TEXAS EDUCATION AGENCY

SPECIAL EDUCATION DISPUTE RESOLUTION SYSTEMS HANDBOOK

TEA | DIVISION OF LEGAL SERVICES

MARCH 2013

TABLE OF CONTENTS

TERMS USED IN THIS DOCUMENT

Adult student refers to a student with a disability who is 18 years of age or older to whom rights have transferred under the Individuals with Disabilities Education Act (IDEA) and who is not under legal guardianship.

Allegation refers to a claim that a school district has violated a specific requirement of the IDEA. This term is used in the special education complaint resolution process.

ARD committee refers to the Admission, Review, and Dismissal committee and is the term used in Texas for the group of individuals who develop an individualized education program (IEP) for a student with a disability. Federal law refers to these individuals as the *IEP Team*. Members of the ARD Committee include the student's parents, certain designated school district personnel, and the student, if appropriate.

Expedited due process hearing refers to a hearing with shortened timelines. A parent and a school district have the opportunity for an expedited due process hearing on a disciplinary matter resulting in a change of placement about which they disagree.

FAPE refers to a free appropriate public education for a student with a disability that includes special education and related services that: are provided at public expense; meet state and federal standards; include an appropriate preschool, elementary, or secondary school education; and are provided in conformity with an appropriate IEP.

IDEA refers to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). Although "IDEIA" is the formal acronym based on the 2004 amendments to the IDEA, the acronym of "IDEA" is commonly used and is used in this handbook. The IDEA is designed to ensure that all students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for further education, employment, and independent living.

IEP refers to the *individualized education program* required by the IDEA for a student with a disability. The IEP is a written statement of the educational program designed to meet the student's individual needs. The IEP has two general purposes: to set reasonable learning goals for the student, and to state the services that the school district will provide for the student. The IEP is developed, reviewed, and revised by the student's ARD committee under the procedures set out in the IDEA. The IEP must be reviewed periodically, but not less than annually, and revised, as appropriate.

IEP team refers to the group of individuals who develop an IEP for a student with a disability. In Texas, this group is referred to as the *ARD committee*.

Parent refers to a biological or adoptive parent, a foster parent, a legal guardian, a properly appointed surrogate parent, or other person as defined by the IDEA who has legal authority to make educational decisions for a student with a disability or who is suspected of having a disability.

Party refers to a person or entity that files or responds to a special education complaint. With regard to special education mediation or a special education due process hearing, the term refers to a parent, as defined by the IDEA, or an adult student and the school district involved in decisions regarding the educational program for a student with a disability.

Procedural violation refers to a school's failure to follow the specific procedures outlined in the IDEA or in state special education law and regulations. For example, if timelines for conducting evaluations are not followed, this would be a procedural violation.

School district refers to a local educational agency (LEA) involved in decisions regarding the educational program for a student with a disability, including public charter schools. In the IDEA, the school district is referred to as the local education agency or public agency.

Student with a disability refers to a student who is eligible for special education and related services as defined by the IDEA.

Substantive violation refers to a failure on the part of a school district that results in denying a student with a disability a FAPE. For example, if a student's IEP fails to provide the student with a meaningful educational benefit, this would be a substantive violation.

TEA refers to the Texas Education Agency, the state educational agency (SEA) responsible for ensuring that the IDEA is implemented in Texas.

INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) is a federal law designed to ensure that students with disabilities receive a free appropriate public education (FAPE). The Texas Education Agency (TEA) is responsible for ensuring that school districts in the state meet the various requirements set out in the IDEA. To this end, TEA is required, among other things, to provide three programs for resolving disagreements that may arise between parents or adult students and school officials regarding the educational program for a student who is eligible for special education and related services under the IDEA. A party may seek resolution of the disagreement by participating in: (1) a voluntary mediation session; (2) a special education complaint investigation; or (3) a due process hearing.

Because the parties will need to work together in the future on matters relating to a student's educational program, TEA's policy is to encourage resolution of disagreements at the local level if possible. As long as a student remains in the school district, the parties will need to maintain a cooperative relationship to make future decisions about a student's special education program. Often, parties are able to resolve disagreements by holding an Admission, Review, and Dismissal (ARD) committee meeting, which the parent may ask for at any time, or a meeting that includes other school personnel, such as a campus administrator or the special education director, or other school district administrators or support personnel. Some school districts have begun using neutral meeting facilitators to assist ARD committees in resolving disagreements. This process is commonly referred to as a "facilitated IEP meeting." Parents interested in having a facilitated IEP meeting should begin by contacting their school district to explore their options and inquire about availability.

SCOPE OF THIS HANDBOOK

This handbook is designed to assist parents, school officials, and other interested parties in understanding and working through TEA's special education dispute resolution system. The handbook is not intended to be legal advice. A party needing legal advice concerning a special education matter should contact a private attorney as TEA cannot provide legal assistance.

PART 1: SPECIAL EDUCATION MEDIATIONS

The Frequently Asked Questions (FAQs) discussed in this part are as follows:

1. What is mediation?
2. Why choose mediation?
3. How much does it cost to go to mediation?
4. If the parties could not solve their problems at an ARD committee meeting, why might mediation work?
5. How does someone request mediation?
6. Who may request mediation?
7. What happens after someone requests mediation?
8. May TEA or a hearing officer require the parties to participate in mediation?
9. May the parties extend the deadlines for a pending hearing or complaint investigation while trying mediation?
10. Who conducts the mediation?
11. How are mediators assigned?
12. What is the mediator's role?
13. Who may attend the mediation?
14. Where are mediations held?
15. What happens during the mediation?
16. What happens if the parties settle the disagreement at mediation?
17. What happens if a party does not follow the terms of the settlement agreement?
18. What happens if the parties do not settle the disagreement at mediation?
19. Are mediation discussions confidential?
20. Are mediation settlement agreements confidential?
21. May a party record the mediation?
22. If my child has a 504 plan, may I request mediation?

1. What is mediation?

Mediation is a process during which the parties, with the help of a trained mediator, work toward a solution to a disagreement involving any matter related to a student's special education eligibility or educational program under the IDEA. The mediator is a neutral third party who helps the parties communicate with each other. With the assistance of the trained mediator, all parties are involved in the decision-making process, and everyone has a chance to express concerns, offer opinions, make suggestions, and come up with solutions. The focus of the mediation is on solving disagreements and arriving at a solution that meets the needs of the student.

TEA is required by state and federal law to offer mediation to parties who have a disagreement involving the educational program for a student with a disability. The decision to mediate is completely voluntary, meaning that both parties must agree to participate in mediation.

TEA automatically offers mediation each time a special education complaint or due process hearing request is filed, but mediation may be requested at any time. In other words, a parent or school district may request mediation *before* filing a complaint or a due process hearing request.

2. Why choose mediation?

Parties are more likely to maintain a good working relationship in the future if they settle a disagreement by mutual agreement. Mutual agreements generally result in greater satisfaction for all parties because the parties themselves decide the outcome. Other benefits of mediation are that it is less formal, less costly, and less time-consuming than the other dispute resolution processes. TEA's mediation program has been very successful at resolving special education disagreements. In fact, nearly 80 percent of the

parties that have used TEA's mediation services during the last several years have reached an agreement as a result of the mediation. For this reason, TEA strongly encourages all parties to consider mediation.

3. How much does it cost to go to mediation?

There is no cost for parents and school districts to participate in mediation.

4. If the parties could not solve their problems at an ARD committee meeting, why might mediation work?

Because mediation is conducted by a neutral third party, it allows everyone to express their concerns while being treated fairly. The mediator listens to each party and provides feedback and suggestions to help the parties communicate more effectively and reach a common solution. In addition, the questions that a mediator asks may encourage new thoughts and new ideas for resolving disagreements.

5. How does someone request mediation?

TEA has created a mediation request form that can be found on TEA's website at: http://www.tea.state.tx.us/index4.aspx?id=5087. You are not required to use the form, but TEA encourages its use.

A written request for mediation must be mailed, hand-delivered, or faxed to:

Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, TX 78701-1494
Telephone: (512) 463-9720 | Fax: (512) 463-6027

TEA encourages you to provide a copy of the mediation request to the other party.

6. Who may request mediation?

Mediation may be requested by:

- a student's parent, guardian, or other person who has legal authority to make educational decisions for the student;
- an adult student;
- a school district; or
- the authorized representative of any of the above.

7. What happens after someone requests mediation?

When TEA receives a mediation request, it will contact the other party to ask if the party is willing to mediate. If both parties are willing to mediate, then TEA assigns a mediator and sends each party an *Assignment Letter*. TEA will also send a copy of this handbook, the Free and Low Cost Legal Services List, and a list of attorneys and advocates who provide assistance and guidance to parents. The mediator will contact the parties to begin the mediation process.

If the other party does not agree to mediate, then TEA will send a letter to both parties telling them that one party declined to mediate. Since mediation is available at any time, one or both parties may request mediation at a later date.

8. May TEA or a hearing officer require the parties to participate in mediation?

No. The IDEA requires mediation to be voluntary. Therefore, TEA and hearing officers may not require parties to participate in mediation. In addition, when a party chooses not to participate, the party does not have to give a reason for the decision.

9. May the parties extend the deadlines for a pending hearing or complaint investigation while trying mediation?

If a special education complaint (see Part 2) is pending, TEA must issue a written decision within 60 calendar days of the date on which the complaint was filed. The parties, however, may agree to extend the 60 calendar day timeline in order to participate in mediation. If they want to do this, they should contact the complaint investigator as soon as possible.

If a due process hearing (see Part 3) has been requested, the IDEA sets specific timelines for when the hearing officer must issue a decision. Because the IDEA specifically states that mediation must not delay the right to a due process hearing, the mediator and parties typically work to quickly complete the mediation process so as to allow a timely resolution of the due process hearing (if one is still necessary following mediation). If an extension of time is necessary, the parties must present a request for extension to the hearing officer. A hearing officer must make a finding of *good cause* in order to extend a hearing deadline. It is up to the hearing officer to determine whether good cause exists.

10. Who conducts the mediation?

TEA contracts with private practice attorneys who have experience in mediation and special education law. Most of the contract mediators are also special education due process hearing officers. The mediators are not TEA employees or school district employees and must not have any personal or professional interest that would conflict with their impartiality. TEA maintains a list of the current mediators and their qualifications which is available upon request and on TEA's website at http://www.tea.state.tx.us/index4.aspx?id=5087.

11. How are mediators assigned?

If both parties agree to mediate, they may agree to use a mediator from TEA's list. If the parties do not select a mediator, a mediator will be randomly selected by TEA's computer system. If there is a pending due process hearing involving the same parties, the person who is serving as the hearing officer will not be assigned as the mediator.

12. What is the mediator's role?

The mediator's role is to focus on the following:

- working toward open communication between the parties by creating a safe environment in which the parties feel free to communicate;
- assisting the parties in understanding each others' positions; and
- assisting the parties with finding options to resolve the disagreement.

The mediator is not a judge. The mediator is not there to provide legal advice. The mediator is there to assist the parties in reaching an agreement and will not pressure the parties to settle the disagreement in a certain way.

13. Who may attend the mediation?

Parents and school personnel with decision-making authority usually attend the mediation. The parties may choose who they bring with them. The participants may include attorneys, advocates, interpreters, and other relevant parties. The parties may agree to limit the number of participants. The mediator will confirm the participants before the mediation session.

14. Where are mediations held?

Mediations are held at locations that are convenient to the parties. Possible meeting places include the school, school district offices, regional education service centers, libraries, and other locations convenient to both parties.

15. What happens during the mediation?

Different mediators have different ways of conducting mediations. A mediator may conduct each mediation session somewhat differently based on the situation, but most mediation sessions have things in common.

The mediation may begin in the same room with the mediator greeting everyone. This is called a joint session. The mediator will explain the purpose of mediation, the mediator's role, the confidentiality of the mediation discussions, and how the mediation will proceed.

The mediator may ask the parties to summarize the issues that are in dispute and explain what they hope to accomplish through mediation. Afterward, the mediator will assist the parties in discussing each issue and exploring ideas for resolving the disagreement.

The mediator may want to speak with the parties separately. This is called a *caucus* or a *separate session*. For example, if the mediator and the parents want to meet alone, the school district staff would leave the room so that the parents and the mediator can talk in private. Then the mediator would talk to the school district staff in private. This sort of back-and-forth might go on until the mediator thinks it is a good time to bring the parties together again.

There might also be times when the parents, for example, would want to talk to each other alone, without the mediator or the school district staff in the room. Likewise, the school district staff might want to talk to each other in private. Thus, throughout the day, there might be meetings of the entire group, meetings between the mediator and one party, and meetings between just the members of one of the parties. Settlement offers may be discussed during these meetings, and a party may ask the mediator to share those settlement offers with the other party.

Mediation may last at least several hours or an entire day so it is important to set aside the full day for mediation. In rare cases, a mediator may continue the mediation to another day. If so, the mediator works with the parties to select the date for the follow-up mediation session.

16. What happens if the parties settle the disagreement at mediation?

If the parties reach a settlement agreement, they will work together to write down the terms of the agreement. After the parties have agreed on the terms and language of the agreement, the parties will sign the agreement. The mediator does not sign the agreement because he or she is not a party to the agreement. Once the parties have signed an agreement, it becomes a legal contract.

17. What happens if a party does not follow the terms of the settlement agreement?

A written settlement agreement that the parties have signed is a legally binding contract. This means that if, for example, a party does not do something that the agreement says the party will do, then the other party may file a lawsuit in state or federal court and ask the judge to make the party follow the agreement. The parties are also free to try to work out their differences on their own or with the help of a mediator.

18. What happens if the parties do not settle the disagreement at mediation?

If an agreement is not reached, the parties and the mediator may discuss whether another mediation session should be scheduled. If there is a pending request for a complaint investigation or a hearing, that process will move forward after the mediation ends.

19. Are mediation discussions confidential?

Yes. Discussions that occur during the mediation process are confidential and may not be used later as evidence in a due process hearing or court case. The mediator may ask each party to sign an agreement at the beginning of the mediation stating that they understand and agree that the discussions are confidential. The IDEA requires that settlement agreements include a statement that all discussions that occurred during the mediation process will remain confidential. In addition to discussions, all notes and draft agreements prepared during the mediation are confidential. The mediator may collect all the documents for shredding at the end of the mediation session. Information that was available before the mediation or that may be obtained from another source, such as an IEP that was revised due to the mediation settlement agreement, is not confidential.

20. Are mediation settlement agreements confidential?

A settlement agreement is a student record. As a general rule, a school district may not give out any information from student records, including settlement agreements, without the parent's or adult student's written permission. However, under a law known as the Family Educational Rights and Privacy Act (FERPA), school districts may sometimes give out student records without permission to certain parties in certain cases. For example, a school district does not need the parent's permission to give student records to a school official if the official has a legitimate educational interest in the records. In some cases, the parties may agree to put a confidentiality statement in the settlement agreement to keep the parties from sharing all or part of the agreement with third parties.

21. May a party record the mediation?

No. As stated above, all discussions at mediation are confidential, and no one may record any part of the mediation.

22. If my child has a 504 plan, may I request mediation?

TEA's mediation process should only be used to resolve disagreements involving special education matters under the IDEA, such as the identification, evaluation or educational placement of a student who is eligible for special education services or the provision of a FAPE to the student. If a disagreement relates only to alleged violations of Section 504 of the Rehabilitation Act of 1973, the parent may file a complaint with the local school district. The parent and the school district can also agree to hire a private mediator to conduct mediation at their own expense. In addition, a parent may file a complaint under Section 504 with the U.S. Department of Education's Office of Civil Rights (OCR). OCR may offer to facilitate mediation, referred to as "Early Complaint Resolution," to resolve a Section 504 complaint. Information regarding OCR's complaint process can be found at http://www2.ed.gov/about/offices/list/ocr/504faq.html.

PART 2: SPECIAL EDUCATION COMPLAINT RESOLUTION

The FAQs discussed in this part are as follows:

1. Who may file a special education complaint?
2. What are the reasons a complaint may be filed?
3. May a complaint be used to address the problems of a group of students?
4. How is a complaint different from a due process hearing?
5. Is there a time limit for filing a complaint?
6. May someone file a complaint and request a hearing at the same time?
7. What information must be included in a complaint?
8. How does someone file a complaint?
9. How long does TEA have to make a determination about a complaint?
10. What are the steps in the complaint process?
11. How does TEA decide if there has been a violation of the IDEA?
12. What action will TEA take if it finds a violation?
13. What are *compensatory services*?
14. What is *reimbursement*?
15. How does TEA ensure that the school district or other public agency completes the corrective actions?
16. What may parties do if they disagree with TEA's findings of fact and conclusions?

1. Who may file a special education complaint?

Anyone may file a special education complaint with TEA. The person filing the complaint is referred to as the *complainant.*

When a complaint is filed by someone other than the parent, legal guardian, or adult student, referred to a "third party complaint," TEA will inform the complainant of the student's right to confidentiality. A third party complainant must submit written permission signed by the parent or adult student for the release of confidential information about the student.

2. What are the reasons a complaint may be filed?

A special education complaint may be filed when there is a concern that a school district or other public agency, such as TEA, has violated federal or state special education requirements.

If TEA determines that there are any issues in a complaint that are not covered by the IDEA or by state special education requirements, TEA will notify the complainant that those issues may not be investigated through the special education complaint process. TEA will inform the complainant about other options for addressing those concerns.

3. May a complaint be used to address the problems of a group of students?

Yes. A complaint may be filed on behalf of an individual student or a group of students.

4. How is a complaint different from a due process hearing?

A complaint investigation is less formal than a due process hearing. A complaint investigation is conducted by TEA staff members who review documentation, talk to parents and school district or other public agency staff, and evaluate whether a violation of a special education requirement occurred. There is no formal testimony by witnesses.

As discussed in Part 3 of this document, a due process hearing is a formal hearing that is much like a trial before a judge. An impartial hearing officer, who is not a TEA or school district employee, conducts a due process hearing. The parties in a due process hearing may bring and question witnesses, submit and

object to evidence, and will receive a record of the proceedings. Finally, the hearing officer's decision may be appealed to state or federal court.

5. Is there a time limit for filing a complaint?

Yes. A complainant must file a complaint within one year of the action s/he wants investigated. For example, if a complaint is filed on February 1, 2013, TEA may only investigate allegations regarding events that occurred between February 1, 2012, and February 1, 2013. If TEA determines that an allegation occurred more than one calendar year before the complaint was filed, TEA will notify the complainant that it will not investigate that allegation.

6. May someone file a complaint and request a hearing at the same time?

Yes, but TEA is required to set aside (hold in abeyance) any issues that are being addressed in a due process hearing until the hearing is over. TEA will address the issues that are not part of the due process hearing according to the standard complaint procedures and timelines. TEA will notify the parties in writing of the specific issues that must be set aside and those that will be addressed.

After the hearing is over, TEA will determine whether any issue that was set aside was not addressed in the hearing. If any issue was not addressed in the hearing, TEA will address it within 60 calendar days from the date of the hearing officer's decision unless the complainant withdraws the complaint.

If an issue raised in a complaint has already been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and may not be reconsidered through the complaint resolution process.

7. What information must be included in a complaint?

In order for TEA to conduct an investigation, a complaint must be in writing, allege a violation that occurred within the past year, and include the following:

- the complainant's signature and contact information (such as address, telephone number, e-mail address, etc.);
- a statement alleging that a school district or other public agency violated a special education law; and
- supporting facts, including detailed information describing the alleged violation (such as when, where, and how the alleged violation took place).

A complaint alleging a violation regarding a specific student must also include:

- the student's name and address (or, if the student is homeless, the name and available contact information);
- a proposed solution to the problem;
- the name of the school that the student attends; and
- a proposed resolution of the problem to the extent known to the complainant at the time the complaint is filed.

A complaint is not considered filed until the complainant has provided all of the above information.

If TEA determines that any issues are not supported by sufficient facts, it will inform the complainant that the facts are insufficient and that it will investigate only the allegations that include supporting facts. If the complainant wants TEA to investigate the unsupported allegations, the complainant may file a new complaint that includes sufficient facts.

A model complaint form, in English and Spanish, is available on TEA's website at: http://www.tea.state.tx.us/index2.aspx?id=2147497563. Though not required, the form is very useful for ensuring that a complainant provides all of the information needed for TEA to investigate the complaint.

The form also includes a checklist that was developed to ensure that all necessary information is included in a complaint, even when the form is not used.

8. How does someone file a complaint?

A complaint must be mailed, hand-delivered, or faxed to:

Texas Education Agency
Division of Federal and State Education Policy
1701 North Congress Avenue
Austin, Texas 78701-1494
Telephone: (512) 463-9414 | Fax (512) 463-9560

A complainant must also send a copy of the complaint to the non-filing party.

9. How long does TEA have to make a determination about a complaint?

Under federal law, TEA must issue a written decision within 60 calendar days of the date on which the complaint was filed. The timeline does not begin until all requirements for filing a complaint have been met. Exceptions to the deadline are as follows:

Extended
TEA may extend the 60-day timeline for exceptional circumstances which may include: (1) an unforeseen crisis, such as a natural disaster or emergency; and (2) a complaint that involves a group of students.

In addition, the 60-day timeline may be extended for the parties to participate in mediation if both parties agree to the extension. The timeline may not be extended by just one of the parties or for the parties to participate in other types of dispute resolution. If the parties are attempting to settle the issues through mediation or some other way, they should notify TEA as soon as possible.

Expedited
Under state law, a complaint alleging that a school district has refused to provide special education or related services to an eligible student must be expedited (handled more quickly) to ensure that any services due to the student are promptly provided. Expedited complaints will be resolved in less than 60 calendar days, if possible.

10. What are the steps in the complaint process?

The steps in the complaint process are described below.

Intake
TEA will review the complaint, and if it is determined that all requirements for filing a complaint (see question 7) have been met, the complaint is assigned to a complaint investigator. Complaint investigators are TEA employees.

Investigator Assessment
The complaint investigator will review the complaint to determine if it raises issues that TEA may investigate under the IDEA. Specifically, the complaint investigator will review the following issues:

- whether the alleged violations occurred within the last calendar year;
- whether the alleged violations are matters covered by the IDEA or state special education requirements;
- whether the complainant has provided supporting facts for each alleged violation; and
- whether any of the alleged violations in the complaint are the subject of a pending or previous due process hearing.

The complaint investigator will also discuss the complaint with the other complaint investigators.

Notice of Investigation and Request for Response

If TEA determines that the complaint meets the requirement described above, it will send the parties a letter that is called a *Notice of Special Education Complaint Investigation and Request for Response*. That letter states the allegations to be investigated, requests information needed to conduct the investigation, lists the investigation timelines, and encourage the parties to attempt to resolve the disagreement informally at the school district level or through TEA's mediation process. If any issues raised in the complaint do not meet the requirements described above, the letter will state that these claims will not be investigated.

The school district or other public agency will typically have 14 calendar days from the date of the notice to respond and provide the requested information to TEA. The school district or other public agency may send a copy of its response and documentation to the complainant unless doing so would violate laws regarding confidentiality. The complainant may also provide additional information about the allegations to TEA and the school district or other public agency.

If the school district or other public agency does not provide the complainant with a copy of its response and documentation, the complainant may submit a written request for the information to either the school district or TEA under the Texas Public Information Act. However, if the complainant is a third party (someone other than the parent, legal guardian, or adult student), TEA may not release any confidential student information without written authorization signed by the parent or adult student.

Investigation

The assigned complaint investigator will review the information from the school district or other public agency and any additional information provided by the complainant. The complaint investigator may also gather information through telephone or personal interviews. If TEA decides an on-site investigation is required, the complaint investigator will make arrangements with the parties for an on-site visit. The complaint investigator's interviews are informal and are typically not recorded electronically.

Investigative Report

TEA will issue a written decision called an *Investigative Report* within 60 calendar days of the date on which the complaint was filed unless the timeline has been extended (see question 9). TEA complaint investigators work together to develop the final Investigative Report which is sent to the school district or other public agency and the complainant, unless the complainant is a third party who is not authorized to receive confidential information about the student.

The Investigative Report includes the following:

- a description of the allegations in the complaint;
- TEA's findings of fact and conclusions;
- a discussion of how the findings of fact and the applicable law support TEA's conclusions;
- any technical assistance that TEA determines may help the school district or other public agency avoid such situations in the future; and
- any corrective actions TEA will require of the school district or other public agency if TEA finds that a violation occurred.

11. How does TEA decide if there has been a violation of the IDEA?

To determine if the school district or other public agency has violated an IDEA requirement, TEA will examine whether the school district or other public agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the information about the student provided by the parties.

12. What action will TEA take if it finds a violation?

If TEA determines that there has been a violation, it will require corrective actions. The type of corrective action will depend on the type of violation found and must be appropriate to address the needs of the specific student. If TEA determines that the violation affected or may have affected a group of students, the corrective action will address steps that the school district or other public agency must take to correct the broader problem. Examples of corrective actions TEA may require include, but are not limited to, the following:

- an evaluation;
- compensatory services;
- monetary reimbursement for educational expenses;
- an ARD committee meeting to review and/or revise the student's IEP;
- an ARD committee meeting to work out the details of compensatory services, reimbursement, or other corrective action;
- staff training or development;
- a review and/or revision of policies, practices, and/or guidelines;
- a self-assessment regarding compliance with the IDEA; or
- periodic monitoring or reporting on implementation of corrective actions.

TEA may not charge fines or address staffing decisions as part of the corrective action.

13. What are *compensatory services*?

Compensatory services are future services to be provided to a student to make up or *compensate* for a school district's failure to provide the student with appropriate services in the past. For example, if a student's IEP says that the student should get 60 minutes per week of speech therapy, and it is determined that the student did not receive speech therapy for a time period, the student might be entitled to extra speech therapy sessions to make up for the sessions that were missed. The length or amount of a student's compensatory services award will be determined by either TEA or the ARD committee and is based on the student's current needs. Compensatory services are not required every time there is an IDEA violation but only when the violation may have resulted in denying the student a free appropriate public education.

14. What is *reimbursement*?

Reimbursement means paying the parent back for services that the parent purchased privately because the school district did not provide appropriate services to the student.

15. How does TEA ensure that the school district or other public agency completes the corrective actions?

The Investigative Report will include a timeline for the school district or other public agency to submit documentation showing that it has completed the corrective actions or for it to submit a plan and timeline for implementation of the corrective actions. Under federal guidelines, all noncompliance must be corrected as soon as possible but in no case later than one year from the date of the Investigative Report. TEA follows up with school districts and other public agencies to ensure that they are completing the required corrective actions. A school district or other public agency that fails to implement corrective actions as ordered will be subject to interventions and sanctions under the Texas Administrative Code.

16. What may parties do if they disagree with TEA's findings of fact and conclusions?

The IDEA does not require that state complaint resolution processes provide parties with a right to appeal a decision made in an Investigative Report. TEA's complaint resolution process does not include an appeal procedure for parties who disagree with a decision. TEA's process does, however, allow parties

the opportunity to request that any errors in an Investigative Report be corrected. The process for requesting reconsideration of an Investigative Report is described in the cover letter to the report.

Filing a request for reconsideration does not delay the completion of corrective actions ordered in an Investigative Report. A public agency must complete any corrective actions required even if it files a request for reconsideration. If TEA determines that its Investigative Report includes an error, it will take appropriate action to address the error.

PART 3: SPECIAL EDUCATION DUE PROCESS HEARINGS

The FAQs discussed in this part are as follows:

1. What is a special education due process hearing?

A special education due process hearing is a formal legal process similar to going to trial in a court. A due process hearing may be requested when a parent and the school do not agree about the identification, evaluation, educational placement or services of a student with a disability, and/or regarding the provision of a FAPE to a student with a disability.

A parent may also request an *expedited* hearing when there is a disagreement with certain decisions involving discipline (see question 24).

2. Who may request a hearing?

A parent or a school district may request a due process hearing. The party requesting a hearing is called the *petitioner* and the other party is called the *respondent*.

3. How does someone request a hearing?

A party must send a *written* request to TEA. TEA has developed a model due process hearing request form that is available on TEA's website at: http://www.tea.state.tx.us/index4.aspx?id=5090. A party is not required to use the model form, but TEA encourages its use. The form is also available on request from TEA, all regional education service centers, and all school districts.

The hearing request must be mailed, hand-delivered, or faxed to:

Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, TX 78701-1494
Fax: (512) 463-6027

A party must also send a copy of the hearing request to the other party.

4. What information must be included in a hearing request?

TEA's model form contains all of the basic information that must be included in a hearing request. If a party does not use the form, the party must include the following information in the hearing request:

- the student's name and address (or available contact information if the student is homeless);
- the name of the student's school;
- a description of the nature of the problem and facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to the party at the time.

5. Is there a time period for requesting a hearing?

Yes. A party must request a hearing within one year of the date the party knew or should have known about the matter that is the subject of the hearing. There is an exception to the one-year timeline if the parent was prevented from requesting the due process hearing because of specific misrepresentations by the school district that it had resolved the problem or the school district's withholding of information from the parent that was required to be provided to the parent under the IDEA.

6. How must a party respond when receiving a hearing request?

The response to a hearing request must be sent within 10 days of receiving the request, and must specifically address the issues raised in the request. The school district is not required to provide a response if the school district already provided the parent with written prior notice that addresses the issues raised in the hearing request. If the school district is the party responding to the hearing request and has not already sent the parent prior written notice addressing the issues raised in the hearing request, then it must send the parent a response that includes the following:

- an explanation of why the school district proposed or refused to take the action raised in the hearing request;
- a description of other options that the ARD committee considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school district used as the reason for the proposed or refused action; and
- a description of any other relevant factors.

7. Does a party to need to have an attorney?

No. The parties to a hearing may represent themselves. Because of the legal nature of the proceedings, however, parties are often represented by attorneys. As required by federal regulations, TEA maintains a list of free and low-cost legal service providers. This list is sent to all parents who request a due process hearing and is also available upon request or on TEA's website at http://www.tea.state.tx.us/index4.aspx?id=5093. TEA also maintains a list of parent attorneys and advocates that is sent to all parents who request a hearing and is also available upon request. TEA may not pay for attorney fees.

The hearing officer may not give either party legal advice or help a party present evidence during the hearing. A party without legal representation is responsible for knowing the laws and rules that apply to the hearing which include the following:

- Individuals with Disabilities Education Act (IDEA) of 2004
- Federal regulations (implementing IDEA)
- Texas Administrative Procedures Act
- Texas Education Code
- Texas Administrative Code Rules Concerning Special Populations
- TEA's hearing rules
- Texas Rules of Civil Procedure
- Texas Rules of Evidence

8. May a party have a non-lawyer assist with a hearing?

The IDEA states that the parties have the right to "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." Texas law generally limits the practice of law to licensed attorneys. The term "practice of law" is defined in Texas statute and case law. The statutory definition is found in Texas Government Code §81.101(http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.81.htm).

In 2011, TEA asked the Attorney General of Texas for an opinion on whether non-lawyers may represent parties at hearings conducted under the IDEA. The attorney general's response noted that there are several laws involving other types of legal hearings where a person who is not a lawyer may represent another person. The attorney general further stated that without a specific exception in state law, the rule against the practice of law by non-lawyers applies to IDEA hearings. The attorney general further stated that the question of whether certain conduct constitutes the practice of law will depend on the facts and that it could not determine in its opinion whether particular conduct of a non-lawyer violated state law.

As there is currently not a state law allowing a non-lawyer to represent a party at an IDEA hearing, the individual hearing officers determine on a case-by-case basis whether to limit the conduct of a non-lawyer in a hearing. A party assisted by a non-lawyer should consider this when preparing for a hearing and may want to address the matter with the hearing officer in the early stages of the hearing process.

9. What is a special education hearing officer's role?

The hearing officer is in charge of the due process hearing, just as a judge is in charge of a trial. The hearing officer controls the hearing, listens to the evidence and arguments of the parties, and writes a final decision and order. Additionally, the hearing officer can administer oaths, call and examine witnesses, rule on motions, determine the admissibility of evidence, maintain decorum, schedule and recess the proceedings from day to day, and issue any other necessary orders, including sanctions needed to maintain an orderly hearing process. The hearing officer typically has telephone conferences with the parties before the hearing to develop a schedule for the hearing process and to discuss any legal matters that should be addressed before the hearing. These conferences are referred to as "prehearing conferences."

10. What are the qualifications of hearing officers?

Under the IDEA, a hearing officer must be impartial. A hearing officer may not be an employee of TEA or any agency involved in the education or care of the student or have a personal or professional interest that conflicts with his/her objectivity in the hearing. TEA contracts with private practice attorneys to conduct hearings.

The IDEA requires that a hearing officer possess knowledge of federal and state special education laws and regulations in addition to the knowledge and ability to conduct hearings and render decisions in accordance with standard legal practice. TEA maintains a list of current hearing officers and their qualifications on its website at: http://www.tea.state.tx.us/index4.aspx?id=5090, which is also available upon request.

11. How are hearing officers assigned to cases?

A hearing officer is assigned from TEA's computer system in an alphabetical rotation. An exception to this process is when the parties to the hearing were involved in another hearing filed within the last 12 months. In these situations, TEA will assign the same hearing officer who presided over the previous hearing.

12. What happens after a hearing officer is assigned to a case?

Once a case has been assigned to a hearing officer, TEA will send the parties a written notice that provides the hearing officer's name and contact information. TEA will also send the parent a packet of helpful information that includes free and low-cost legal services, special education advocate and attorney lists, as well as a copy of this handbook. The hearing officer will contact the parties to schedule the case for a prehearing conference.

13. May a party request that a hearing officer be removed from a case?

A party seeking the removal of a hearing officer from a case must file what is called a motion to recuse with the assigned hearing officer (not with TEA) at least 10 days before the hearing. The party must provide the other party with a copy of the motion. The motion must be based on personal knowledge and evidence that would be admissible at a hearing and must state the reasons why the hearing officer should be removed. There are limited reasons for removing a hearing officer. Basically, a party will have to show that the hearing officer has a bias or personal or professional interest that may conflict with his or her objectivity in the hearing. A motion to recuse should not be based solely on the hearing officer's rulings in the case.

The assigned hearing officer will consider the motion. If the assigned hearing officer agrees that he or she should step down from the case, TEA will assign the case to a new hearing officer. If the assigned hearing officer denies the motion, a second hearing officer will consider the motion. If the second hearing officer grants the motion, TEA will assign the case to a new hearing officer. If the second hearing officer denies the motion, the assigned hearing officer will move forward with the case.

Because hearings must be independent of TEA, TEA may not rule on motions to recuse or influence hearing officers' decisions in any way.

14. What is the resolution process?

The resolution process gives the parties a chance to try to resolve their differences before going to a hearing. When a parent files a due process hearing, the school district must hold a meeting within 15 days of receiving notice of the due process hearing request. The meeting is referred to a resolution session or a resolution meeting (see question 15). If the parties cannot resolve their differences within 30 days, then the hearing timelines begin to run (see question 23). This 30-day time period, known as the resolution period, may be shortened or lengthened in certain circumstances. The period will end before 30 days have passed if both parties agree in writing to waive, or not hold, the resolution session, or if both

parties agree in writing that no agreement is possible. The resolution process may last longer than 30 days if the parties have already begun the mediation process and agree to continue to try to settle their differences beyond the 30-day period. In that case, the resolution period will end when one of the parties withdraws from the mediation process.

15. What is a resolution session?

A resolution session is a required meeting between parents and school district personnel that takes place when a parent requests a hearing. When a school district requests a hearing, a resolution session is not required. Under the IDEA, the school district must hold a resolution session within 15 days of receiving notice of the parent's hearing request unless the parties waive the meeting in writing or agree to use mediation instead. The purposes of the resolution session are to give the parent a chance to talk about the reasons for requesting the hearing and to give the parties an opportunity to resolve the issues without the necessity of going further with the formal hearing process.

16. Who may attend the resolution session?

The parties determine who should attend the resolution session. The resolution session must include the student's parents, someone from the school district who has the authority to make a decision for the school district, and relevant members of the ARD committee. The meeting may not include the school district's attorney unless the parent is accompanied by an attorney. The hearing officer does not attend the resolution session.

17. What happens if a school district fails to hold a resolution session or the parent fails to attend a resolution session?

If the school district fails to hold a resolution session within the required time period (see question 14), the parent may request that the hearing officer start the hearing timeline. If the school district cannot get the parent to participate at the resolution session after reasonable efforts have been made to arrange a mutually agreed upon time and place, the school district may request that the hearing officer dismiss the hearing.

18. What happens if the parties reach an agreement at the resolution session?

If the parties reach an agreement, they must develop and sign a written agreement. The parties must notify the hearing officer whether all or some of the issues have been settled. The hearing officer will then dismiss any settled issues or the entire hearing if all issues were settled. The settlement agreement is a legal document and is enforceable in a state or federal district court. The parties each have three business days after the settlement agreement is signed to cancel the agreement. If the agreement is canceled, then the hearing moves forward.

19. What happens if the parties do not reach an agreement in the resolution session?

If the parties do not come to an agreement, they may:

- agree to extend the resolution period and continue to meet to reach a satisfactory resolution;
- agree to participate in mediation; or
- proceed to a hearing.

20. May a hearing request be amended?

Occasionally a party will want to amend the hearing request to add or take out certain facts or claims. A party may amend the request only if the other party agrees in writing or if the hearing officer allows it. The other party must be given a chance to resolve the issues in the request at a resolution session. The hearing officer may not give a party permission to amend the request within five days of the date the hearing is scheduled to begin.

Once a party amends the request, the timelines for the resolution session and the decision due date begin again.

21. Are discussions that occur during resolution sessions confidential?

Unlike mediation, there is no requirement that the discussions during a resolution session remain confidential. However, the confidentiality provisions in the IDEA and in FERPA apply. Therefore, either party may introduce information discussed during the resolution session when presenting evidence and confronting or cross-examining witnesses at a due process hearing, unless they have an agreement not to.

22. May a party withdraw a hearing request?

Yes. If a party decides to withdraw a hearing request, the party must submit a signed letter or a motion to dismiss to the hearing officer and the other party as soon as possible.

23. What is the hearing timeline?

A hearing officer must issue a decision within 45 calendar days following the 30-day resolution period, unless the resolution period is adjusted or the case involves discipline (see question 24). A hearing officer may grant an extension of the 45-day hearing timeline at the request of either party for good cause.

The table below shows the general hearing timeline:

30-Day Resolution Period	Day 1	The resolution period begins on the day the non-filing party first receives notice of the hearing.
	Day 5	The hearing officer will send the parties a scheduling order within the first five calendar days of the resolution period.
	Day 10	By the 10th calendar day, the non-filing party must send a response to the other party.
	Day 15	By the 15th calendar day, the non-filing party must notify the other party and the hearing officer if it believes the hearing request does not contain all the required information. The hearing officer has five calendar days to rule on whether the request is sufficient. Within 15 calendar days, the parties must hold a resolution session, unless the parties waive the meeting in writing or agree to use mediation instead.
	Day 30	Unless adjusted, the resolution period ends.
45-Day Hearing Period	Day 1	The hearing period begins (1) at the expiration of the 30-day resolution period if there is no resolution of the dispute; (2) the day after the parties agree in writing to waive the resolution session; or (3) the day after the parties agree in writing that no agreement is possible following mediation or a resolution session. The parties may extend the resolution period to continue mediation.
	The Prehearing Conference	The hearing officer will hold a prehearing conference during or right after the resolution period.
	5 Business Days Before the Hearing	The parties have until five business days before the hearing to (1) ask the hearing officer for permission to submit an amended complaint; (2) disclose and provide copies to all other parties of all the documents that each side intends to use at the hearing; and (3) provide to the other party a list of all witnesses who will testify at the hearing.
	The Hearing	The hearing will be held at a time and place reasonably convenient to the parent and student.
	The Decision	The hearing officer shall issue a final decision no later than 45 calendar days after the end of the resolution period, unless the deadline for a final decision has been extended.
After the Decision		If the hearing officer issues a decision against a school district, the school district must implement the decision within 10 school days even if it appeals the decision (except that any monetary reimbursement for past expenses ordered by the hearing officer can be withheld until the appeal is resolved). The school district or parent may appeal a hearing officer's decision to federal or state court within 90 calendar days of the date of the decision.

24. Are there any situations that allow for a shorter hearing timeline?

Yes. The IDEA provides limited circumstances under which hearings are expedited (handled more quickly). A parent who disagrees with certain decisions regarding discipline matters may request an expedited hearing. A school district may also request an expedited hearing when it believes that maintaining the student's current placement is substantially likely to result in injury to the student or others.

Unless the parties agree in writing to waive the resolution session or agree to use mediation instead, a resolution session must occur within seven calendar days of receipt of an expedited hearing request. The resolution period for an expedited hearing is 15 calendar days from the date of receipt of the hearing request.

Expedited hearings must occur within 20 school days of the date the hearing is requested. Furthermore, the hearing officer must issue a written decision within 10 school days after the hearing.

25. May a party watch a hearing to prepare for the party's own hearing?

A party will not usually be able to watch a hearing to prepare for the party's own hearing because hearings deal with confidential information about students. A party may only watch a hearing if the party has the permission of the student's parent or if the hearing is "open" by parental request.

Hearing decisions are available to the public after TEA removes confidential information. These decisions can be found on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=6728.

26. What happens to the student while a case is pending?

During the hearing process and any court appeals, the student generally must remain in the current educational placement (i.e., the last agreed upon placement), unless the parent and the school district agree otherwise. Remaining in a current placement is called *stay put*.

When the student's placement has been changed for disciplinary reasons, the student must remain in the disciplinary placement pending the hearing officer's decision or until the end of the time period applicable to the disciplinary placement, whichever occurs first, unless the parent and the school district agree otherwise.

27. What is a prehearing conference?

A prehearing conference is a discussion with the hearing officer, the parent, designated school district personnel, and the parties' representatives and/or attorneys. The hearing officer usually issues a written order setting the prehearing conference for a specific date and time. Parties should contact the hearing officer if they cannot attend on the date or time set by the hearing officer.

During the prehearing conference, the hearing officer may:

- clarify the issues raised in the hearing request;
- ask the parties to agree to certain facts;
- limit the number of witnesses and the length of time each witness will be allowed to testify; and/or
- discuss any other matters that might help simplify the hearing or end the dispute, including the possibility of settlement.

Soon after the prehearing conference ends, the hearing officer will send the parties a prehearing order that states:

- the hearing date, time, and place;
- the issues that the hearing officer will rule on;
- the relief that the filing party is seeking;
- the deadline for the parties to disclose evidence and identify witnesses;
- the deadline for the hearing officer to issue the final decision; and
- any other relevant information.

The prehearing conference is held by telephone unless the hearing officer determines that an in-person conference is necessary. The prehearing conference is recorded and transcribed by a certified court reporter. The hearing officer makes the arrangements for the court reporter. Each party receives a copy of the prehearing conference transcript at no charge.

28. What happens if a party cannot attend the hearing when it is scheduled?

If a party cannot attend the hearing at the scheduled time, the party or the party's attorney should file a written request, referred to as a motion for continuance, with the hearing officer. A motion for continuance is a request for the hearing to be scheduled at another time. The motion must say why the party cannot come to the hearing on the day that it was scheduled, and it must ask for the hearing to be scheduled on another date. The motion must be sent to the hearing officer, and a copy of the motion must also be sent to the other party. The other party has a right to respond to the motion. The hearing officer will rule on the motion in a written order and will either grant or deny the motion.

If a party does not attend the hearing, the hearing officer may rule against that party on every issue. If a party attends the hearing but does not participate, the hearing officer may rule against that party on every issue. The hearing officer will decide whether to reschedule the hearing.

If a party has an emergency at the last minute and cannot go to the hearing, the party must call the hearing officer and the other party as soon as possible and explain the situation. The hearing officer will decide whether to postpone the hearing or go forward with it.

29. What issues may be raised at a hearing?

At the hearing, parties may only present the issues raised in the hearing request and/or clarified at the prehearing conference.

30. What are the parties' rights at the hearing?

The IDEA gives the parties the rights to:

- be accompanied and advised by an attorney or other representative and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- present evidence and confront, cross examine, and require that a witness attend the hearing (by subpoena);
- receive in either written or electronic form a record of the hearing at no cost;
- receive written or electronic findings of fact and decisions; and
- ask the hearing officer to exclude any evaluation that has not been disclosed at least five calendar days before the hearing.

The IDEA gives parents the rights to:

- have the student who is the subject of the hearing present at the hearing and
- open the hearing to the public.

31. What happens at a hearing?

A hearing is similar to a courtroom trial but is not as formal. The people who come to the hearing include the hearing officer, the parties and their attorneys, the witnesses, and a court reporter. The IDEA also allows any party to bring to the hearing and be advised by people with special knowledge or training about the problems of children with disabilities. Hearings may last anywhere from a few hours to several days. There is no dress code for the hearing, but most people dress as if they were going to a business office. The party asking for the hearing will have the burden of proof, which means that he or she has the responsibility of proving to the hearing officer that his or her version of the facts is true. Parents usually have the burden of proof since they are usually the party requesting the hearing.

The table below illustrates the possible format of a hearing.

Call to Order	The hearing officer generally starts by making some introductory/opening remarks. The hearing is called to order, the purpose of the hearing is explained, and the procedure is described.
Opening Statements	The parties are given the opportunity to give an opening statement that generally describes or summarize their side of the case, reviewing the key facts and how those support the legal claims or defenses. Opening statements are not evidence and may not be used to prove facts in the case; rather, opening statements describe what the evidence in the hearing will show. The party with the burden of proof will be asked to make its opening statement first and the other party may follow, although some respondents (non-filing parties) may choose to wait until after the petitioner (filing party) has presented all witnesses and evidence.
Presentation of Evidence	The party with the burden of proof must present evidence (exhibits) and witnesses first. Then it is the other party's turn. Each party may have witnesses attend the hearing. The witnesses are placed under oath and sworn to tell the truth. Witnesses first answer questions from the party who called them (direct examination). Then they may be asked questions by the other party (cross examination). Finally the party who first called the witness can ask more questions (redirect examination). The hearing officer may also question the witnesses. If the parties request it, the hearing officer may require the witnesses to wait outside the hearing room until they are called in to testify. The hearing officer may also instruct the witnesses not to discuss their testimony with anyone. This ensures that a witness will not be influenced by hearing the testimony of other witnesses. Persons with specialized training or knowledge may be considered expert witnesses by the hearing officer. Upon request and order of the hearing officer, experts may remain inside the hearing room during the testimony of the witnesses to advise a party and to hear information that will serve as the basis for the expert's opinion. A party may ask a witness to come to the hearing, but the witness may choose not to appear voluntarily. To make sure a witness attends, a party may submit a request to the hearing officer for a *subpoena*. A subpoena is an order requiring a witness to attend a hearing at a specific location, date, and time. A *subpoena duces tecum* is an order that requires the witness to bring specific papers, documents, or other information to the hearing or to produce the papers, documents or information ahead of time. Parties should request subpoenas in writing from the hearing officer well in advance of the due process hearing or according to any dates established by the hearing officer's scheduling order. If a party wants the hearing officer to look at particular papers that they have at the hearing, they must offer the documents into evidence. Those documents will be marked as exhibits. The party must provide a copy for the hearing officer, a copy for the other party, and they must keep a copy. Sometimes, the person who prepared the document may need to testify about it before it may be admitted as evidence. Parties who are not represented by an attorney should become familiar with the *Texas Rules of Evidence* and the hearsay rules before the hearing. The parties may object to questions, testimony, or exhibits that they do not think should be used as evidence in the case. The hearing officer will either *sustain* (agree with) or *overrule* (disagree with) an objection. If an objection is sustained, the testimony or exhibit will not be used as evidence. If the objection is overruled, the testimony or exhibit will be admitted as evidence.
Closing Arguments	After all of the evidence has been presented, the hearing officer usually gives each party the chance to make a closing argument that summarizes the party's case and explains how the evidence introduced supports the party's case. The closing argument may be presented orally at the end of the hearing or in writing, which is referred to as a post-hearing brief, if ordered by the hearing officer.
Record of the Case	The hearing will be recorded by a certified court reporter. The court reporter gives the parties a free copy of the transcript of the hearing. The transcript will be a written copy of everything that was said on the record at the hearing and is usually provided within two weeks of the hearing.

32. What is the difference between a *procedural* violation and a *substantive* violation?

Procedural violations relate to a school's failure to follow procedures outlined in the IDEA. Two examples of procedural violations are a late evaluation and a failure to include the necessary members at ARD committee meetings. Substantive violations relate to a school's failure to perform its duties under the IDEA. Two examples of substantive violations include failure to identify a student with a disability and failure to provide a FAPE to a student with a disability. The hearing officer's decision must be made on *substantive* grounds based upon a determination of whether a student received a FAPE.

There is a high standard for winning a case on allegations of procedural violations because the hearing officer must find that the violations resulted in substantive harm to the student by:

- impeding the student's right to a FAPE;
- impeding the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or
- causing a deprivation of educational benefit.

33. What types of relief may hearing officers award?

Hearing officers may award relief to either party, which may include:

- orders for a school district to implement an educational program, conduct an evaluation, or change an educational placement;
- awards of reimbursement for private services and tuition;
- awards of additional services to make up for services that were not provided in the past, referred to as compensatory services;
- relief pertaining to disciplinary sanctions; and
- orders for a school district to comply with the procedural requirements under the IDEA and its regulations.

34. Who pays the attorney fees?

The parties must pay their own attorney fees. Hearing officers do not have the authority to award attorney fees or litigation costs to either party. If the hearing officer rules in favor of a party, that party may file a claim for attorney's fees and litigation costs in state or federal court.

35. How is a hearing officer's decision implemented?

When a hearing officer has ordered the school district to take some form of action in an IDEA case, that portion of the order is called *adverse to* (against) the school district. TEA monitors the implementation of adverse decisions. A school district must implement a hearing officer's adverse decision within 10 school days of the date of the decision. If a parent or adult student believes that a hearing officer's decision has not been fully implemented, he or she should contact TEA and not the hearing officer who issued the decision. The IDEA regulations permit a parent alleging that a school district failed to implement a hearing officer's decision to file a special education complaint. (See part 2: Special Education Complaint Resolution.)

36. May the parties appeal the hearing officer's decision?

A party may appeal the hearing officer's decision to state or federal court no more than 90 calendar days after the date that the hearing officer issues the decision. As part of the appeal process, the court will review the records of the due process hearing and may hear additional evidence at the request of either party. The court will base its decision on the evidence and grant any appropriate relief.

If a school district appeals a hearing officer's decision, it must still implement the hearing officer's decision within 10 school days of the date of the decision, except that it may withhold a reimbursement award while appeals are pending.

Questions regarding the **complaint investigation** process may be addressed by contacting:

Texas Education Agency
Division of Federal and State Education Policy
1701 North Congress Avenue
Austin, Texas 78701

Telephone: (512) 463-9414
Fax: (512) 463-9560

Questions regarding **mediation services** or **due process hearings** may be addressed by contacting:

Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, Texas 78701

Telephone: (512) 463-9720
Fax: (512) 463-6027

The following toll free message line is reserved for parents and other family members who have questions about student rights and regulatory requirements as they relate to special education:

Toll Free Parent Information Line: 1-800-252-9668

For individuals who are deaf or hard of hearing:

TTY Number: (512) 475-3540
Relay Texas 7-1-1