

Advocacy Notes



Question from the field: We keep going around and around in the IEP process, not agreeing. What are our options?

We have had 4 amendment meetings since our daughter's last IEP meeting. We are not in agreement, and at every meeting we seem to be going in circles. We have heard about due process, but don't want the district to be mad at us. What happens in due process?

While the idea of due process or taking legal action can be scary for many families, and is not what anyone, either the family or the district wants, it can often have very positive results for the child, the family, and the district. If the team is continuing to have IEP meetings and getting no further in the process, then taking the conversation to the administration outside of the IEP meeting can lead to open, honest, and productive discussions.

Having multiple IEP amendment meetings to discuss the same requests, concerns, or disagreements can create frustration and ill will all around. When families feel that they are not being heard or that their child's needs are not being addressed, it can lead to resentment and mistrust of the educators. When DHH Specialists and other district members of the IEP team, who are not administrators or decision makers, are put in the difficult position of defending an offer it can also lead to damaged relationships with the family. Once a family takes their requests to the next level of decision makers and opens the door to additional discussion, it provides an opportunity for some very productive conversations to take place.

While this is in no way a comprehensive guide, following are the basic stepping stones in due process. Prior to filing a request for due process, the district administrator may reach out to the family for an alternative dispute resolution (ADR) meeting. Parents may also choose to reach out to the district in an effort to explore if there is a willingness to meet outside of the IEP. All parties should be sure to not approach this meeting as an IEP meeting. It is not. This is an opportunity to think outside of the box in an effort to find a solution and to recognize that the family and district have many years to work together. I would advise parents to remember this and really advocate for *alternative* ideas, and to not have this meeting turn into another frustrating *IEP-like* meeting.

While different states may have some additions or differences in the timelines, what follows is a basic timeline of what to expect per IDEA requirements once a family files a request for due process:

1. Following receipt of the request for due process, the school district has 15 days to offer the family an Informal Dispute Resolution (IDR) meeting.¹ The IDR can be waived only if both the family and the district agree to waive the meeting. I would recommend attending IDR. It is a wonderful opportunity to explore misunderstandings, clarify what is being requested, and work with the decision makers to resolve the disagreements that have arisen from the IEP meetings. This is a meeting that typically will not include attorneys for either the family or the district. Because this is the first opportunity to speak candidly as well as confidentially, it can be quite beneficial for families of children with hearing loss. If this meeting begins to feel like another IEP meeting, it can be ended at any time.

2. The State Department of Education will set dates for both the mediation, which is completely voluntary and confidential,² and the hearing. A judge or mediator and representatives for the family and district voluntarily attend. For the mediation meeting the job of the judge is to facilitate a compromise. Surprisingly, while the unknown aspects of this process are understandably stressful for families, mediation can be the experience that repairs the relationship. This is not a promise, but a true possibility. As such, it is a wonderful opportunity for families of children who have hearing loss. There are so many unique and different needs regarding students with all degrees of hearing loss and all modes of communication that administrators do not always understand the nuances. Because hearing loss is a low incidence disability, many of these administrators have relied on regionalized programs or Non-Public schools to educate their students. These administrators may honestly be unaware, until the mediation, what the student needs are or that parents have options regarding mode of communication and language development. Administrators may not realize that students with hearing loss have the right to “opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the child’s language and communication mode.”³ In my experience supporting families and districts, as long as both parties are willing to participate in mediation, the strained relationships can begin to heal during mediation. In 2018 approximately 83% of cases were resolved in mediation in Minnesota⁴ and 97% of cases were resolved at, or just following mediation, in California.⁵
3. Should the case go to hearing, following a due process decision the family and district have 90 days to file an appeal.

The special education system can be overwhelming for families as it has a language all its own. Families do not need to enter any of these steps alone. Consulting with either a special education attorney or an advocate to prepare and navigate the process can be beneficial. Someone who not only understands special education law, but also understands the unique needs of children with hearing loss has the potential to facilitate getting appropriate placement and services, help to the repair of the relationship, and provide additional education for the district administrators. Just as the path of due process may feel intuitively adversarial, it may also feel adversarial to think about bringing an attorney or advocate. However, again, this can actually take the stress off of the family and provide the path to ending the cycle of IEP meetings and amendments that seem to be going nowhere.

1. IDEA [20 USC 1415 (f)(1)(B); 34 CFR 300.510]; Preparing for Special Education Mediation and Resolution Sessions: A Guide for Families and Advocates
2. IDEA [20 U.S.C. 1415(e); 34 CFR 300.506]; Preparing for Special Education Mediation and Resolution Sessions: A Guide for Families and Advocates
3. IDEA section 300.324(2)(iv)
4. www.idonline.org/article/6302/
5. www.amsterlawfirm.com/blog/what-happens-after-you-file-for-due-process