



Due Process Hearing Resolution Session Fact Sheet

The Individuals with Disabilities Education Act (IDEA) of 2004 and New Mexico state special education rules create a new dispute resolution option as a step to encourage parents and the local education agency to reach a mutual agreement in an informal setting prior to a due process hearing. This option is called a **resolution session**.

Overview

Whenever a parent requests a due process hearing, then the local education agency must provide an opportunity for a resolution session meeting. The intent of this meeting is to allow the parents to discuss the concerns and the facts that form the basis of their due process hearing request with the local education agency, and then to provide the agency with an opportunity to resolve these concerns. This dispute resolution option allows the local education agency time to work with the parents to resolve the due process matter quickly, thus allowing both parties to control the outcome and avoid the cost of a hearing. It is important to keep in mind that a resolution session is not an Individualized Education Program (IEP) meeting. Since there is no guidance in the IDEA or implementing regulations about the confidentiality of discussions held in a resolution session, it is recommended that the parties agree in writing to maintain the confidentiality of all discussions and that such discussions can not later be used as evidence in the due process hearing or any other proceeding.

What are the Requirements?

1. The resolution session must take place within 15 days from the time the local education agency receives notice of the parents' request for a due process hearing.
2. The parents and *relevant* member or members of the student's IEP team who have specific knowledge of the facts identified in the due process request must attend the resolution session.
3. A representative of the local education agency who has decision-making authority on behalf of the agency must also attend the resolution session. In the context of a due process hearing request, this representative will likely need to be someone from a district-level position.
4. The meeting **may not** include an attorney of the agency unless the parents are accompanied by an attorney.

What Happens if We Reach Agreement?

- In the event that issues raised in the due process hearing request are resolved at the resolution session, then the parties shall develop a legally binding written agreement that is signed by both the parents and a representative of the agency who has the authority to bind that agency. The agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. Agencies should seek advice and training from their legal counsels **prior** to convening any resolution sessions in order to learn how to generally develop such an agreement.
- Under New Mexico state special education rules, if the resolution session participants reach agreement on any IEP-related matters, then the binding written agreement must also state

that the local education agency **will subsequently convene an IEP meeting** to inform the student's service providers of their responsibilities under that agreement, as well as revise the student's IEP accordingly or develop an IEP Addendum, as appropriate.

- If the parties execute an agreement pursuant to a resolution session, either party may void this agreement within three (3) business days of the agreement's execution.
- The IDEA provides that a resolution session is not an action that can result in reimbursement of attorney's fees.

Are There Other Options?

Yes. The resolution session is not required if the parents and the agency **jointly** agree in writing and notify the assigned due process hearing officer that they wish to waive the resolution session. Parties to a due process hearing may also choose to convene a **Facilitated IEP (FIEP) meeting** or **mediation** instead of a resolution session. (See the *Facilitated IEP Meeting and Mediation Fact Sheets*)

To request one of these alternative options, the party filing the request for the due process hearing must (and the other party may) notify the due process hearing officer in writing within one (1) business day of the parties decision and to **jointly** request one of these other dispute resolution options. The hearing officer will notify the State who will then assign a state-funded IEP facilitator or mediator to the case. A FIEP meeting or mediation must be completed no later than 14 days after the assignment unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing.

What if None of These Options Work?

If the local education agency has not been able to resolve the due process hearing issue to the parents' satisfaction within 30 days after receiving it, or if the parties jointly waive the available alternative dispute resolution options, then a due process hearing can occur. The IDEA and state special education rules at Subsection (I) of 6.31.2.13 NMAC set forth the applicable procedures and timelines for a due process hearing.

If you have general questions about resolution sessions, please feel free to contact the following persons in the Special Education Bureau at (505) 827-1457:

- ADR Coordinator (for districts or charter schools)
- Parent Liaison (for parents)