA may make regarding the complaint.

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 or other public agency, such as TEA, has violated federal or state special education requirements. For TEA to investigate a complaint, it must allege at least one violation of a special education requirement and set forth facts to support each allegation. Examples of allegations and supporting facts are included in the table below.

Allegation	Supporting Facts
The school district did not provide the related services in my child's IEP.	My child's current IEP includes 30 minutes per week of speech therapy, and I learned at a parent-teacher conference that he hasn't seen the speech therapist all year.
The school district changed my child's placement without holding an ARD committee meeting.	My child's IEP states that she will receive reading services in a special education setting. However, at the beginning of the school year, the district changed my child's placement to a general education setting where she receives reading services from the general education teacher.
The school district did not timely complete a special education evaluation of my child.	I asked for a special education evaluation because my child is failing her classes and having behavior problems. I signed a consent form months ago but have not received any test results.

The school district is not providing my child with all of the accommodations in her IEP.	My child's current IEP states that the regular education teachers will let her have extra time to complete assignments. It also states that she can take tests in the resource room so that the test questions can be read to her. Her teachers lower her grade on assignments when she takes extra time to complete them and won't let her go to the resource room to take tests.
The school district did not follow the requirements in IDEA when they suspended my child.	Following a disciplinary incident, my child was suspended from school and placed on homebound instruction for 19 days even though the ARD committee determined that his behavior was the result of his disability.

If TEA determines that there are any issues in a complaint that are not covered by the IDEA or by state special education requirements, TEA will notify the complainant that those issues cannot be investigated through the special education complaint process and will provide information about other options for addressing those concerns, if any. For example, the special education complaint process does not handle violations of civil rights related to disability (i.e., matters relating to Section 504 of the Rehabilitation Act). These matters are addressed directly with the United States Department of Education's Office of Civil Rights. In addition, the complaint process cannot address personnel issues or assignments, general education matters, teaching methods, and campus visitor policies. These matters generally must be addressed with the local school district. Finally, the complaint process cannot investigate allegations related to child abuse or neglect. These issues must be reported to local law enforcement agencies or the Texas Department of Family and Protective Services.

3. May a complaint be used to address the problems of a group of students?

Yes. A complaint may be filed on behalf of an individual student or a group of students.

4. How is a complaint different from a due process hearing?

A complaint investigation is less formal than a due process hearing. A complaint investigation is conducted by TEA staff members who review documentation, talk with parents and school district or other public agency staff if necessary, and evaluate whether a violation of a special education requirement occurred. There is no formal testimony by witnesses and no appeal process.

As discussed in Part 4 of this document, a due process hearing is a formal hearing that is much like a trial before a judge. An impartial hearing officer, who is not a TEA or school district employee, conducts a due process hearing. The parties in a due process hearing may bring and question witnesses, submit and object to evidence, and will receive a record of the proceedings. Finally, the hearing officer's decision may be appealed to state or federal court.

5. Is there a time limit for filing a complaint?

Yes. A complainant must file a complaint within one year of the action s/he wants investigated. For example, if a complaint is filed on February 1, 2016, TEA may only investigate allegations regarding events that occurred between February 1, 2015, and February 1, 2016. If TEA determines that an allegation occurred more than one calendar year before the complaint was filed, TEA will notify the complainant that it will not investigate that allegation.

6. May someone file a complaint and request a hearing at the same time?

Yes, but TEA is required to set aside (hold in abeyance) any issues raised in a complaint that are being addressed in a due process hearing until the hearing is over. TEA will address 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 and those that will be addressed.

After the hearing is over, 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 address it 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 already been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and may not be investigated through the complaint resolution process.

7. What information must be included in a complaint?

In order for TEA to conduct an investigation, a complaint must be in writing, allege a violation that occurred within the past year, and include the following:

- the complainant's signature and 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; and
- supporting facts, including detailed information describing the alleged violation (such as when, where, and how the alleged violation took place).

A complaint alleging a violation regarding a specific student must also include:

- the student's name and address (or, if the student is homeless, the name and available contact information);
- the name of the school that the student attends;
- a description of the nature of the problem, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known to the complainant at the time the complaint is filed.

A complaint is not considered filed until the complainant has provided all of the above information to TEA and to the public agency subject to the complaint.

If TEA determines that any issues are not supported by sufficient facts, it will inform the complainant that the facts are insufficient and that it will investigate only the allegations that include supporting facts. If the complainant wants TEA to investigate the unsupported allegations, the complainant may file a new complaint that includes sufficient facts.

A model complaint form, in English and Spanish, is available on TEA's website at: http://tea.texas.gov/index2.aspx?id=2147497560. 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 to ensure that all necessary information is included in a complaint even when the form is not used.

8. How does someone file a complaint?

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

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

A complainant must also send a copy of the complaint to the non-filing party. TEA cannot accept special education complaints by email.

9. How long does TEA have to make a determination about a complaint?

Under federal law, TEA must issue a written decision within 60 calendar days. The 60-day timeline begins to run on the next business day after the day on which TEA receives the complaint. 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 group of students.

In addition, the 60-day timeline may be extended for the parties to participate in mediation if both parties agree to the extension. The timeline may not be extended by just one of the parties or for the parties to participate in other types of dispute resolution. If the parties are attempting to settle the issues through mediation or some other way, they should notify TEA as soon 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 (handled more quickly) 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.

10. What are the steps in the complaint process?

The steps in the complaint process are described below.

Intake
TEA will review the complaint, and if it is determined that all requirements for filing a complaint (see Question 7) have been met, the complaint is assigned to a complaint investigator. Complaint investigators are TEA employees.

Investigator Assessment
The complaint investigator will review the complaint to determine if it raises issues that TEA may investigate under the IDEA. Specifically, the complaint investigator will review the following issues:

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

The complaint investigator will also discuss the complaint with the other complaint investigators in order to reach consensus on the issues that TEA may investigate.

Notice of Investigation and Request for Response
If TEA determines that the complaint meets the requirement described above, it will send the parties a letter called a *Notice of Special Education Complaint Investigation and Request for Response*. The letter states the allegations to be investigated, requests information needed to conduct the investigation, lists the investigation timelines, and encourages the parties to attempt to resolve the disagreement informally at the local level or through TEA's mediation process. If any issues raised in the complaint cannot be investigated through the special education complaints process, the letter will explain why not.

The school district or other public agency must provide TEA with its response to the complaint and all requested information by the timeline set by TEA, unless TEA extends the timeline due to extenuating circumstances. The school district or other public agency must also send a copy of its written response to the complainant and may send a copy of the documentation, too, unless doing so would violate laws regarding confidentiality. The complainant may also provide additional information about the allegations to TEA and the school district or other public agency.

If the school district or other public agency 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 the school district or TEA 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 confidential student information without written authorization signed by the parent or adult student.

Investigation

The assigned complaint investigator will review the information from the school district or other public agency and any additional information provided by the complainant. The complaint investigator may also gather information through 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.

Investigative Report

Unless the deadline is extended as described above, 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 (see Question 9). TEA complaint investigators work together to develop the final Investigative Report, which is sent to the school district or other public agency and the complainant, unless the complainant is a third party who is not authorized to receive confidential information about the student.

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 or other public agency avoid such situations in the future; and
- any corrective actions TEA will require of the school district or other public agency if TEA finds that a violation occurred.

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

To determine if the school district or other public agency has violated an IDEA requirement, TEA will examine whether the school district or other public agency followed special education laws and rules, applied required standards, and reached a determination that is reasonably supported by the information about the student provided by the parties.

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

If TEA determines that there has been a violation, it will require 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. If TEA determines that the violation affected or may have affected a group of students, the corrective action will include steps that the school district or other public agency must take to correct the broader problem. Examples of corrective actions TEA may require include, but are not limited to, the following:

- an evaluation;
- compensatory services;

- monetary reimbursement for educational expenses;
- an ARD committee meeting to review and/or revise the student's IEP;
- an ARD committee meeting 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 the IDEA; or
- periodic monitoring or reporting on implementation of corrective actions.

TEA may not charge fines or address staffing decisions as part of the corrective action.

If the school district has appropriately corrected the violation before TEA issues an Investigative Report, TEA may choose not to issue a finding of noncompliance.

13. 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. For example, if a student's IEP says that the student should get 60 minutes per week of speech therapy, and it is determined that the student did not receive speech therapy for a time period, the student might be entitled to extra speech therapy sessions to make up for the sessions that were missed. 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 current needs. Compensatory services are not required every time there is an IDEA violation but only when the violation may have resulted in denying the student a free appropriate public education.

14. What is *reimbursement*?

Reimbursement means paying the parent back for services that the parent paid for because the school district or other public agency did not provide appropriate services to the student.

15. How does TEA ensure that the school district or other public agency completes the corrective actions?

The Investigative Report will include a timeline for the school district or other public agency to submit documentation showing that it has completed the corrective actions or for it to submit a plan and timeline for implementation of the corrective actions. All noncompliance must be corrected as soon as possible and in most cases within one year from the date of the Investigative Report. TEA follows up with school districts and other public agencies to ensure that they are completing the required corrective actions. A school district or other public agency that fails to implement corrective actions as ordered may be subject to interventions and sanctions under the Texas Administrative Code. However, there are instances when corrective actions may extend beyond a year, such as when the parties agree to compensatory services that take longer than a year to provide.

16. What may parties do if they disagree with TEA's findings of fact and conclusions?

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. However, TEA's process allows the parties the opportunity to request that TEA correct errors in the Investigative Report that may have affected TEA's conclusions. The process for requesting reconsideration of an Investigative Report is described in the cover letter to the report.

Filing a request for reconsideration does not delay the completion of corrective actions ordered in an Investigative Report. A public agency must complete any corrective actions required even if it files a request for reconsideration. TEA will consider the request for reconsideration and provide a written response to the parties within 45 calendar days of receipt of the request.

PART 4: 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 may request a hearing?
3. How does someone request a hearing?
4. What information must be included in a hearing request?
5. Is there a time period for requesting a hearing?
6. How must a party respond when receiving a hearing request?
7. Does a party need to have an attorney?
8. May a party be represented by a non-attorney at a hearing?
9. What is a special education hearing officer's role?
10. Who are the hearing officers and what are their qualifications?
11. How are hearing officers assigned to cases?
12. What happens after a hearing officer is assigned to a case?
13. May a party request that a hearing officer be removed from a case?
14. What is the resolution process?
15. What is a resolution meeting?
16. Who may attend the resolution meeting?
17. What happens if a school district fails to hold a resolution meeting or the parent fails to attend a resolution meeting?
18. What happens if the parties reach an agreement at the resolution meeting?
19. What happens if the parties do not reach an agreement in the resolution meeting?
20. May a hearing request be amended?
21. Are discussions that occur during resolution meetings confidential?
22. May a party withdraw a hearing request?
23. What is the hearing timeline?
24. Are there any situations that allow for a shorter hearing timeline?
25. May a party watch a hearing to prepare for the party's own hearing?
26. What happens to the student while a case is pending?
27. What is a prehearing conference?
28. What happens if a party cannot attend the hearing when it is scheduled?
29. What issues may be raised at a hearing?
30. What are the parties' rights at the hearing?
31. What happens at a hearing?
32. What is the difference between a *procedural* violation and a *substantive* violation?
33. What types of relief may hearing officers award?
34. Who pays the attorneys' fees?
35. How is a hearing officer's decision implemented?
36. May the parties appeal the hearing officer's decision?

1. What is a special education due process hearing?

A special education due process hearing is a formal legal process similar to going to trial in a court. A due process hearing may be requested when a parent and the school do not agree about the identification, evaluation, educational placement or services of a student with a disability, and/or regarding the provision of a FAPE to a student with a disability.

A parent may also request an *expedited* hearing when there is a disagreement with certain decisions involving discipline (see Question 24).

2. Who may request a hearing?

A parent or a school district may request a due process hearing. The party requesting a hearing is called the *petitioner* and the other party is called the *respondent*.

3. How does someone request a hearing?

A party must send a *written* hearing request to TEA. TEA has developed a model due process hearing request form that is available on TEA's website at: http://tea.texas.gov/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 hearing request must be mailed, hand-delivered, or faxed to:

Texas Education Agency
Office of General Counsel
1701 North Congress Avenue
Austin, TX 78701-1494
Fax: (512) 463-6027

A party must also send a copy of the hearing request to the other party.

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

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

- the student's name 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 hearing?

Yes. A party must request a 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 are two exceptions to the one-year timeline:

- if the parent was prevented from requesting the due process hearing because the school district specifically misrepresented that it had resolved the problem; or
- if the school district withheld information from the parent that the school district was required to provide under the IDEA.

6. How must a party respond when receiving a hearing request?

The party who receives a hearing request must respond within 10 days of receiving the request, and must specifically address the issues raised in the request. The school district is not required to provide a response if the school district already provided the parent with written prior notice that addresses the issues raised in the hearing request. If the school district is the party responding to the hearing request and has not already sent the parent prior written notice addressing the issues raised in the hearing request, then it must send the parent a response that includes the following:

- an explanation of why the school district proposed or refused to take the action raised in the hearing request;
- a description of other options that the ARD committee considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school district used as the reason for the proposed or refused action; and
- a description of any other relevant factors.

7. Does a party need to have an attorney?

No. The parties to a hearing may represent themselves or seek to have a non-attorney, such as an advocate, represent them, as explained below in Question 8. 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://tea.texas.gov/About_TEA/Legal_Services/Special_Education/Office_of_Legal_Services,_Special_Education_General_Information. TEA also maintains a list of parent attorneys and advocates that is sent to all parents who request a hearing. This list is also available upon request. TEA may not pay for attorney fees.

The hearing officer may not give either party legal advice or help a 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 the following:

- 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 Populations
- TEA's hearing rules (Division 7, Commissioner's Rules Concerning Special Education Services)
- Texas Rules of Civil Procedure
- Texas Rules of Evidence

8. May a party be represented by a non-attorney at a hearing?

Texas law generally allows a party to be represented at a special education due process hearing by a non-attorney if the non-attorney has special knowledge or training with respect to the problems of children with disabilities. The non-attorney must also meet certain qualifications, including the requirement that the non-attorney know about special education due process rules, hearings, and procedures and about special education laws.

A party who wishes to be represented by an individual who is not an attorney must file a written authorization with the hearing officer on a form provided by TEA, which is available at: http://ritter.tea.state.tx.us/rules/tac/chapter089/19_0089_1175-1.pdf. It is up to the hearing officer to determine whether someone meets the requirements to serve as a non-attorney representative in a particular hearing. If the non-attorney has ever worked for the school district that is a party to the hearing, state law allows the school district to object to the non-attorney's representation. If this occurs, the non-attorney will not be allowed to represent the parent in the hearing.

9. 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 hearing, listens to the evidence and arguments of the parties, and writes a final decision and order. Additionally, the hearing officer can administer oaths, call and examine witnesses, rule on motions, determine the admissibility of evidence, maintain decorum, schedule and recess the proceedings from day to day, and issue any other necessary orders, including sanctions needed 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. These conferences are referred to as "prehearing conferences."

10. Who are the hearing officers and what are their qualifications?

TEA maintains a pool of hearing officers to conduct due process hearings. The pool consists of a combination of private practice attorneys and attorneys employed as administrative law judges (ALJs) by the Texas State Office of Administrative Hearings (SOAH). SOAH is a state agency that conducts hearings for various state agencies and governmental entities in Texas. Certain SOAH ALJs have been approved by TEA to serve as hearing officers in due process hearings.

Under the IDEA, a hearing officer must be impartial and may not be an employee of TEA or any agency involved in the education or care of the student. A hearing officer may not have a personal or professional interest that conflicts with his/her objectivity in the hearing. Furthermore, the IDEA requires that a hearing officer 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.

TEA maintains a list of current hearing officers and their qualifications on its website at: http://tea.texas.gov/index4.aspx?id=5090, which is also available upon request.

11. How are hearing officers assigned to cases?

TEA assigns cases to hearing officers based on a rotation system. Under this system, TEA assigns cases to hearing officers who are private practice attorneys based on an alphabetical rotation, and assigns cases to SOAH according to the procedures specified in the interagency agreement between TEA and SOAH. When TEA assigns a case to SOAH, SOAH then appoints one of the TEA-approved ALJs to hear the case. If a hearing officer is unavailable or declines an assignment, TEA will assign the case to the next name on the rotation list. An exception to the rotation process is when the parties to the hearing were involved in another hearing that was filed within the last 12 months. In these situations, TEA will generally assign the recently filed case to the same hearing officer who presided over the previous hearing. In addition, TEA will generally assign cases involving siblings that are filed on the same date, or within a 12 month period of each other, to the same hearing officer.

12. 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 and contact information. TEA will also send the parent a packet of helpful information that includes free and low-cost legal services, special education advocate and attorney lists, as well as a copy of this handbook. The hearing officer will contact the parties to schedule the case for a prehearing conference.

13. May a party request that a hearing officer be removed from a case?

A party who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing because of bias or a personal or professional interest that may conflict with the hearing officer's objectivity in the hearing may file a written request with the assigned hearing officer (not with TEA) asking that the hearing officer step down from presiding over the hearing. The written request (often referred to as a motion to recuse) must state the grounds for the request and the facts upon which the request is based. The party filing the request must provide the other party with a copy of the request.

The assigned hearing officer will consider the request and determine whether to grant the request. If the assigned hearing officer agrees that he or she should step down from the case, TEA will reassign the case to a new hearing officer. If the assigned hearing officer denies the request, a second hearing officer will consider the request. If the second hearing officer grants the request, TEA will reassign the case to a new hearing officer. If the second hearing officer denies the request, the assigned hearing officer will move forward with the case.

Because hearings must be independent of TEA, TEA may not rule on requests for the removal of a hearing officer or influence hearing officers' decisions in any way.

14. What is the resolution process?

The resolution process gives the parties a chance to try to resolve their differences before going to a hearing. When a parent files a due process hearing request, the school district must hold a meeting within 15 days of receiving notice of the hearing request. The meeting is referred to as a resolution meeting (see Question 15). If the parties cannot resolve their differences within 30 days, then the hearing timelines begin to run (see Question 23). This 30-day time period, known as the resolution period, may be shortened or lengthened in certain circumstances. The period will end before 30 days have passed if both parties agree in writing to waive, or not hold, the resolution meeting, or if after the mediation or resolution meeting starts but before the 30-day time period ends, both parties agree in writing that no agreement to settle the parties' differences is possible. The resolution process may last longer than 30 days if the parties have already begun the mediation process and agree to continue to try to settle their differences beyond the 30-day period. In that case, the resolution period will end when one of the parties withdraws from the mediation process.

If the hearing involves disciplinary issues and is expedited, shortened timelines apply to the resolution meeting and the resolution process (see Question 24).

15. What is a resolution meeting?

A resolution meeting is a required meeting between parents and school district personnel that takes place when a parent requests a hearing. When a school district requests a hearing, a resolution meeting is not required. Under the IDEA, the school district must hold a resolution meeting within 15 days of receiving notice of the parent's hearing request unless the parties agree in writing to waive the meeting or agree to use mediation instead. The resolution meeting gives the parent a chance to talk about the reasons for requesting the hearing and gives the parties an opportunity to resolve the issues without the necessity of going further with the formal hearing process.

If the hearing involves disciplinary issues and is expedited, the resolution meeting must occur within seven calendar days of receipt of the expedited hearing request (see Question 24).

16. Who may attend the resolution meeting?

The parties determine who should attend the resolution meeting. The resolution meeting must include the student's parents, someone from the school district who has the authority to make a decision for the school district, and relevant members of the ARD committee. The meeting may not include the school district's attorney unless the parent brings an attorney. The hearing officer does not attend the resolution meeting.

17. What happens if a school district fails to hold a resolution meeting or the parent fails to attend a resolution meeting?

If the school district fails to hold a resolution meeting within the required time period (see Question 14), the parent may request that the hearing officer start the hearing timeline. If the school district cannot get the parent to participate at the resolution meeting after reasonable efforts have been made to arrange a mutually agreed upon time and place, the school district may request that the hearing officer dismiss the hearing.

18. What happens if the parties reach an agreement at the resolution meeting?

If the parties reach an agreement, they must develop and sign a written agreement. The parties must tell 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 signed settlement agreement is a legal document and is enforceable in a state or federal district court. The parties have three business days after the settlement agreement is signed to cancel the agreement. If the agreement is canceled, then the hearing moves forward.

19. What happens if the parties do not reach an agreement in the resolution meeting?

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

- continue discussions in an effort to reach a satisfactory resolution;
- agree to participate in mediation; or
- proceed to a hearing if an agreement is not reached during the resolution period.

20. May a hearing request be amended?

Occasionally, a party will want to amend the hearing request to add or take out certain facts or claims. A party may amend the request only if the other party agrees in writing and is given the opportunity to resolve the issues at a resolution meeting or if the hearing officer allows the amendment. The hearing officer may not give a party permission to amend the request within five days of the date the hearing is scheduled to begin. Once a party amends the request, the timelines for the resolution period and the decision due date begin again.

An expedited hearing request, however, cannot be amended (see Question 24).

21. Are discussions that occur during resolution meetings confidential?

Unlike mediation, there is no requirement that the discussions during a resolution meeting remain confidential. However, the confidentiality provisions in the IDEA and in FERPA apply. Therefore, either party may introduce information discussed during the resolution meeting when presenting evidence and confronting or cross-examining witnesses at a due process hearing, unless they have an agreement not to.

22. May a party withdraw a hearing request?

Yes. If a party decides to withdraw a hearing request, the party must submit a signed letter or a motion to dismiss to the hearing officer and the other party as soon as possible.

23. What is the hearing timeline?

A hearing officer must issue a decision within 45 calendar days following the 30-day resolution period, unless the resolution period is adjusted or the case involves discipline (see Question 24). A hearing officer may grant an extension of the 45-day hearing timeline at the request of either party for good cause. When considering whether good cause exists to grant an extension of the hearing timeline, the hearing officer must consider:

- whether the student's educational interest or well-being could be harmed or helped if there is a delay;
- whether a party needs additional time to prepare for or present the party's case at the hearing;
- whether a party will suffer financial consequences if there is a delay; and
- whether there has already been a delay in the case because of the actions of one of the parties.

The table below shows the general hearing timeline:

30-Day Resolution Period	Day 1	The resolution period begins on the first calendar day after the non-filing party first receives notice of the hearing.
	Day 5	The hearing officer will send the parties a scheduling order within the first five calendar days of the resolution period.
	Day 10	By the 10th calendar day, the non-filing party must send a response to the other party.
	Day 15	By the 15th calendar day, the non-filing party must notify the other party and the hearing officer if it believes the hearing request does not contain all the required information. The hearing officer has five calendar days to rule on whether the request is sufficient. Within 15 calendar days, the parties must hold a resolution meeting, unless the parties waive the meeting in writing or agree to use mediation instead.
	Day 30	Unless adjusted, the resolution period ends.
45-Day Hearing Period	Day 1	The hearing period begins (1) at the expiration of the 30-day resolution period if there is no resolution of the dispute; (2) the day after the parties agree in writing to waive the resolution meeting; or (3) the day after the parties agree in writing that no agreement is possible following mediation or a resolution meeting. The parties may extend the resolution period to continue mediation.
	Prehearing Conference	The hearing officer will usually hold a prehearing conference during or right after the resolution period.
	5 Business Days Before Hearing	The parties have until five business days before the hearing to (1) ask the hearing officer for permission to submit an amended hearing request; (2) disclose and provide copies to all other parties of all the documents that each side intends to use at the hearing; and (3) provide to the other party a list of all witnesses who will testify at the hearing.
	Hearing	The hearing will be held at a time and place reasonably convenient to the parent and student.
	Decision	The hearing officer must issue a final decision no later than 45 calendar days after the end of the resolution period, unless the deadline for a final decision has been extended at the request of a party.
After Decision		If the hearing officer issues a decision that orders a school district to take some action, the school district must implement the decision within the timeframe specified by the hearing officer or, if there is no timeframe specified, within 10 school days of the date of the decision. A school district must implement a decision even if it appeals the decision (except that any reimbursement for past expenses ordered by the hearing officer may be withheld until the appeal is resolved). 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. Are there any situations that allow for a shorter hearing timeline?

Yes. The IDEA provides limited circumstances under which hearings are expedited (handled more quickly). A parent who disagrees with certain decisions regarding discipline matters may request an expedited hearing. A school district may also request 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.

Unless the parties agree in writing to waive the resolution meeting or agree to use mediation instead, a resolution meeting must occur within seven calendar days of receipt of an expedited hearing request. The resolution period for an expedited hearing is 15 calendar days from the date of receipt of the hearing request.

Expedited hearings must occur within 20 school days of the date the hearing is requested. Furthermore, the hearing officer must issue a written decision within 10 school days after the hearing. A hearing officer

is not permitted to grant any extensions of time in expedited hearings. In addition, a party is not allowed to amend an expedited hearing request.

25. 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 the party has the permission of the student's parent or if the hearing is "open" by parental request.

Hearing decisions are available to the public after TEA removes confidential information. These decisions can be found on the TEA website at http://tea.texas.gov/index4.aspx?id=5090.

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

During the hearing process 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 called *stay put*.

When the student's placement has been changed for disciplinary reasons, however, the student must remain in the disciplinary placement pending the hearing officer's decision or until the end of the time period applicable to the disciplinary placement, whichever occurs first, unless the parent and the school district agree otherwise.

27. What is a prehearing conference?

A prehearing conference is a discussion with the hearing officer, the parent, 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 cannot attend on the date or time set by the hearing officer.

During the prehearing conference, the hearing officer may:

- clarify the issues raised in the hearing request;
- ask the parties to agree to certain facts;
- limit the number of witnesses and the length of time each witness will be allowed to testify; and/or
- discuss any other matters that might help simplify the hearing or end the dispute, including the possibility of settlement.

Soon after the prehearing conference ends, the hearing officer will send the parties a prehearing order that states:

- the hearing date, time, and place;
- the issues that the hearing officer will rule on;
- the relief that the filing party is seeking;
- the deadline for the parties to disclose evidence and identify witnesses;
- the deadline for the hearing officer to issue the final decision; and
- any other relevant information.

The prehearing conference is held by telephone unless the hearing officer determines that an in-person conference is necessary. 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.

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

If a party cannot attend the hearing at the scheduled time, the party or the party's attorney or representative should file a written request, referred to as a motion for continuance, with the hearing officer. A motion for continuance is a request for the hearing to be scheduled at another time. The motion must say why the party cannot come to the hearing on the day that it was scheduled, and it must ask for the hearing to be scheduled on another date. The motion must be sent to the hearing officer, and a copy of the motion must 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 does not attend the hearing, the hearing officer may rule against that party on every issue. If a party attends the hearing but does not participate, the hearing officer may rule against that party on every issue. The hearing officer will decide whether to reschedule the hearing.

If a party has an emergency at the last minute and cannot go to the hearing, the party must call the hearing officer and the other party as soon as possible and explain the situation. The hearing officer will decide whether to postpone the hearing or go forward with it.

29. What issues may be raised at a hearing?

The parties may only present the issues raised in the hearing request and/or clarified at the prehearing conference, unless the other party agrees otherwise.

30. What are the parties' rights at the hearing?

The IDEA gives the parties the right to:

- be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- present evidence and confront, cross examine, and require that a witness attend the hearing (by subpoena);
- receive in either written or electronic form a record of the hearing (the transcript 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.

The IDEA gives parents the right to:

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

31. What happens at a hearing?

A 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 or representatives, the witnesses, and a court reporter. A party may also be accompanied and advised by individuals with special knowledge or training regarding the problems of children with disabilities. Hearings may 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 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 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	The parties are allowed to make an opening statement that generally describes or summarizes their side of the case, reviewing the key facts and how those support the legal claims or defenses. Opening statements are not evidence and may not 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 (non-filing parties) may choose to wait until after the petitioner (filing party) has presented all witnesses and evidence.
Presentation of Evidence	The party with the burden of proof must present evidence (exhibits) and witnesses first. Then it is the other party's turn. Each party may have witnesses attend the hearing. The witnesses are placed under oath and sworn to tell the truth. Witnesses first answer questions from the party who called them (direct examination). Then they may be asked questions by the other party (cross examination). Finally the party who first called the witness can ask more questions (redirect examination). The hearing officer may also question the witnesses. If the parties request it, the hearing officer may require the witnesses to wait outside the hearing room until they are called in to testify. The hearing officer may also instruct the witnesses not to discuss their testimony with anyone. This ensures 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 to advise a party and to hear information that will serve as the basis for the expert's opinion. A party may ask a witness to come to the 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 requiring a witness to attend a hearing at a specific location, 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 may 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 should be used as evidence in the case. The hearing officer will either *sustain* (agree with) or *overrule* (disagree with) an objection. If an objection is sustained, the testimony or exhibit will not be used as evidence. If the objection is overruled, the testimony or exhibit will be admitted as evidence.
Closing Arguments	After all of the evidence has been presented, the hearing officer usually gives each party the chance to make a closing argument that summarizes the party's case and explains how the evidence introduced supports the party's case. The closing argument may be presented orally at the end of the hearing or in writing, which is referred to as a post-hearing brief, if ordered by the hearing officer.
Record of the Case	The hearing will be recorded by a certified court reporter. The court reporter gives the parties a free copy of the transcript of the hearing. The transcript will be a written copy of everything that was said on the record at the hearing and is usually provided within two weeks of the hearing.

32. 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 the IDEA. Two examples of procedural violations are the failure to include the necessary members at ARD committee meetings or conducting an evaluation outside of the required timeline. Substantive violations relate to a school's failure to perform its duties under the IDEA. Two examples of substantive violations include the failure to identify a student with a disability and the 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 proving procedural violations because the hearing officer must find that the violations 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.

33. What types of relief may hearing officers award?

Hearing officers may award relief to either party, which may include:

- 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 additional services to make up for services that were not provided in the past, referred to as compensatory services;
- relief pertaining to disciplinary sanctions; and
- orders for a school district to comply with the procedural requirements under the IDEA and its regulations.

34. Who pays the attorneys' fees?

The parties must pay their own attorneys' fees. Hearing officers do not have the authority to award attorneys' fees or litigation costs to either party. If the hearing officer rules in favor of a party, that party may file a claim for attorneys' fees and litigation costs in state or federal court.

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

When a hearing officer has ordered the school district to take some action, TEA will monitor the school district's implementation of the hearing officer's decision. A school district must implement a hearing officer's decision within the time frame specified by the hearing officer or, if there is no time frame specified, 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 to file a special education complaint alleging that a school district failed to implement a hearing officer's decision. (See Part 3 for more information on the complaint process.)

36. May the parties appeal the hearing officer's decision?

A party may appeal the hearing officer's decision to state or federal court no more than 90 calendar days after the date that the hearing officer issues the decision. As part of the appeal process, the court will review the records of the due process hearing and may hear additional evidence at the request of either party. The court will base its decision on 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 the applicable timelines, except that it may withhold a reimbursement award while appeals are pending.

For questions about the **complaint investigation** process or **state IEP facilitation project**, please contact:

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

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

For questions about **mediation services** or **due process hearings**, please contact:

Texas Education Agency
Office of General Counsel
1701 North Congress Avenue
Austin, Texas 78701

Telephone: (512) 463-9720
Fax: (512) 463-6027

If you need information about special education issues, you may call the Special Education Information Center at **1-855-SPEDTEX (1-855-773-3839)**. If you reach voice mail, please leave a message and someone will return your call during normal business hours.

If you are deaf or hard of hearing, you may call the voice number above using **Relay Texas at 7-1-1**.