Today's objectives

- What are the general student rights?
- What legal actions have been taken for school violence?
- Why are there special rules about discipline for children with disabilities?
- What is a change of placement?
- What are IDEA's new discipline regulations?
- What discipline actions are allowed for children with disabilities?
- What are the school's three options and what actions should be taken? How and when?
- How is an alternative educational setting determined?
- What is a manifestation determination review?
- When? Who? What happens with yes or no outcomes?
- What provisions promote proactive up-front measures that will help prevent discipline problems? BIP, FA, implement and evaluate BIP
- Also figures 15.2, 15.4, 15.8

What are the general student rights for ALL?

**Rights: Due Process Protection for all students**

Cannot deprive any student of liberty or property interest

1. Right to fair procedures if deprived of education

   A. Rights for short term (10 days or less):
      - Notice (24 hrs)
      - oral or written explanation of reasons for actions
      - Hearing (72 hrs)

   B. Rights for Long Term
      - Notice written and explanation of reasons
      - Notice of evidence, witnesses and substance of testimony
      - Set hearing
      - Right to confront witnesses and present own
      - Right of appeal

2. Due Process right to reasonableness

   Rules
   - discipline acts must have a rationale and school related purpose
   - school should have clear/specific guidelines for expected behaviors

   Must employ reasonable means to achieve compliance
   - School actions only for those behaviors that have adverse effect on public education and proper school purposes

Court rules “reasonable” disciplinary action based on 4 questions:

- Did teacher have authority under state and local laws to discipline?
- Was rule violated within scope of educational function?
- Was rule violator the one disciplined?
- Was the discipline in proportion to gravity of offense?
No discernible trend by courts in holding school officials liable for injuries students suffered at the hands of other students or third parties in a school.

"[W]e must reject the broad view of 'custody' because school officials would be subject to liability any time a child skinned his knee on the playground or was beat-up by the school bully, so long as the requisite 'state of mind' was shown. More seriously,...teachers would be constitutionally obligated to assumed roles as policemen or even prison guards in protecting students from other students."


Agencies held liable if they do not follow the due process rights of children in safety discipline cases and for disciplining students on insufficient grounds.

Two thirds of state legislatures have enacted some form of legislation since 1996 to erode confidentiality provisions concerning children who commit offenses. E.g.,

• Require school to report all felonies or other violent acts against an employee or student to law enforcement officials.
• Require that courts, police, and/or prosecutors notify school districts when a juvenile is suspected of, charged with, and/or found guilty of particular offenses.
• Requiring parents of students adjudicated as delinquent for a violent crime to notify the school in writing of the nature of the offense. If not, student may be suspended, transferred or expelled.
• Refer to law enforcement agency if school receives a report that a student has made a threat to commit a crime of violence

School does not have to notify parent or follow procedural safeguards with sp ed students.

School suspensions have increased and fallen disproportionately on African American and special education students.

• African Americans are suspended 2.3 times the rate of whites nationally. 1997 - black students constituted approximately 17% of students enrolled but approximately 32% of all the students suspended.
• Despite making up 13% of the student body, children in special education make up almost a quarter (23.1%) of suspended kids, and a nearly a fifth (18.4%) of "long-term" suspensions.
• But in more rural or suburban districts, special education students represented about a third or more of all suspensions.

Jamie, a high school student, brought a gun to school. Under his school's disciplinary policy, he should be expelled. But, Jamie has a disability

IDEA makes disciplinary actions different for children with disabilities or those suspected

This dual standard only if results in change of placement
Why are there special rules about discipline for children with disabilities?

1. To prevent speculative and subjective decisions that led to widespread abuses of the rights of children with disabilities to an appropriate education in the past.

2. (1972) court recognized that children were being excluded entirely from education because identified as behavior disorder. Today, there are excluded due to suspensions and expulsions.

3. Allow appropriate changes in placement.

4. Ensure that children continue to receive an appropriate education.

This dual standard only if results in change of placement

A change of placement occurs if—
(a) The removal is for more than 10 consecutive school days; or
(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another
(c) In courts--affects the delivery of education

Change in placement triggers safeguard procedures

What are IDEA's new discipline regulations?

1. Prohibits
   A. Long-term suspension and expelling students with special needs if due to disability.
   B. Corporal punishment

2. Mandates that schools continue to provide educational services if suspended more than 10 days (short term) regardless of whether or not his action was related to his disability.

   Although services may be provided in an alternative setting.

What discipline action are allowed for children with disabilities?

School can…
1. Use Permitted procedures
   Those part of school disciplinary procedures and those commonly used for all (table 15.1)

   Report crimes committed to appropriate law authorities to the same extent as for nondisabled students. Sec. 300.529.
2. Use Controlled procedures
interventions that courts help permissible
with due process rights in place and with FAPE
and not overused or discriminating

Seclusion/Timeout
as long as not excessive and prolonged
In-school suspension
written policy stating when and how
with warning first
inform parents
supervised
continued education
documented
Out-of-school suspension
up to 10 days

3. Immediately remove dangerous child by…

Emergency restraint (with trained?)
suspend up to 10 days
hold IEP meeting IF want to decide on new placement
or rewrite IEP
go to hearing officer for temporary restraining order (TRO)
or courts if parent/school disagree and danger is grave

What are school options Under the Law?

**OPTION 1:** Short Suspensions Exempt from IDEA Protections
For suspensions of first 10 consecutive school days or less, IDEA regulations:
- Students with disabilities may be removed from the classroom for up to 10 days for any violation of a school code of conduct, in the same manner and to the same extent that a non-disabled student would be. (In other words, equal punishment for the same offense).
- Schools may either provide or stop educational services.
- Schools are exempted from conducting manifestation determinations.
- Schools are exempted from conducting FA
- IEP teams must consider positive behavioral interventions and supports that may inhibit behavior that impedes learning.

<table>
<thead>
<tr>
<th>OPTION 1: Risk-violation</th>
<th>OPTION 2: Weapons, drugs, bodily injury</th>
<th>OPTION 3: Believed to be dangerous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short suspension up to 10 consecutive days using general ed policy</td>
<td>can change to interim alternative educational up to 45 school days</td>
<td>ask a hearing officer to remove a student to an alternative setting up to 45 school days.</td>
</tr>
<tr>
<td>FA and IEP</td>
<td>Manifestation Review Alternative setting determination FA and IEP FAPE</td>
<td>Manifestation Review Alternative setting determination FA and IEP FAPE</td>
</tr>
<tr>
<td>On 11th cumulative day</td>
<td></td>
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<tr>
<td>Manifestation Review • If NO, FA and IEP, FAPE, and monitor Pattern</td>
<td>• If YES, FA and IEP, FAPE, and possible LRE determination w/ IEP team</td>
<td></td>
</tr>
</tbody>
</table>

Getting into specifics....
Do the IDEA regulations mean that a child with a disability cannot be removed from current placement for more than ten school days in a school year?

No.

- May implement multiple short-term removals in that same school year for separate incidents of misconduct
  - If educational services are provided after first 10 days
  - Is same action as for nondisabled
  - No pattern

- **PATTERN:** would mean that factors such as the length of each removal, the total amount of time that the child is removed, and the proximity of the removals to one another lead to the conclusion that there has been a change in placement.
- Schools may seek IEP changes or court orders to change the student

Discuss Time out, lunch, before school, shortened day.

What must a district do when removing a child for the eleventh cumulative day in a school year?

Provide services FAPE necessary to enable the child to progress in the general curriculum and towards IEP goals.

Conduct a manifestation determination within 10 days to determine whether the behavior was the result of the child's disability or whether the behavior was a "direct result of the local educational agency's failure to implement the IEP."

Conduct a FA and modify and revise BIP.

Determine where those services would be provided.

*This means that for any subsequent removals, services must be provided to the extent determined necessary, while the removal continues.*

Getting into specifics....

**OPTION 2:** If child committed bodily harm.

Showing substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss or impairment of function of bodily member organ or mental faculty.

Verses

**OPTION 3:** If believe child is dangerous to self or others, can ask a hearing officer in an expedited due process hearing to remove a student to an interim alternative educational setting for up to 45 days.
OPTION 3: If believe child is dangerous to self or others--, can ask a hearing officer in an expedited due process hearing to remove a student to an interim alternative educational setting for up to 45 school days.

At the end of an interim alternative educational placement of up to 45 school days and believe that it would be dangerous to return, ask hearing officer to order an interim alternative educational setting for an additional 45 days or request subsequent extensions.

may seek to obtain a court order to remove from school or to change a child's current educational placement.

Getting into specifics….

What is a Manifestation determination review?

IEP meeting to determine
a) Was behavior caused by, or had direct and substantial relationship to, the child’s disability?
b) Was IEP implemented? (supplementary aids and services and behavior strategies)

IF YES to ANY of these questions--
cannot be suspended more than 10 days or expelled Conduct FA and modify or revise BIP
but may still initiate change of placement under proper procedures.

Consider, in terms of the behavior subject to disciplinary action, all relevant information, including--

evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child; includes the private evaluations by the parents.
observations of the child; and
the child’s IEP and placement

When do you conduct a manifestation determination?

Triggered by:
• placement in alternative setting for drug, weapon offense, serious bodily injury
• Placement by hearing officer for student who continues to pose a threat
• Removal that constitutes a change of placement which means child was removed for more than 10 consecutive days or a PATTERN was noted

Who is present?

IEP team including parent and school psychologist or other qualifies personnel knowledgeable about the disability
If the IEP team decides that the behavior is not a manifestation of the disability,

child with a disability may be treated as a regular ed child

Even if a child with a disability is suspended or expelled for behaviors not related to the disability, the child must be provided a free, appropriate public education.

This requirement has resulted in the proliferation of the “alternative educational settings.”

If IEP Team determines that the behavior was a manifestation of the disability:

“take immediate steps to remedy any deficiencies found in the child’s IEP or placement or the implementation.”

The remedies often should enable the student to return to his or her previous educational setting before a 45-day placement in an alternative setting ends.

How is an alternative educational setting determined?

1. be selected so as to enable the child to continue to participate in the general curriculum,
2. to continue to receive IEP services and modifications that will enable the child to meet the goals set out in that IEP;
3. plus services and modifications designed to address the behavior problem so that it does not recur.
4. Determined by IEP team
5. Take into account on a case-by-case basis "any unique circumstances . . . when determining whether to order a change in placement for a child with a disability who violates a code of student conduct." (This may be the biggest change in the discipline provisions -- it is designed to grant limited exceptions to the "stay put" rule.)

Options from literature:

- need a very structured environment
- with trained teachers
- provide numerous acknowledgements of student success,
- a positive environment with meaningful curriculum,
- incorporating community service also helps students with severe behavior problems modify their aggressive behavior
(A) determines that the public agency has demonstrated by evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
(B) considers the appropriateness of the child’s current placement;
(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and
(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B). I.e., the goals and objectives of the IEP must be maintained.

What criteria must be met for a Hearing Officer to Order a 45-day placement?

(A) determines that the public agency has demonstrated by evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
(B) considers the appropriateness of the child’s current placement;
(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and
(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B). I.e., the goals and objectives of the IEP must be maintained.

What are the protections for children not yet eligible for special education and related services?

Case 1: If has not been determined to be eligible for special education and related services then may assert any of the typical discipline protections (Your OK)
However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.

How do schools demonstrate harm and actions to prevent?

Number of witnesses
anything in writing
report staff training, behavior management efforts, crisis prevention and interventions
Anything documented counts
“didn’t happen if not in writing”

What are the protections for children not yet eligible for special education and related services?

Case 2: if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred then discipline as special ed student

LEA would have known that a child was a child with a disability if
a) parent put concerns in writing to school personnel that their child needs special education services
b) LEA shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services, or the child has been evaluated and it was determined that the child was not a child with a disability.
Yes.

**HOW?**

For all children, focus on a universal proactive approach
early identification of reading and behavior problems
provide appropriate interventions
based on individual child needs

The new law gives flexibility to local school districts to use up
to 15 percent of their funds for early intervening services for
students (in k-12)

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**IDEA: Positive Behavioral Interventions**
Section 614 (d)(3)(B)(i)

“In the case of a child whose behavior impedes his or
her learning or that of others, consider, when
appropriate, strategies, including **positive behavioral
intervention strategies & supports**, to address that
behavior.”

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**IDEA: Functional Behavioral Assessment**
Section 615 (k)(1)(B)(i)

“If the local educational agency did not conduct a
**functional behavioral assessment** & implement a
**behavioral intervention plan** for such child before the
behavior that resulted in the suspension described in
subparagraph (A), the agency shall convene an IEP
meeting to develop an assessment plan to address that
behavior.”

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**WHAT IS FBA?**

A systematic **process** for
- Developing **statements** about factors that
  contribute to occurrence & maintenance of
  problem behavior, &
- More importantly, serving as basis for developing
  proactive & comprehensive **behavior intervention & support plans**.
GOAL of FA

Find operant function of the problem behavior
(DISRUPT FOR TEACHER ATTENTION)
Weaken the maintaining contingency for problem behavior
(NO OR LITTLE TA FOR DISRUPTION)
Strengthen a concurrent available alternative
more preferred response
(TA FOR QUIET WORK, RAISE HAND)

Behavior says:  
Teacher says:

PEER/TEACHER ATTENTION:  
TALK TO ME -- I WILL TALK TO YOU WHEN YOU ARE BEING “GOOD”

TANGIBLES  
I WANT THAT -- YOU CAN HAVE THAT FOR BEING “GOOD”

AVOID/ ESCAPE  
I DON’T WANT TO DO THIS -- YOU CAN HAVE A BREAK AFTER
DOING SOME OF THIS IN AN EASIER WAY

Behavioral Interventions

When?

1. If a student's behavior impedes his or her learning or that of others, the strategies and supports needed to address that behavior must be a part of the student's IEP.

2. If deciding to take disciplinary action/change in place, need to develop BIP if one is not already no later than 10 days

3. To develop effective behavioral interventions, educators must complete three steps:

   perform a functional assessment of the behaviors,
   determine and implement intervention strategies,
   evaluate them.

Functional Assessment

When by law?

..first remove for more than 10 days in a school year
..removal constitutes a change in placement
..placed in an alternative setting for weapons-drug offense
**TODAY’S OBJECTIVES**

- What are procedural safeguards and why?
- Safeguards and Issues:
  - Parents: Who are “parents”?
  - Notice: What types of notice is needed by schools and parents and when?
  - Consent: What are the parent consent requirements?
  - Disputes: How do schools and parents handle disputes?
    - What are Mediation requirements?
    - What are Due Process requirements?
    - What are “Stay Put” requirements?

**SAFEGUARD ISSUE 1: PARENTS**

**QUESTION 1: Who are the parents?**

Two routes...
- living with the child in a parental role
- having legal responsibility for a child who resides elsewhere.

Legal responsibility given to someone who:
- has no conflicts of interest (e.g., may not a school employee)
- has knowledge and skills to ensure child is adequately represented
- has ongoing day by day involvement and personal concerns

**13 topics covered in IDEA safeguards**

- independent educational evaluation
- prior written notice
- parental consent
- assess to educational records
- opportunity to present complaints to initiate due process hearings
- Child’s placement during pendency of due process proceedings
- Procedures for students who are subject to placement of an interim alternative setting
- Requirements for unilateral placement by parents of children in private schools at public expense
- Mediation
- due process hearings
  - State-level appeals
  - Civil actions
  - Attorney’s fees

**What are procedural safeguards and why?**

- Formality requirements of IDEA
- Designed to afford parents or guardians of handicapped children meaningful involvement in the educational placement of their children.
- To enable parents to protect the rights of their child
- Where? 300.43, 300.500-.529 and 300.560-300.577
Term parent means—
(1) A natural or adoptive parent of a child;
(2) A guardian but not the State if the child is a ward of the State;
(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare); or
(4) A surrogate parent who has been appointed in accordance with §300.515.

Surrogate Parent

Appointed if child:
- does not have a parent
- Parents cannot be found after reasonable efforts to locate
- Child is ward of state

Parent has the rights and a surrogate may not be appointed if:
- location is known but is not interested in becoming involved.
- Others acting as parents such as foster, grandparents.
- Still has rights even if surrogate appointed but parental rights were not terminated

Foster parent. Unless State law prohibits a foster parent from acting as a parent,
State may allow a foster parent to act as a parent if—
(1) The natural parents’ authority to make educational decisions on the child’s behalf has been extinguished under State law; and
(2) The foster parent—
   (i) Has an ongoing, long-term parental relationship with the child;
   (ii) Is willing to make the educational decisions required of parents under the Act; and
   (iii) Has no interest that would conflict with the interests of the child.
(3) Often a case by case basis considering time and actions of foster parents

Question 2: How does the school handle non-custodial parents?

IDEA: Rights apply to both unless court granted sole authority to one or if state law differs
Then the other cannot use IDEA to compel school to allow participation.

Always try to get joint participation by getting both to agree.
Vague rules and few cases give vague guidelines:

Doe v Anrig 1987:
school might be justified in relying on custodial spouse only
If one agrees with IEP, that is enough but the parent who disagrees should be notified of due process rights

Lower Moreland Township School District 1992
Hearing officer stated that an involved parent has rights to make good faith objectives to the proposed program

North Allegheny school district 1997
divorced parents must resolve between themselves any disagreements

Question 3:
If parent SHARES legal custody but not physical custody?

Doe v Anrig 1987:
school might be justified in relying on custodial spouse only
If one agrees with IEP, that is enough but the parent who disagrees should be notified of due process rights

Lower Moreland Township School District 1992
Hearing officer stated that an involved parent has rights to make good faith objectives to the proposed program

North Allegheny school district 1997
divorced parents must resolve between themselves any disagreements

Question 4: How do schools handle Domestic issues?

- FERPA requires one parent signature but both have rights regardless of custody without a court order
- Send out information to both parents or set up “contact person” that both parent's trust
- Inform both parents of meeting dates/times with adequate advance
- Distinguish between educational and domestic issues at meeting
- Maintain that the best interest is child’s education
- if receive subpoena, consult

SAFEGUARD ISSUE 2: NOTICE

Question 1:
What types of notice is needed by schools and parents?

Type 1: Prior Written Notice

Prior written notice is provided whenever the agency proposes or refuses to initiate or change the—
- identification,
- evaluation,
- educational placement, or
- provision of FAPE to the child. [615( b)( 3)]

In a reasonable amount of time

in the native language of the parents

Question 2: What information must a school provide in prior written notice required?

- Description of action proposed or refused action
- Explain why
- Description of options e.g. continuum of placement that school has
- Description of evaluation procedures, test, record, or report agency used as a basis for action
- Potential outcomes
- Description of other pertinent factors relating to action
- A statement about procedural safeguard rights
- Sources for parents to contact to obtain assistance in understanding the provisions.
Question 1: When are procedural safeguards provided?
- on initial referral for evaluation
- on each notification of an IEP meeting (which includes change in placement/location)
- on reevaluation of the child
- on registration of a due process complaint.

Question 2: Is initial presentation of a copy of IDEA enough?
NO. Must give description of safeguards in easily understandable manner
The procedural safeguards notice must be in the native language of the parents, unless it clearly is not feasible to do so. But may be oral translation.

Question 3: What are the CONSENT requirements?
- Consent must be fully informed
- Provide all relevant information
- In native language
- Made aware that consent is voluntary and can be revoked at any time
- Written consent given

ISSUE 3: CONSENT

Question 1: What are the CONSENT requirements?
- Consent must be fully informed
- Provide all relevant information
- In native language
- Made aware that consent is voluntary and can be revoked at any time
- Written consent given

Question 2: When is written consent given?
- Pre-placement evaluations
- Re-evaluations
- Initial placements, for provision of special education and related services.

There is NO override provision if parent consent not given and school cannot be charged in violation of failure to provide FAPE.

Provides procedural safeguards once per year to parent PLUS if child initially referred, parent initiates a due process, or requests a copy.

To be safe:
- Document that parent received test results
- Frequent information of progress
- If there is a change in program and/or placement
- Cessation of eligibility

Question 2: When do parents have to notify the school?
1. Parents must give notice to the public agency when they intend to remove their child from the public school and place him or her in a private school at public expense.
2. Parents must give notice to the SEA, State agency, or LEA, as appropriate, when filing a request for due process.

For procedures see IDEA.
ISSUE 4. HANDLING DISPUTES:

How do schools and parents handle disputes?

Mediation
or
Due Process

Question 1. What is Mediation?

Impartial system with a neutral third party with the goal of resolving the disputes in a binding written agreement. Offers an opportunity for parents and public agencies to resolve disputes or complaints about any matter involved in proposals or refusals to initiate or change the identification, evaluation, or educational placement of the child or the provisions of FAPE.

A mediation agreement is enforceable in state or federal court.

When is mediation available?
whenever a due process hearing is requested

each party may end the mediation process at any stage and proceed with a due process hearing for any reason consistent with the IDEA.

States must offer mediation options even if due process not requested

What are the benefits of mediation?

•Mediation often results in lowered financial and emotional costs compared to due process.
•enabling participants to have more control over the process and decision-making
•Remedies are often individually tailored and contain workable solutions, easier for the parties to implement as both parties have been involved in the specific details of the implementation plan.
•Voluntary
Where do I find a mediator? How is a mediator selected?
State maintains a list of individuals who are qualified mediators.
A mediator may be selected from this list on a random (e.g., a rotation) basis. Or both parties must be involved in selecting the mediator and agree with the selection.
The mediator must be trained in effective mediation techniques and special ed laws.

Who bears the cost of paying for the mediation process?
The State

Who may participate and attend the mediation meeting?
If a party feels strongly about not attending mediation without his or her attorney and attorneys are not allowed to attend mediation under the State’s rules, the party may choose not to attend mediation.

May the child with a disability who is the subject of the mediation process attend the mediation?
Yes.

May parties to the dispute in a mediation process be required to sign a confidentiality pledge or agreement prior to the commencement of the process?
Yes.
Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.

Must an agreement reached by the parties in a mediation process be in writing?
Yes.

When is due process available under the IDEA?
due process hearings at any time

Question 2: What are the basic mediation process?
• be voluntary on the part of the parties;
• not to be used to deny or delay parents’ rights to due process or any other rights under Part B; and
• be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
• Be confidential
Question 3:
How is mediation similar to due process hearings?

- Achieve resolution of the disputed issues.
- Are initiated by either a parent or a public agency conducted by an impartial individual.
- About any matter in proposals to initiate, refusal or change the identification, evaluation, or educational placement of a child with a disability or the provisions of FAPE to the child.

Question 4: What are the differences between mediation and due process?

<table>
<thead>
<tr>
<th>Mediation</th>
<th>Due process</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Voluntary</td>
<td>Not voluntary for all</td>
</tr>
<tr>
<td>2. Parties establish ground rules</td>
<td>Ground rules for presenting are those established under Federal and State law.</td>
</tr>
<tr>
<td>3. Mediator does not pass judgment on specific issues.</td>
<td>Adjudicator renders legal based on law</td>
</tr>
<tr>
<td>4. Confidential</td>
<td>May be open to the public</td>
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</table>

Question 5: What is a resolution session?

The law creates a new "opportunity to resolve" problems before a due process complaint is formally filed.

School districts will have 15 days in which to convene a resolution session unless parent and LEA agree in writing to waive or go to mediation.

School may not bring an attorney unless parents also have counsel.

The school district has another 15 days to try to cure problems.

If successful resolution is reached, a binding signed written settlement agreement must be developed and is enforceable in any court.

Either party may void this agreement within 3 business days.

Question 5: What is DUE PROCESS?

Formal hearing requested by parents or school districts to resolve disputes between parent and school.

When the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
**Question 5: What is DUE PROCESS?**

Must be initiated within 2 years of parent knowing or should have known of the disputed decision unless state time limit.

Party must file a written request of issues and relief sought. If this notice is insufficient, either party can file a claim.

Resolution is held within 15 days with parent and relevant IEP members unless waived by both parties or a mediation session is requested. No LEA attorney may attend UNLESS parent attorney is present.

If no resolution is reached, a hearing is scheduled within 30 days. No new issues are to be brought up at the hearing.

Appeals within 90 days of receiving decision unless state time limit

A due process hearing decision is enforceable in state or federal court.

**How?**

Must have procedures and a model form to assist parents to provide notice (confidentially) to the public agency

**Content of parent notice.**

Complaints to be clear and specific when they are filed so that school districts have adequate notice and knowledge of the grounds on which parents are basing their complaints. Must be a written document including:
- Description of the nature of the problem and proposed resolution of the problem to the extent known and available to the parents at the time.

**When?**

Decision must be given 45 calendar days after a request although hearing officer may grant an extension

**Who?**

Hearing officers must have relevant knowledge of state and federal statutes and to write appropriate decision under legal practices. Must be impartial (impartial attorney OK but not school employee).

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**Question 6: What are due process procedural rights?**

Any party has the right to—

1. Be accompanied and advised by counsel and by individuals with special knowledge or training
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit any evidence has not been disclosed to that party at least 5 business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Findings of fact and decisions.

**Parental rights at hearings.**

- Have the child who is the subject of the hearing present
- Open the hearing to the public
- Records provided free
- Advocate or attorney present
Role of hearing officer
• may order IEE, reimbursement of educational expense, or compensatory education
• may accept or reject placement and consider parent option
• not liable for actions if act in good faith
• a decision must be made on substantive grounds based on a determination of whether the child received a free appropriate public education. A hearing officer may find that a child did not receive FAPE only if the procedural errors impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE, or caused a deprivation of educational benefits.

Appeals option to office of sp ed of state’s dept of ed for office review before civil action.
No timeline

Question 7:
What is the "Stay Put" placement requirement during a dispute?

“Except during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the current educational placement of such child...”

• maintains stability and continuity for the student
• Current educational placement is in accordance to most recently approved IEP
• stay put lasts from hearing request throughout the review but "stay put" placement may change during an appeal
• Applies only to school and not parent or courts