



## **“The Process of Due Process for Special Education Students”**

Parents who disagree with the proposed identification, program or placement of their special needs child have the right to request a special education due process hearing under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) before a Pennsylvania Special Education Hearing Officer. Parents have a right to be represented by counsel at the hearing, and to offer documentary evidence and witness testimony supporting their case. A due process hearing may take place over several sessions. Following the due process hearing, the Hearing Officer issues a written decision, which may be appealed by either party. Among the types of relief that a Hearing Officer can award families are compensatory education, reimbursement for tuition at a private school, development of an appropriate educational program and placement, payment for an independent educational evaluation, and reimbursement for tutoring or other educational services which the parents have obtained privately.

While this is expected to change shortly with the passage of new Pennsylvania regulations to the IDEA, currently, any appeal from a Hearing Officer decision under the IDEA must be taken in the Pennsylvania Special Education Appeals Panel, which reviews the record below, takes additional evidence or hears oral argument in its discretion, and issues a written decision. The Appeals Panel does not, however, have jurisdiction over claims brought under Section 504, and any such appeals go directly to court.

Either party who disagrees with the decision of the Appeals Panel may file an appeal in state or federal court, although most appeals are either filed in or removed to federal court. Most often, such an appeal involves a determination by a judge as to whether the Appeals Panel decision should be overturned based on the judge's review of the administrative record, which can be supplemented by leave of Court by either party. Occasionally, such an appeal can result in a either a jury trial or trial before a judge sitting without a jury. The judge's opinion can then be appealed to the United States Court of Appeals for the Third Circuit and, in rare cases, to the Supreme Court of the United States.

Parents who are prevailing parties as a result of this process are also entitled to reimbursement from the district for their reasonable attorneys' fees and costs.

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