



*SPECIAL EDUCATION LITIGATION IN  
TODAY'S WORLD: FROM  
CLASSROOM TO COURTROOM*

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# *Most Special Education Directors Have Never Been Through a Due Process Hearing*

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First Reaction is Always that “We Have Done Everything Right”

Get Over the Anger and Self-Righteous Indignation

Do You Have a Process of Predicting Who Will File a Due Process Hearing and Preparing For it in Advance

Are SDOE and OCR Complaints Predictors of Due Process Hearings? Not as Good as a Stressful IEP Meeting

Very Different Rules and Processes for Each Procedure

# *Individuals with Disabilities Education Act (IDEA), 20 USC § 1400 et seq.*

IDEA sets forth legal framework for process

Begins with parent or school filing a due process complaint concerning the:

- Identification
- Evaluation
- Educational placement and/or
- Provision of a free appropriate public education (FAPE)

Filed with State Department of Education and forwarded to Office of State Administrative Hearings

Case is assigned to ALJ

# *Due Process Complaint*

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Must include  
specific  
components

If complaint lacks  
the components,  
may file a Notice  
of Insufficiency  
within 15 days

ALJs lenient with  
pro se parents

Must file a  
written response  
to complaint in  
10 days

# *Resolution Meeting*

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- Required to convene resolution meeting with parent unless both parties agree to waive in writing
- Almost never agree to waive
- Informal meeting and good opportunity to get more information about parent's case and what be will be presented at hearing
- Unlike mediation - not confidential unless otherwise agreed
- School attorneys may **not** attend unless parent brings their attorney
- In practice - parent attorney often reluctant to resolve at resolution meeting and prefer to convene a mediation - \$\$\$



## *Mediation*

- Another avenue to resolve case if resolution meeting unsuccessful
- Voluntary
- State DOE will assign mediator at no charge
- Can pursue mediation with a mediation service at parties' expense
- Complex cases: Justice Center of Atlanta



# *Timelines at First Are Very Tight*

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Getting **all** records to the lawyers immediately (hopefully request has been anticipated)

If available, give notice to insurance company and understand what it will pay and what it requires

Helping lawyers understand the issues from the parent's perspective

Trying to determine what the parent really wants

Trying to determine all options available to the District

# *Motions*



CAN ATTEMPT TO  
HAVE CASE  
DISMISSED BY  
FILING A MOTION  
FOR SUMMARY  
DETERMINATION,  
MOTION TO  
DISMISS OR  
MOTION FOR  
DEFAULT



IN PRACTICE -  
NOT SUCCESSFUL  
AGAINST PRO SE  
PARENTS; ALJS  
RELUCTANT TO  
DISMISS  
WITHOUT GIVING  
PARENT  
OPPORTUNITY  
FOR HEARING



## *Due Process Hearing*

- If resolution meeting and/or mediation not successful, party entitled to a due process hearing before an ALJ
- May last a day (pro se parent) or multiple weeks spread out over months
- In practice, hearing days are rarely consecutive
- Party requesting hearing (typically parent) has burden of proof

# *Pre-Hearing Requirements*

No discovery, but. . .

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Parties must exchange documents and evaluations 5 business days in advance of hearing

Party has a right to prohibit the introduction of documents at a hearing that have not been disclosed 5 business days in advance

Time-consuming, costly process

Pro se parents frequently fail to comply

Attorneys frequently produce multiple binders of evidence that may be used in hearing

# *Pre-Hearing Requirements*

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- ALJs almost always require parties to exchange witness lists and a summary of anticipated testimony 5 business days prior to hearing
- In practice, ALJs permit parents to testify even where parents failed to present witness list
- Parties can issue subpoenas
- Parent's attorneys frequently blanket school district with subpoenas and notices to produce

# *Hearing Decision & Appeal*

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ALJ often extends timeline to issue order for months



Almost always require parties to submit proposed Findings of Fact and Conclusions of Law



One-tier review system



Party may bring a civil action in District Court (or Superior Court) to appeal decision



Court reviews records of administrative proceedings and may hear additional evidence

# *Attorneys' fees*

Parent may recover attorneys' fees if prevailing party

School may recover fees as prevailing party only if parent's complaint is frivolous, unreasonable or without foundation

Parents' attorneys' fees are costly - courts have upheld \$600 an hour

2017 Northern Dist. of GA case - attorneys' fees in amount of \$275,186 awarded

# *S.S. v. Cobb County School District, (11<sup>th</sup> Cir. 2022)*

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Student with cerebral palsy and IDEA services since 2000

In 2015, parents challenged IEP

ALJ granted summary determination for the District finding there was no factual basis to find in favor of the parent

Parent filed suit in District Court which remanded to the ALJ requiring a hearing and finding there were issues in dispute that required evidentiary hearing

Issues had to do with need for paraprofessional and whether the goals in the IEP were “appropriately ambitious”

# *S.S. v. Cobb County School District, (11<sup>th</sup> Cir. 2022), cont'd*

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11<sup>th</sup> Cir. Determined that it lacked jurisdiction

“remand orders from district courts to administrative agencies are not final and appealable”

Parents argue that child has made little educational progress, but seven years after first challenge case returns to ALJ

One purpose of last Reauthorized IDEA was to expedite legal process and ultimate decisions for IDEA cases