
Alabama Autism & Asperger's Statewide Info & Support Network
Unite Guide & Connect

CURRENT RULES	PROPOSED RULE CHANGES	COMMENTARY
(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. If a parent requests an independent educational evaluation at public expense, 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. (Page 503 of Regulations)	(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……..(everything in remainder of paragraph same as current rules) (Page 504 of Regs. Proposed)	The current rules provide us the right to an independent evaluation in EACH individual area that our children are evaluated in (including behavior). In the new rules, they are planning to limit our rights to only evaluations used for eligibility and evaluations that would be used by the school for the purposes of special education planning and related services. Where is our right to an independent Functional Behavior Assessment (FBA)? Isn't there a high likelihood that many schools will simply confuse or misinterpret the new rules in a literal way and deny us an independent FBA because they claim behavior isn't special education or related services? Would the misinformed parent know to continue fighting or would they accept what the school was telling them? How many other literal interpretations by a school will deny parents or children evaluations that we have access to under the current rules? Also, the State is trying to shift a legal burden on the parents by making us be "specific" in identifying the evaluation that we disagree with prior to receiving the independent educational evaluation. We are not experts, do not necessarily understand or know the name, purpose or criteria for an evaluation that we disagree with. This could be used to deny and disenfranchise some parents from access to these critical independent evaluations that can't answer the new rule in a way that satisfies their particular school system. There is too much opportunity for some schools to abuse, what is intended to be, a simple to understand process that parents can use to advocate on some kind of equal playing field.
(h) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an individual evaluation(s) with which the parent disagrees. (Page 503 of Regulations)	(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. (Page 504 of Regs. Proposed)	These changes could easily be misinterpreted by schools and not understood by parents. A school could institute a practice of only evaluating in limited areas or misinterpret that they are only entitled to a single IEE instead of an IEE in each individual area that a school performs an evaluation

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(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 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. (Page 547 of Regulations)	(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. (Page 547 of Reg. Proposed)	Your child has a right to a 'free and appropriate public education' (FAPE). When a school accepts federal and state money to provide these appropriate services to your child then they accept that responsibility. If the school does not provide those services then you have the right to go to mediation or file a due process complaint to get your child those services that they didn't receive from the school. Our current laws give you two years to find out about these problems and do something about it (which means the school would have to pay your child back for up to two years of educational services they didn't provide). The new rules steals a year from you and limits what the school would be responsible for paying back to just one year. The good schools and good staff wouldn't need this kind of protection but the State is clearly wanting to protect the bad schools and the schools that chronically have complaints filed against them. This sounds like their problem and not ours. Perhaps the State needs to do a better job of monitoring the schools they give money to instead of trying to steal from us to cover school failures.

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(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 relating to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time. (iii)……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. (Page 548 in Regulations)	(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 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. (iii)….. 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. (Page 548 in Reg. Proposed)	The special education laws are written for parents so that we can easily and simply advocate for our kids and understand the rules. The IDEA does not require us to have a legal background nor does it require us to conduct a legal analysis of what a school did wrong before being allowed to go to the next stage in the due process complaint format. In the current rules, we only need to provide a description of the problem we are having with the school and/or the IEP team. In the new changes, the State wants to require us to do a legal analysis of how the school denied our children a free and appropriate public education. You get a gold star if you can understand the new rule and how to legally define a free and appropriate public education. As a new obstacle, the State added that you can't have a hearing or the solutions you asked for until you've successfully identified the facts supporting your claim that the school denied your child a free and appropriate public education. This could be easily abused by a school by claiming, at the beginning of this process, that you didn't meet the "sufficiency requirements" because you didn't understand or know how to do a legal analysis of a free and appropriate public education. Remember, due process is a component of the IEP team process. It was not meant for or intended for attorneys. We have a right to use an attorney but it is not a requirement nor is it encouraged. The only choices we have when we can't reach a consensus on our IEP team is to use mediation, the state complaint or file a due process complaint. The process should be simple to understand and navigate.

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NO CURRENT RULE	(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 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. (Pg. 551 in Reg. Proposed)	This is new language and there is no current rule on this. If you happen to use an attorney and you have a valid case then you have the ability to get your attorney fees reimbursed and/or paid for as part of your parental rights. There are many cases where your school will want to settle your case but either doesn't want to pay for or reimburse your attorney fees. These new rules would give you and the school the choice of resolving everything but the attorney fee issue. There would be more than a few problems with this new rule. The ability for a parent to recover their attorney fees is a right and a school should not be able to separate this from the rest of a settlement. Also, if you were to agree to separate the agreement from the attorney fee reimbursement and/or payment then there may be a strong chance that you would be end up being liable for some, most or all of your attorney fees because you weren't able to work that out with the school after your settlement. You would be forced to file another complaint in the federal court to recover your attorney fees where expenses would continue to rise, as would your risk. Why would any parent using an attorney agree to separate their due process claims from their demand for the school to pay their attorney fees? Attorney fees are one of the parental safeguards and this infringes on it.

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NO CURRENT RULE EXISTS	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 41-22-13 (1975). Except as may be otherwise permitted by the hearing officer and served on all parties no later than 30 days before the date set for hearing. (Page 551 in Reg. Proposed)	First, if you understand this new rule then you are probably an attorney. Due process is intended for parents and is supposed to be a simple process to understand and follow. This is not easy to understand. We, as parents, are guaranteed certain due process hearing rights by statute, that would include our ability to make a teacher or administrator appear for the hearing to be questioned and cross-examined. We can't cross-examine an "affidavit". A summary determination is a ruling by the hearing officer on the education record and submitted statements by "witnesses" (affidavit). Any party (you or the school) can ask for a summary determination and the school, at this point in the process, would be able to use their attorneys against us and they are far better equipped to understand what a "genuine issue of material fact" is or "probative evidence". Despite a parent having the burden of proof if we file a due process complaint, we are strapped with a new boulder in even trying to understand this step of "summary determination". How many schools will be able to use this to immediately deny us our right to a hearing and to question witnesses by getting a immediate ruling that they did provide a FAPE because the school had the special education director fill out an affidavit stating that they did everything right? Come on, the school controls our kids' records and we have limited knowledge as to what really goes on in the classroom and now they want to throw this obstacle in so the special education director can merely write a statement claiming how perfect they are. This is outrageous!!!

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NO RULE EXISTS	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 41-22-13 (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 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. (Page 552 in Reg. Proposed)	Aside from the complicated summary determination referenced on the prior page, the State is proposing Evidentiary Submission where no live testimony will be taken but the school and parent will submit the records (which the school controls and can manipulate), depositions (which requires that a parent pay for a court reporter so that they can be certified and recognized by the hearing officer. A deposition is questioning school employees with their attorney present in front of a court reporter that is recording the questions and answers), affidavits (sworn statements used instead of depositions), etc. All of this is to be completed, specific, organized and submitted within 30 days from the day you file your due process complaint (which is the end of the resolution period). It is almost impossible to get a school to give us copies of the full educational record in the first place because the rules on the requirement for a school to produce school records are weak and are frequently abused (especially from schools like Jefferson County). By adding depositions and affidavits, the State is putting a huge financial burden on us. They get to use our money to fund these depositions yet we must front these costs and, if we don't use an attorney, would these costs be reimbursable? This new rule is complicated to understand and violates the spirit and purpose of due process by making it expensive and hard to navigate without an attorney.

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NO RULE EXISTS	(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. (Pg 522 of Reg. Proposed)	The IDEA guarantees that we, as parents, have a right to compel the attendance of witnesses at a due process hearing and the right to examine and cross examine. This new rule violates that right and would only be available if the school also agrees or if the hearing officer allowed it upon convincing him/her that live testimony is the only way for us to get responses that we need to prove our case. This protects school employees from our rightful opportunity to call them as witnesses in these cases. The rule is overly complicated and demands that we prove, in advance, exactly why we need their testimony and the we would have the burden to overcome this additional obstacle while still being responsible for the overall burden to prove our case. We would need an attorney to navigate this new process. This additional step will create more expense for both sides and would also create appealable issues prior to the end of the due process hearing if the hearing officer denies our right to live testimony. It is the discovery and motion side of any legal case that consumes the most time and money. The State is planning to insert fairly strict time requirements that will only skyrocket costs while the school and parents also work simultaneously to try and settle the case. If an attorney is used then the end of case costs will be substantially higher due to the need to prepare for summary determination due to timeline. Will a school agree to or want to pay those costs?

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NO RULE EXISTS	(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. (Pg. 522 of Reg. Proposed)	This is overly complicated to understand as a parent. How does a parent "cure" objectionable submissions? It denies our right to a simple process of advocacy by inserting an extraordinarily high amount of work and documentation without ever having access to an actual hearing.

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NO RULE EXISTS	(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. (Pg. 522 for Reg. Proposed)	Due to the new changes that require that we be specific in how the school denied our children a free and appropriate public education at the very beginning of the process, this part would prevent us from using anything that we discover in the education record that we didn't specify in the initial complaint. It is very common for us to know and feel that there is a problem with our child's program but not know how serious the problem truly is until we start looking at or reviewing all of our children's records. It would be like going to the doctor for a cold and then the doctor discovering that you have cancer. Under this new rule, we would not be allowed to use anything newly discovered in the record that wasn't mentioned specifically at the start. This is outrageous and would only encourage school deception and document manipulation. This is a declaration of war by the State on our rights and it is clear who they represent and protect. They are supposed to be a neutral and monitor the schools and not protect them. Forcing us to file a new complaint on newly discovered material is in violation of the very spirt and essence of the IDEA.