

Due Process Hearings & Panel Discussion

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WISCONSIN DEPARTMENT OF
PUBLIC INSTRUCTION

Carolyn Stanford Taylor, State Superintendent

Legal Basis



- [34 CFR §§300.507-300.516, 300.530](#) (Expedited hearing)
- [Wis. Stat. §115.80](#)
 - Within 1 year
 - [DPI Model form](#)
- [Wis. Stat. §115.80\(2\)](#)
 - List of qualified hearing officers
 - Cannot be DPI employees
- [Dispute Resolution Procedures](#)

Reasons a Hearing May Be Requested

- Refusal or proposal to initiate or change student's
 - Evaluation
 - IEP
 - Placement
 - Provision of FAPE
- Override parent's refusal to consent to evaluation.
- To contest a request for an Independent Educational Evaluation (IEE).



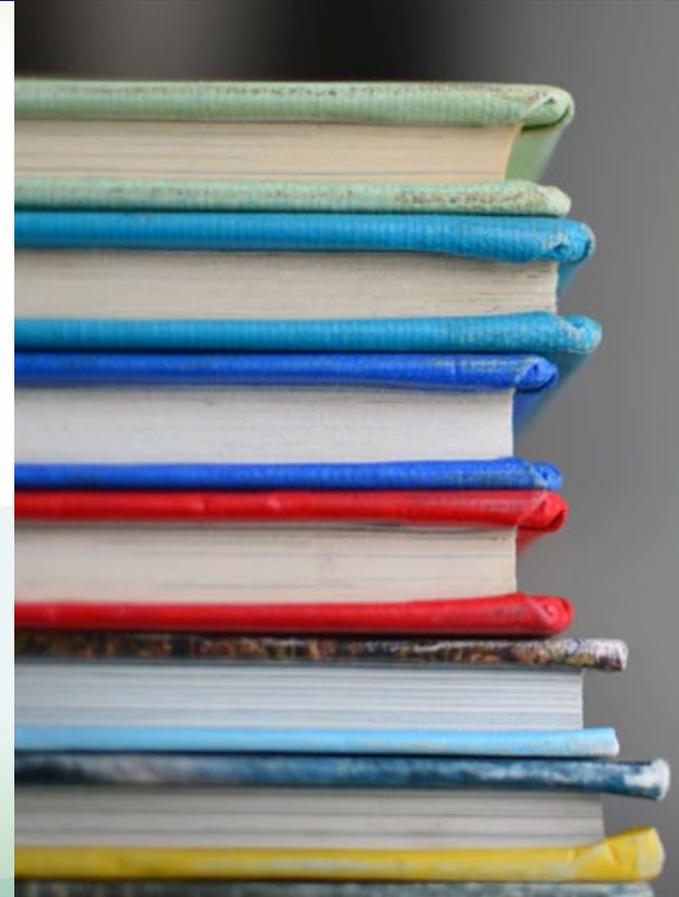
Initial Processing Steps



- Filed with DPI and other party.
- DPI sends the other party a copy of the request.
- DPI sends the parents a copy of the procedural safeguards notice, a list of free/low cost legal services, and a mediation brochure.
- If parent files, DPI sends a copy of the due process resolution summary form to the LEA.

Next Processing Steps

- DPI sends request to DHA for appointment of an administrative law judge (ALJ).
- Other than IAES, LEA cannot change placement during pendency of proceedings unless parent agrees.



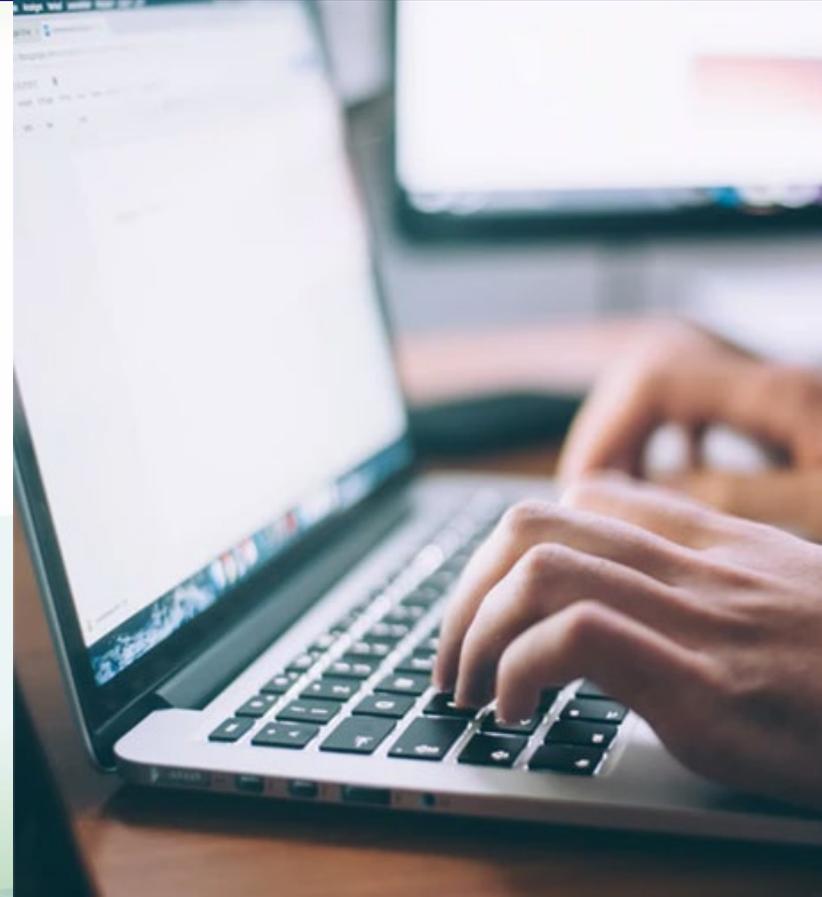
Expedited Due Process



- **DPI reviews during initial processing to determine applicability.**
- **Intended for disciplinary matters - disciplinary placement or manifestation determinations.**
- **Resolution session 7 days after the receipt of the request.**
- **Due process hearing 20 school days from notice.**
- **Written decision within 10 school days of the hearing.**

Written Response/Prior Written Notice

- **Within 10 days of receiving a hearing request, the other party must send a written response addressing all issues raised in the hearing request. Provide copy to ALJ.**
- **If prior written notice has not been sent, LEA must do so.**



The Resolution Session



- Must be held by the LEA within 15 days of receiving notice of parent's request for due process hearing.
- May be waived if both parties agree in writing.
- [DPI Sample Form](#) to document agreement to use mediation or waive resolution session.
- Must document what happens on DPI form and email back to DPI.

Mediation

- [Wisconsin Special Education Mediation System](#)
- [Wis. Stat. §115.797](#)
- Can be used to resolve due process and in place of resolution meeting.
- [Wis. Stat. §904.085\(3\)](#)
- Increasingly popular.



Sufficiency of the Hearing Request



- Within 15 days of receipt of hearing request, the other party may notify the ALJ that it believes the request does not meet legal requirements.
- Within 5 days, the ALJ shall determine whether the hearing request is legally sufficient and notify the parties.

Amended Hearing Request

Hearing request may be amended if:

- The other party consents in writing and is given the opportunity to resolve new issues, or
- The ALJ grants permission at least five days prior to the scheduled hearing.



Prehearing Telephone Conference



- **ALJ promptly schedules prehearing conference and sends written notice to the parties.**
- **Scheduled at least 20 days out to allow time for resolution session.**
- **Purpose:**
 - **Clarify issues**
 - **Establish prehearing and post-hearing deadlines**
 - **Schedule hearing.**

Prehearing Telephone Conference, cont.

- No testimony taken.
- Attorneys should participate.
- Pro se litigant considerations.
- ALJ sends written prehearing conference report/scheduling order/notice of hearing, and if applicable, order extending decision deadline.



IEE/Extension of Time



- ALJ may order an IEE of the child at LEA expense.
- ALJ may grant specific extensions of time for cause at the request of either party.
 - Decision deadline often extended
 - ALJ will issue order stating reasons for granting request of extension of time.

Due Process Hearing



- Held in location of the parties, typically at LEA building.
- Formal rules of civil procedure and evidence do not apply.
- Parties have right to legal representation.
- LEA responsible for cost of hearing.
- Stenographer prepares transcript.

After the Due Process Hearing

- Transcript received.
- Parties file post-hearing briefs.
- ALJ issues written decision by deadline.
- Appeal rights.
- Posted on the [DPI website](#) by decision year.
- Shared with the State Advisory Panel.
- DPI follow up as needed.



Questions for the Panel #1



- **What kinds of issues most often lead to requests for due process hearings?**

Questions for the Panel #2

- Is there a certain type of case that is best suited for a mediation versus a due process hearing?



Questions for the Panel #3



- **How do you prepare for a resolution session?**

Questions for the Panel #4

- If you had a case where a due process hearing request was originally filed, (but a hearing did not occur) what was beneficial in resolving that case so the hearing wasn't necessary?



Questions for the Panel #5



- How do you prepare for a due process hearing?

Questions From The Audience

