

290-8-9.02(4)(c)

290-8-9.02(6)(a)

(c) For purposes of this section:

1. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

2. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(d) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an ~~individual evaluation(s) (e.g., OT, PT, achievement)~~ obtained by the public agency, used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. ~~obtained by the public agency.~~ If a parent requests an independent educational evaluation at public expense, the parent shall identify the specific agency evaluation with which he or she disagrees. The public agency must, without unnecessary delay, either file a due process hearing request to show that its evaluation is appropriate or ensure that the independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. If the final decision in a due process hearing is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(e) If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child, and may be presented by any party as evidence at a due process hearing regarding that child.

(f) If a due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(g) If the parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he/she objects to the agency's evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend its evaluation.

(h) A parent is entitled to only ~~one independent educational~~ an evaluation at public expense each time the public agency conducts an ~~individual~~ evaluation(s) with which the parent disagrees.

(5) **Out-of-State Evaluations.** Decisions regarding out-of-state evaluations used to determine initial eligibility for special education services and the length of time these evaluations are valid, are at the discretion of the public agency.

(6) **Reevaluation.**

(a) Once the initial evaluation to determine whether a child has a disability is completed, any subsequent evaluation is considered to be a reevaluation that requires parental consent as described herein and in accordance with the consent procedures. However, for students who transfer from out of state, any evaluation conducted is an initial evaluation that requires notice and consent procedures in accordance with the procedures for initial evaluation.

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6. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written agreement that sets forth the resolution. A written signed mediation agreement is signed by both the parent and a representative of the agency who has the authority to bind the agency. The signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

7. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal or State court.

8. An individual who serves as a mediator may not be an employee of any LEA or the Department of Education that is involved in the education or care of the child who is the subject of the mediation process and must not have a personal or professional interest that conflicts with the person's objectivity. A person who otherwise qualifies as a mediator is not an employee of an LEA or Department of Education solely because he or she is paid by the agency to serve as a mediator.

9. A public agency may establish procedures to offer to parents and schools who elect not to use the Department of Education's mediation process the opportunity to meet, at a time and location convenient to the parents and school, with a disinterested party who is under contract with a parent training and information center or established under Section 671 or 672 of the IDEA, or an appropriate alternative dispute resolution entity, and who would explain the benefits of the mediation process and encourage the parents to use the process. The Department of Education will not establish such procedures.

10. A public agency may not deny or delay a parent's right to a due process hearing if the parent fails to participate in the meeting to discuss the benefits of mediation.

11. Either party may request mediation by writing to the State Superintendent of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101, or by calling Special Education Services at (334) 242-8114 or (334) 242-8406 (TDD). A Special Education Services' staff member will contact the other parties to determine if mediation is desired.

12. If a due process hearing has been requested, or a State complaint has been filed, the parties may agree to use mediation to resolve the need for a due process hearing or to resolve the State complaint.

13. The SEA will allow other state enforcement mechanisms (a State complaint, mediation, or a due process hearing) to seek enforcement of mediation agreements. The use of those mechanisms is not mandatory and must not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

(c) Impartial Due Process Hearing Procedures. An impartial due process hearing is available when a parent or the public agency disagrees with any matter relating to a proposal or refusal to initiate or change the identification, evaluation, educational placement of a child or the provision of FAPE to a child. An impartial due process hearing may be requested if the disagreement on which the request for a due process hearing arises out of or relates to an alleged violation that occurred not more than ~~two~~ one years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for a hearing. However, the timelines may be extended if the parent was prevented from requesting a hearing

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due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the hearing request or the public agency's withholding of information from the parent that was required to be provided to the parent. The public agency must inform the parent of any free or low-cost legal and other relevant services in the area any time the parent requests the information, or if the parent or public agency initiates a due process hearing. Nothing in this ~~part~~ regulation shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular public agency employee to be highly qualified, or to prevent a parent from filing a State complaint about staff qualifications. There is no right to due process solely based upon the failure of a public agency employee to be highly qualified. The party filing the hearing request has the burden of proof with respect to any claimed violation or request for relief.

1. Procedures for Requesting an Impartial Due Process Hearing.

(i) The parent, the attorney or a designated person representing the parent, or an official from the public agency may request an impartial due process hearing by ~~sending~~ filing a signed written request to the State Superintendent of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101. A copy of the written request for a due process hearing must also be sent to the other party and must remain confidential. The timelines referred to in this section begin when the Department of Education receives the written request. The Department of Education must forward a copy of the due process hearing request to the other party involved in the hearing.

(ii) When the parent, the attorney representing the parent, or an official from the public agency, files a written request, the request must include the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including ~~facts~~ a statement of fact supporting the contention that the public agency's proposal or refusal has deprived the child of a free appropriate public education, relating to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time. In the case of a homeless child or youth [within the meaning of section 725(2) of the *McKinney-Vento Homeless Assistance Act* (42 U.S.C. 11434a(2))], available contact information for the child and the name of the school the child is attending must be provided in the request. A party may not have a hearing until the party, or the attorney representing the party, files a written request for a hearing that meets the requirements of this rule. A sample form for filing a Request for Due Process Hearing can be found on the Department of Education's Web site at www.alsde.edu. The use of the form is not required, as long as another form or document used meets, as appropriate, the due process request content requirements.

(iii) The written request for a hearing must be deemed to be sufficient unless the party receiving the written request for the hearing notifies the hearing officer and the other party in writing within 15 calendar days of receipt of the due process hearing request that the receiving party believes the request is insufficient. Within five calendar days of receipt of the notification, the hearing officer must make a determination on the face of the written request for a hearing as to whether it meets the requirements for sufficiency and immediately notify the parties in writing of that determination. No hearing may be held or relief granted until a request that meets the sufficiency requirements set forth herein has been filed and served on all parties.

(iv) A party may amend its due process request only if the other party consents in writing to such an amendment and is given the opportunity to resolve the issue(s) through a resolution meeting, or the hearing officer grants permission, except that the hearing officer may only grant such permission to amend at any time not later than five calendar days before—a

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~~hearing begins.~~ the first day of the due process hearing. If a party files an amended request, the timelines for a resolution meeting and the thirty-day resolution period begin again with the filing of the amended request.

2. Response to a Request for a Due Process Hearing. If the public agency has not sent prior written notice to the parent regarding the issues contained in the parent's hearing request, the public agency must, within ten calendar days of receiving the request, send to the parent a response that includes an explanation of why it proposed or refused to take the action raised in the hearing request; a description of other options that the IEP Team considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report used as the basis for the proposed or refused action; and a description of the other factors that are relevant to the proposed or refused action. Except as provided, the party receiving a hearing request must, within ten calendar days of receiving the request, send to the other party a response that specifically addresses the issues raised in the hearing request. A response filed by a public agency shall not be construed to preclude the public agency from asserting that the parent's hearing request was insufficient, where appropriate.

3. Resolution Process.

(i) Within 15 calendar days of receiving the parent's hearing request and prior to the ~~opportunity~~ commencement ~~for~~ of a hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process hearing request. The meeting must include a representative of the public agency who has decision-making authority on behalf of the agency and may not include an attorney of the LEA unless the parent is accompanied by an attorney. The purpose of the meeting is for the parents of the child to discuss the due process hearing request and the facts that form the basis of the request so that the LEA has the opportunity to resolve the issues. The resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting or they agree to use the State mediation process. The parent and the LEA determine the relevant members of the IEP Team to attend the resolution meeting.

(ii) If the LEA has not resolved the issues to the satisfaction of the parents within 30 calendar days of the receipt of the due process hearing request, the due process hearing may occur and the required timeline for issuing a final decision on the hearing request begins at the expiration of this 30 calendar ~~30~~-day resolution period.

(iii) Except where the parties have jointly agreed to waive the resolution meeting or to use mediation, the failure of the parent filing a due process request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using procedures consistent to those regarding parent participation in IEP meetings), the public agency may, at the conclusion of the thirty-day resolution period, request that the hearing officer dismiss the parent's hearing request.

(iv) If the LEA fails to hold the resolution meeting within 15 calendar days of receiving notice of the hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline.

(v) The 45-day timeline for the due process hearing starts the day after one of the following events:

- (I) Both parties agree in writing to waive the resolution meeting,
- (II) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible, or

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(III) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(vi) If an agreement is reached as to the issues in the due process hearing request at a resolution meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the public agency who has the authority to bind the agency. The agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(vii) If the parties execute an agreement, a party may void such agreement within three business days of the agreement's execution.

(viii) If the resolution meeting produces an agreement between the parties regarding a plan or program of educational services that satisfactorily addresses the parents' substantive concerns, but that does not include an agreement as to liability for or payment of any attorney's fees that may be sought in connection with the claim, the parties may agree to jointly certify the execution of a resolution agreement regarding services to the hearing officer, reserve all claims and defenses regarding attorney's fees and request disposition of the pending request in accordance with the agreement. Such an agreement shall not be deemed to either establish or foreclose a claim or defense to a claim for attorney's fees, and such claims may be pursued by means that are available for such purposes under the law.

(viii) (ix) — The SEA will allow other state enforcement mechanisms (a State complaint, mediation, or a due process hearing) to seek enforcement of resolution agreements. The use of those mechanisms is not mandatory and must not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

4. Summary Determination

(i) Any party may move for summary determination in its favor on any issue raised by the request if there is no genuine issue of material fact for determination and the moving party is entitled to judgment as a matter of law. The motion shall include a short and concise statement of the material facts as to which the moving party contends there is no genuine issue for determination and shall be supported by affidavits of other probative evidence of the kind that would customarily be admitted at due process hearings or that would be admissible under Ala. Code § 41-22-138 (1975). Except as may be otherwise permitted by the hearing officer for good cause shown, the motion must be filed with the hearing officer and served on all parties no later than 30 days before the date set for hearing.

(ii) A response to a motion for summary determination or a counter-motion for summary determination shall be filed and served within 15 days of service of the motion for summary determination. The response shall include a short and concise statement of the material of facts that the party opposing summary determination contends are disputed, and shall be supported by affidavits or other probative evidence of the kind that would be customarily admitted at due process hearings or that would be admissible under Ala. Code § 42-22-1813 (1975). Opposition to the motion may not rest upon mere allegations or denials but must be based on evidence that establishes a genuine issue of material fact for determination. The hearing officer may set the motion for oral argument and call for the submission of proposed findings of fact, conclusions of law, and briefs. If the period required to rule upon the motion extends beyond or otherwise conflicts with the date set for the hearing, the hearing officer may continue the hearing. The hearing officer shall state the grounds for granting or denying a motion for summary determination in a written ruling.

4.—Evidentiary Submission Format

(i) Parties shall be required to submit in lieu of live testimony, school business or student records, clinical or medical records or reports, educational evaluations, depositions, affidavits, stipulations, or other probative documentary or tangible evidence of the kind that would be customarily admitted in due process hearings or that would be admissible under Ala. Code § 41-22-1813 (1975). Such evidence shall be drafted, organized and presented with specific reference to one or more of the issues that precipitated the hearing request. Those issues shall be precisely identified and enumerated in a prehearing order to be entered no later than 28 days the expiration of the 30 calendar day resolution period before the scheduled commencement of the hearing. The issues shall be stated with specific reference to the particular facts and circumstances of the case.

(ii) Live testimony may be presented by agreement of the parties; otherwise such testimony shall be permitted by the hearing officer only upon a showing that a witness's personal appearance is necessary to resolve a material credibility issue, that cross examination regarding a material issue cannot be obtained or presented by other means, or that material evidence cannot be obtained or presented by other means. Not less than 21 days before the scheduled commencement of the hearing, the parties shall identify in writing to the hearing officer and the opposing party all witnesses whose testimony is sought to be presented in person, shall describe the material nature and purpose of the testimony, and shall explain why such testimony cannot fairly or feasibly be obtained or presented by means other than through live testimony. Parties seeking to present live testimony shall have the burden of demonstrating that such testimony should be permitted. After providing all parties an opportunity to be heard with regard to such requests, the hearing officer shall enter a written order citing the specific grounds for granting or denying any such request and restricting the scope of such testimony to those matters warranting live testimony.

(iii) Unless otherwise directed by the hearing officer, all initial written and documentary submissions shall be identified and provided to all parties and to the hearing officer in accordance with prehearing disclosure and exchange deadlines set forth in the *Alabama Administrative Code* or established by order of the hearing officer. An opportunity to cure objectionable submissions and to respond in writing to the opposing party's written submissions shall be permitted. Written materials shall not be admitted into evidence until all final objections made with respect thereto have been ruled upon. If the written materials present grounds for requesting live testimony that could not reasonably have been anticipated by a party in advance of their submission, a new or renewed request for such testimony may be considered by the hearing officer.

(iv) The hearing officer may enter at his own accord or at the request of a party an order authorizing through subpoena or direct exchange the production of documents in the possession or under the control of the parties or third parties that have or that could reasonably be expected to have probative value with respect to the claims and defenses at issue. Discovery may be authorized for the purpose of establishing or disproving the merits of specific claims or defenses. It shall not be authorized or used for the purpose of developing new disagreements, claims, or issues not embraced within the initial complaint, and no order authorizing discovery shall be issued until a complaint that meets the sufficiency requirements established herein has been filed and served on all parties.

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4. 5. The Appointment of a Due Process Hearing Officer. The appointment of the hearing officer must be made by the State Superintendent of Education on a rotational basis.

5. 6. Qualifications of Due Process Hearing Officers. A hearing officer must not be a person who is an employee of the SEA or the LEA that is involved in the education or care of the child, or a person having a personal or professional interest that would conflict with his or her objectivity in a hearing. The hearing officer must possess knowledge of, and the ability to understand the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. A person who otherwise qualifies to conduct a hearing is not an employee of the education agency solely because he or she is paid by the education agency to serve as a hearing officer.

6. 7. Subject Matter of Due Process Hearings. The party requesting the impartial due process hearing may not raise issues at the due process hearing that were not raised in the written request for hearing, unless the other party agrees otherwise.

7. 8. Due Process Hearing Rights. Any party to a hearing has the right to:

(i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; except that, whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law.

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days prior to the hearing.

(iv) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing.

(v) Obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

(vi) Parents involved in hearings must be given the right to have the child who is the subject of the hearing present, open the hearing to the public, and have the record of the hearing and the findings of fact and decisions provided at no cost.

(vii) Have, no less than five business days prior to a hearing, all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends

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to use at the hearing. A hearing officer may bar any party that fails to comply from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

8. 9. Disclosure of Information. At least five business days prior to the hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering parties evaluations. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

9. 10. Parents' Responsibility in Due Process Hearing Procedures.

(i) Prehearing Activities.

(I) Request a due process hearing that pertains to the proposal or refusal to initiate or change the identification, evaluation, educational placement and/or the provision of FAPE to the child; and

(II) Provide, at least five business days before the hearing a list of potential witnesses to the designated hearing officer. Each party is responsible for the attendance of witnesses.

(III) Disclose evidence to the other party at least five business days prior to the hearing. Do not send a copy of the evidence to the designated hearing officer.

(IV) Cooperate with the hearing officer in any business or communication and the planning for a location, date, and time for the hearing.

(V) Inform the hearing officer regarding their decision pertaining to the child's presence at the hearing and to opening the hearing to the public.

(ii) Hearing Activities. Present their case at the hearing.

10. 11. LEA's Responsibility in Due Process Hearing Procedures.

(i) Prehearing Activities.

(I) Inform the parents of any free or low-cost legal and other relevant services available in the area.

(II) Provide a copy of the Special Education Rights to the parent upon receipt of the first occurrence of a filing of a due process hearing request in a school year.

(III) Provide, at least five business days before the hearing a list of potential witnesses to the designated hearing officer. Each party is responsible for the attendance of witnesses.

(IV) Disclose evidence to the other party at least five business days prior to the hearing. Do not send a copy of the evidence to the designated hearing officer.

(V) Provide parents and/or their representative the opportunity to inspect and review their child's educational records without unnecessary delay (not more than 45 calendar days after the request has been made) and before a due process hearing, or resolution meeting is conducted.

(VI) Cooperate with the hearing officer in any business or communication and the planning for a location, date, and time for the hearing.

(VII) Provide prior written notice as required by the notice provisions under the IDEA.

(VIII) Within 15 calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process hearing request.

(ii) Hearing Activities. Present the case at the hearing.

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~~14~~ 12. Department of Education's Responsibility in Due Process Hearing Procedures.

(i) Prehearing Activities.

(I) Appoint a qualified Due Process Hearing Officer.

(II) Provide for a qualified court reporter to make an official transcript of the hearing.

(III) Arrange for an interpreter, as needed.

(IV) Keep a list of persons who serve as hearing officers, which must include a statement of the qualifications of each person.

(ii) Hearing Activities.

(I) Ensure that not later than 45 days after the expiration of the 30-day resolution period or the adjusted time periods, a final decision is reached and a copy of the decision is mailed to each of the parties.

(II) Maintain comprehensive tracking and filing regarding each impartial due process hearing to include, but not be limited to, all written correspondence, evidence, decisions, and transcripts.

(III) Transmit the hearing findings and decisions, after deleting any personally identifiable information, to the Special Education Advisory Panel and make the findings and decisions available to the public.

(IV) Provide for payment of the hearing officer, court reporter, and interpreter.

~~12.~~ 13 Due Process Hearing Officer's Responsibility in Hearings.

(i) Prehearing Activities.

(I) Ensure that the issues raised in the hearing request pertain to the proposal or refusal to initiate or change the identification, evaluation, educational placement, and/or the provision of FAPE. Identify and dismiss claims and issues that are not justiciable or otherwise properly raised in a due process hearing.

(II) Ensure that the parties to the proceedings have been properly identified, named and served, and have been notified of the hearing and of the claims and issues to be addressed at the hearing.

(III) Notify the Department of Education, Special Education Services, of all interim or final rulings or orders affecting the hearing. This includes, but is not limited to, resolution meeting results, continuances, settlements, or specific extensions of timelines.

(IV) Inform the parties of his or her appointment as the hearing officer.

(V) Inform the parties of the availability of mediation.

(VI) Establish a date, time, and location for the hearing that is reasonably convenient to the parent(s) and child involved.

(VII) Establish a date, at least five business days prior to the hearing, for a prehearing telephone conference to identify the specific issues to be addressed in the hearing.

(VIII) Ensure that the parties understand their rights pertaining to the hearing.

(IX) Utilize written correspondence to notify the parties of hearing procedures and schedules. All telephone calls must be followed by written notification.

(X) Obtain a list of representatives and witnesses from the parties at least five business days prior to the hearing.

(XI) Ensure that the parties have disclosed evidence to each other at least five business days prior to the hearing.

(XII) Inform the parties regarding the format of the hearing.

(XIII) Advise the parties of the confidential nature of the proceedings.

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(XIV) Determine if witnesses should be excluded from the hearing room. This may be requested by either party.

(XV) Make sure that the physical arrangement of the hearing room is appropriate.

(XVI) Provide the parties written notice of any specific extensions to the 30 calendar day resolution timeline or the 45 calendar day hearing timeline.

(XVII) Make such rulings as necessary to conduct the hearings.

(ii) Hearing Activities. The hearing officer will conduct the hearing as outlined below:

(I) Call to order.

(II) Opening statement by the hearing officer.

(III) Introductions of himself/herself and principal parties.

(IV) Statement of opened or closed hearing.

(V) Explanation of procedural matters.

(VI) Statement of issue(s) and purpose.

(VII) Swearing in witnesses.

(VIII) Exclusion of witnesses, if requested by either party.

(iii) Presentation of formal testimony.

(I) Explanation of format for presentation of evidence.

(II) Opportunity for opening statements by all of the principal parties. This is not part of the evidence and will not be considered in the decision.

(III) Presentation of written evidence by petitioner followed by the respondent. The written evidence may be presented all together or as needed during the oral testimony. The impartial due process hearing officer will mark each document for identification purposes and must return all exhibits entered into evidence to the State Department of Education, Special Education Services.

(IV) Presentation of oral testimony by petitioner followed by the respondent. Each witness must identify himself/herself by stating the name, address, position, and relationship to the child. Oral testimony will be taken in the following order:

I. Petitioner's Witnesses.

A. Examination by petitioner.

B. Cross-examination by respondent.

C. Reexamination by petitioner.

D. Recross-examination by respondent.

E. Further examination allowed at the hearing officer's discretion.

F. Questions by the hearing officer.

II. Respondent's Witnesses.

A. Examination by respondent.

B. Cross-examination by petitioner.

C. Reexamination by respondent.

D. Recross-examination by petitioner.

E. Further examination allowed at the impartial due process hearing officer's discretion.

F. Questions by the hearing officer.

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(V) General Procedures Pertaining to the Hearing.

I. Only a principal party or their attorney may question witnesses.

II. The hearing officer may dismiss witnesses when it has been determined that neither party has further need for them.

III. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.

IV. If a principal party fails to appear, the hearing officer may hold the hearing after noting in the record that proper notice was provided, or the hearing may be adjourned or postponed.

V. If a witness fails to appear, the hearing can proceed with a notation in the record. If the evidence from the witness is required, it may be taken at a later date. The hearing may be reconvened at a later time to obtain the testimony.

VI. Written evidence provided by a witness who does not appear may be accepted as fact if the other party agrees.

VII. Summary statements by the petitioner will be followed by the respondent. This is not part of the evidence and will not be considered in the decision.

(VI) Closing statements by the hearing officer.

I. When decision can be expected.

II. Availability of the record of the hearing.

III. Appeal procedures.

(iv) Posthearing activities.

(I) Include in the decision.

I. Procedural history.

II. Statement of the facts.

III. Issues presented.

IV. Discussion of issues.

V. Conclusions.

VI. List of all documents introduced as exhibits.

VII. Order.

VIII. Appeal rights, including time limits on the filing of an appeal.

IX. Such matters deemed necessary by the hearing officer to implement the decision.

X. A hearing officer's determination of whether a child received FAPE must be based on substantive grounds. Due process hearing officers shall have no authority to resolve or determine claims or issues or matters arising under State law (other than laws or regulations adopted for the purpose of implementing the requirements of the IDEA), or arising under federal laws other than the IDEA and its implementing regulations. In matters alleging a procedural violation, the hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or caused a deprivation of educational benefit. Nothing here shall be construed to preclude the hearing officer from ordering an LEA to comply with the procedural safeguards requirements. Nothing in this shall be construed to affect the right of a parent to file a State complaint with the Department of Education.

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(II) Send copies of the written decision to all parties and to the State Superintendent of Education, Attention: Special Education Services.

(III) Submit all correspondence, evidence, or any other information collected during the hearing to the State Superintendent of Education, Attention: Special Education Services, for filing and safeguarding.

(v) Extension of Timelines. At the request of either party, the hearing officer may grant extensions for specific amounts of time beyond the periods set for impartial due process hearings. Documentation of extensions must be submitted to the State Department of Education, Special Education Services.

43.14 Additional Impartial Due Process Hearing Requests. Nothing in this part shall be construed to preclude a parent from filing a separate hearing request on an issue separate from the request already filed. *All claims that are or that should be known to the party filing the request for due process hearing at the time the initial due process hearing request is filed should be asserted in the same hearing request.*

44.15 Child's Status During Hearing Proceedings. Subsequent to a request and during the pendency of any administrative or judicial proceeding, the child involved must remain in his or her current educational placement unless the State or the LEA and parents agree otherwise. If the request for hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. If the hearing request involves an application for initial services under Part B of the IDEA for a child who is transitioning from Part C to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child has been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the public agency must provide those special education and related services that are not in dispute between the parent and the agency. If the hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents pending any subsequent proceedings.

45.16 Civil Action. The decision made by the hearing officer is final except that, any party aggrieved by the findings and decision has the right to bring a civil action with respect to the due process hearing. In any civil action brought, the court shall receive the records of the administrative proceedings; hear additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grant the relief that the court determines to be appropriate. The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy. Nothing here shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the *Americans with Disabilities Act of 1990*, Title V of the *Rehabilitation Act of 1973*, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under Ala. Admin Code r. 290-8-9-.08(9) must be exhausted.

46.17 Timeline for Filing Civil Action. The party bringing the civil action must file a notice of intent to file a civil action within 30 days after receipt of the hearing decision. The party must file the civil action within 30 days of the filing of the notice of intent.

47.18 Attorneys' Fees. In any action or proceeding brought under the procedural safeguards requirements of IDEA, the court in its discretion may award reasonable attorneys' fees to a prevailing party who is the parent of a child with a disability; to a prevailing party who

290-8-9.08(9)(c)17.(i)

290-8-9.08(9)(c)17.(v)(V)

is a SEA or LEA against the attorney of a parent who files a request for due process hearing or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(i) Part B funds may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under the procedural safeguards requirements of the IDEA. However, this does not preclude a public agency from using Part B funds for conducting an action or proceeding. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(ii) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than ten calendar days before the proceeding begins, the offer is not accepted within ten calendar days; and the court or hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(iii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action. A resolution meeting conducted pursuant to these rules shall not be considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of this section.

(iv) An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(v) The court reduces, accordingly, the amount of attorneys' fees awarded if the court finds that:

(I) The parent or parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(II) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(III) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(IV) The attorney representing the parent did not provide to the LEA the appropriate information in the request for the due process hearing in accordance with these rules.

(V) The provisions of this section do not apply in any action or proceeding if the court finds that the State or the local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of IDEA.