



INDIANA
DEPARTMENT of
EDUCATION

Hearing Procedural Manual

Indiana's Special Education/ Due Process Guidance

Indiana Department of Education

100 N. Senate Ave.

Indianapolis, IN 46204



Table of Contents

Introduction

Requesting a Hearing/Issues

Special Education Issues Not Appropriate for a Due Process Hearing

Independent/Impartial Hearing Officer

Procedural Requirements

What's New?

Relevant Acronym, Statutes, and Regulations

Initial Pleadings

Resolution Meeting

Prehearing Conference(s)

Discovery

Motions

Disclosure of Witnesses and Evidence

Conducting a Hearing

Written Decision - 511 IAC 745-7(j)

Dismissal and Default

Expedited Hearings - 511 IAC 7-45-10

Miscellaneous

Appendix Table of Contents

Introduction

This procedures manual is an updated version of the manual first created in 2015. It sets forth required procedures for conducting special education hearings under the Individuals with Disabilities Education Act (IDEA) (20 USC §§1400 *et seq.*; 34 CFR Part 300) and Article 7 (511 IAC 7) and incorporates requirements to ensure compliance with the 2024 amendments to Article 7. Independent hearing officers (IHO) must comply with the IDEA and Article 7, and the hearing procedures set forth in the Administrative Orders and Procedures Act (AOPA, I.C. 4-21.5-3), to the extent AOPA is not inconsistent with the requirements of the IDEA and Art. 7, as reflected in this manual. The manual is available for hearing officers, parents, schools, and attorneys to ensure that everyone participating in a special education due process hearing is aware of the procedural requirements. This manual should serve as a reference for procedural requirements for special education due process complaints and hearings.

Requesting a Hearing/Issues

A parent or a public agency may file a due process complaint on any of the matters described in 34 CFR §300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. 34 CFR §300.507; 511 IAC 7-45-3.

34 CFR §300.503(a)(1) and (2) set forth the matters specified in 34 CFR §300.507 that may be the subject of due process complaints:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—
 - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include—
 - (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the agency proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- (7) A description of other factors that are relevant to the agency's proposal or refusal.

34 CFR §300.508(b) specifies what must be included in the due process complaint. Subsection (b)(5) requires that the due process complaint include 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.

These regulations (34 CFR §§300.503; 300.507; and 300.508) reflect the statutory provisions in 20 USC §1415.

Although stated somewhat differently, the requirements in Art. 7 are similar. Due process complaints are to address a dispute concerning the student's identification and eligibility for services; the appropriateness of the educational evaluation or the student's proposed or current level of special education services or placement; or any other dispute involving the provision of a free appropriate public education (FAPE) for the student. 511 IAC 7-45-3(a).

The language in the IDEA requires that before a due process hearing may be held, a due process complaint must be filed concerning the public agency's proposed or refused action concerning the identification, evaluation, or educational placement of the student. Art. 7 similarly requires a request for hearing to identify a dispute concerning the same. Upon receipt of a due process complaint, the Secretary of Education will appoint an independent hearing officer (IHO) to preside over the hearing.

Special Education Issues Not Appropriate for a Due Process Hearing

There are some issues that appear to arise under Art. 7 that are not appropriate for a due process hearing even though they involve a child with a disability. Such issues must be decided elsewhere. For example:

1. There is no right of action concerning the failure of a particular public agency employee to meet the qualifications of 511 IAC 7-36 or 34 CFR §300.156(c). Although not an appropriate issue for a hearing, nothing prevents a party from filing a state complaint about staff qualifications. 34 CFR §300.156(e), 511 IAC 7-36-3.5.
2. The procedures for mediation in 511 IAC 7-45-2 and the procedures for due process hearings in 511 IAC 7-45-3 through 511 IAC 7-45-11 are not available to resolve disputes concerning parentally-placed nonpublic school students under 511 IAC 7-34 unless the dispute concerns child find, the appropriateness of an evaluation or reevaluation, or the determination of eligibility. 34 CFR §300.140; 511 IAC 7-34-6.
3. An action for attorney fees must be filed in federal or state civil court. 34 CFR §300.517;

511 IAC 7-45-11.

This is not an exhaustive list of issues that cannot be addressed in a due process hearing.

Independent/Impartial Hearing Officer

IHOs must be impartial; that is, they must not have a personal or professional interest that would conflict with their objectivity in the hearing, and not be an officer, employee, or agent of the public agency, the Indiana Department of Education (IDOE), or any other agency that may be involved in education or care of the student. IHOs are required to undergo periodic training and to be knowledgeable about special education laws and procedures.¹

Procedural Requirements

As a reminder to all parties, their attorneys, and IHOs, hearings conducted under Article 7 to resolve disputes arising under the IDEA or Article 7 must be conducted pursuant to the requirements of the IDEA and Article 7 (511 IAC 7), as well as the procedures under the Indiana Administrative Orders and Procedures Act (I. C. 4-21.5) to the extent those procedures are not inconsistent with the requirements of the IDEA and Art. 7. (511 IAC 7-45-7(p)). Although due process hearings are not technically administrative hearings, as they do not involve appeals of decisions of an administrative agency, the Administrative Orders and Procedures Act (AOPA) supplies an appropriate procedural framework for processes not directly addressed by the IDEA and Art. 7. As such, Art. 7 adopts the procedures of AOPA to the extent not inconsistent with the IDEA and Art. 7. The parties are reminded that these hearings are not civil actions in a state or federal district court. The parties and IHOs should refer to the proper scope and authority of these procedures, as well as Article 7 and AOPA for an understanding of the procedural requirements for special education due process hearings. Administrative hearings, and by extension special education due process hearings, are intended to be conducted in an informal manner. Neither the Federal Rules of Civil Procedure² nor the Indiana Rules of Trial Procedure³ are applicable to Indiana administrative hearings. IHOs may limit the party's use of discovery so as to promote the orderly, prompt, and just conduct of the proceeding. I.C. 4-21.5-3-25(d)(2).

What's New?

Highlights of new requirements/changes from previous hearing procedures manual; not an exhaustive list.

¹ Although the IDEA requires hearing officers to be impartial while Article 7 refers to independent hearing officers, this is a distinction without a difference. See 34 CFR §300.511(c) and 511 IAC 7-45-8.

² The Federal Rules of Civil Procedure govern the procedure in all **civil actions and proceedings in the United States district courts**, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. Fed. R. Civ. P. 1. (emphasis supplied)

³ Except as otherwise provided, the Indiana Rules of Trial Procedure govern the procedure and practice **in all courts of the state of Indiana** in all suits of a civil nature whether cognizable as cases at law, in equity, or of statutory origin. They shall be construed to secure the just, speedy and inexpensive determination of every action. Indiana R. Trial P. 1. (emphasis supplied)

Chapter I. Initial Pleadings

Clarifies and emphasizes that due process complaints and other pleadings and documents should never be sent via email. The due process complaint may be submitted to the IDOE through the electronic filing system, I-CHAMP, or sent via facsimile transmission (FAX) or U.S. mail.

Service on the opposing party is to be made by personal service or U.S. mail. If a party has entered an appearance in I-CHAMP, future pleadings may be served on that party through I-CHAMP. Attorneys representing a student, parent, public agency, or any other party in connection with a due process hearing **must** use I-CHAMP for submitting documents or pleadings.

Chapter II. Resolution Meeting

Adds a note that the resolution period and requirement to conduct a resolution meeting do not apply if the public agency requested the due process hearing.

Adds requirements for the parties to request an extension of the resolution period to engage in mediation and requires the IHO to issue appropriate orders and to monitor the timelines.

Extending the resolution period to engage in mediation is only applicable if the parties use the mediation process described in 511 IAC 7-45-2.

Chapter III. Prehearing Conference

Reflects amendments to Article 7. Requires the IHO to conduct an initial prehearing conference. Specific topics must be addressed. IHOs and the parties should be well prepared to address all required topics, including identification of the issues, facts related to the issues, and a proposed resolution. The IHO **must** frame the issues at the initial prehearing conference.

Chapter IV. Discovery

Reflects amendments to Article 7. When filing its response to a parent's request for hearing, the public agency shall provide the core documents to the parent and IHO. Clarifies that the IHO has discretion to grant reasonable requests for discovery after the IHO has framed the issues at the initial prehearing conference.

Chapter VIII. Written Decision

The written decision is served on the parties through I-CHAMP. For unrepresented parties not utilizing I-CHAMP, the decision will be mailed via certified mail, return receipt requested.

Chapter X. Expedited Hearings

Reflects amendments to Article 7 in compliance with the IDEA requiring an expedited hearing to be held to address certain issues. There is no authority for these issues to be heard in a non-expedited manner.

Relevant Acronyms, Statutes, and Regulations

Acronyms and other terminology used in the Procedures Manual

AOPA	Administrative Orders and Procedures Act (IC 4-21.5-3)
Art. 7	Article 7
CCC	case conference committee
CFR	code of federal regulations
EOT	extension of time
FAPE	free appropriate public education
FERPA	Family Educational Rights and Privacy Act
IAC	Indiana administrative code
IAES	interim alternative educational setting
I-CHAMP	Indiana C omplaint, H earing A nd M ediation P rocess
IDEA	Individuals with Disabilities Education Act
IDELR	Individuals with Disabilities Education Law
Report® IEP	individualized education program
IHO	Independent Hearing Officer
IDOE	Indiana Department of Education
LEA	local educational agency
OSE	Office of Special Education
OSEP	Office of Special Education Programs (a division of the Office of Special Education and Rehabilitative Services, US Department of Education)
OSERS	Office of Special Education and Rehabilitative Services, US Department of Education
Part B	IDEA provisions for children aged three through 21
PHC	Prehearing Conference
SEA	state educational agency
TR	Trial Rule
USC	United States Code

Indiana Statutes and Regulations

Article 7: 511 IAC 7

Indiana Administrative Orders and Procedures Act (AOPA). Chapter 3 – Adjudicative Proceedings Ind. Code § 4-21.5-3

Federal Statutes and Regulations

Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 et seq.; 34 CFR part 300 Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g; 34 CFR part 99

Related Federal Statutes and Regulations

Section 504 of the Rehabilitation Act of 1973 (Sec. 504), 29 USC §794; 34 CFR part 104 Americans with Disabilities Act Amendments Act (ADA or ADAAA), 42 USC §§12101 *et seq.*

I. Initial Pleadings

A. Filing a Due Process Complaint

The hearing process cannot begin until a due process complaint has been filed that meets the requirements of 34 CFR §300.508(b). A parent or a public agency may file a due process complaint when there is a dispute regarding: a student's identification and eligibility for special education and related services; the appropriateness of the educational evaluation or the student's proposed or current level of special education services or placement; or any other dispute involving the provision of a free appropriate public education (FAPE) for the student. 20 USC §1415(b)(6); 511 IAC 7-45-3(a).

More specifically, 34 CFR §300.507 provides that a parent or public agency may file a due process complaint concerning any of the matters described in 34 CFR §§300.503(a)(1) & (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). 34 CFR §§300.503(a)(1) & (2) and 511 IAC 7-42-7 require the public agency provide written notice to the parent when it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. This is the basis for the requirement that when filing a response to a parent's due process complaint that if it has not already done so, the school's response must include the prior written notice required by 34 CFR §300.503 and 511 IAC 7-42-7, as that prior written notice provides an explanation of why the agency proposed or refused to take the action raised in the due process complaint; a description of other options that the case conference committee (CCC) considered and why those options were rejected; a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and a description of other factors relevant to the agency's proposed or refused action. This notice is a part of the agency's response and does not preclude the local educational agency (LEA) from raising other defenses or asserting the parent's due process complaint was insufficient.

Contents of the due process complaint

The due process complaint must:

- Be in writing and signed.
- Include student's name and address; or, in the case of a homeless student, available contact information for the student.
- Include the name of the school the student attends.
- Include 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
- Include a proposed resolution of the problem to the extent known and available to the

party at the time.
20 USC §1415(b)(7); 34 CFR §300.508(b); 511 IAC 7-45-3(b).

Format and Content of Due Process Complaint

Instructions and a model form for filing a due process complaint, or request for a due process hearing, can be found at:

<https://www.in.gov/doi/students/special-education/special-education-due-process-hearing-511-iac-7-45-3-through-7-45-7/>

A party is not required to use the model provided, but the information described above must be included in any request for a due process hearing.

The **due process complaint or request should not include** any other motions, requests for discovery, or any other pleading or argument made in anticipation of arguments expected to be filed by the opposing party. Any other motions or preliminary pleadings must be filed separately.

Service

It is the responsibility of the party filing the due process complaint to serve a copy of the complaint on the other party and to file a copy with the Office of Special Education (OSE), IDOE. **The due process complaint must be served on the opposing party by mail or personal delivery.** Because the timelines for the opposing party to file a response, notice of insufficiency, and for the public agency to conduct the resolution session (if required) begin upon receipt of the complaint by the other party, it is strongly recommended that the party filing the due process complaint serve the opposing party by certified mail, return receipt requested, or by personal delivery, so that a record of receipt can be made. **A party filing a due process complaint cannot use I-CHAMP to effectuate service on any other party.** Until a party has been properly served and has entered an appearance, that party will not have access to the case through the I-CHAMP system and will not receive notices of any filings in the matter.

Neither the complaint nor any other information about the student should ever be sent by email. The IDOE will not accept for filing any complaint submitted by email. The filing party is encouraged to submit the due process complaint to the OSE through the electronic filing system. However, service of the initial due process complaint on the opposing party must be made by personal service or U.S. mail.

An initial due process complaint should never be sent directly to an independent hearing officer (IHO). The due process complaint must be sent to the opposing party and the IDOE. The IDOE will appoint an IHO and provide the IHO with a copy of the due process complaint. Should an IHO receive a due process complaint directly from a party before being appointed to that particular case, the IHO should securely destroy the due process complaint to ensure that personally identifiable information about the child is not further disclosed, and notify the party sending the request of the destruction.

Timelines

The timelines begin on the date the party receiving the due process complaint is served with the complaint. The OSE will notify the IHO of the date the due process complaint was received by the OSE, and the IHO may presume that the receiving party received the complaint on the same date the complaint was received by the OSE. Either party may provide proof of the date of service to the IHO to establish a different date of service.

1. Appointment of IHO

The OSE maintains an IHO rotation list. Upon receipt of a due process complaint, the next IHO on the list will be notified of the new complaint. The IHO is expected to respond to the notice of the new due process complaint within twenty-four (24) hours. If the appointment is declined or not timely accepted, the next IHO on the list will be notified.

An IHO may be assigned outside of the rotation order for reasons including, but not limited to: conflict of interest; illness; vacation; previously assigned as an IHO in a matter involving the same parties; or other reasons.

2. Notice to the Parties

Once an IHO has been assigned, the OSE will send notification letters and a copy of the due process complaint to the IHO and the parties.

B. Preliminary Scheduling Order

Within two business days of receiving the notice of appointment, the IHO shall issue a preliminary scheduling order notifying the parties of the specific timelines for filing the response, notice of insufficiency, conducting a resolution meeting, convening an initial prehearing conference, and the commencement of the forty-five (45) calendar day timeline for conducting the hearing and issuing the decision. A sample preliminary scheduling order is included in Appendix A.

C. Response

Within ten (10) calendar days of receiving the due process complaint, the party receiving the complaint must send a response to the other party that specifically addresses the issues raised in the due process hearing request. A copy of the response must also be sent to the IHO. **No extensions of time are permitted.** The IHO has no authority to extend the time for a party to file a response.

34 CFR §300.508(e) & (f); 511 IAC 7-45-5.

If the party receiving the complaint is the public agency, and the public agency has not sent written notice in accordance with 511 IAC 7-40-4(e) or 511 IAC 7-42-7 (34 CFR §300.503), then the public agency must send a response to the parent that includes the following:

1. An explanation of why the public agency proposed or refused to take the action raised in the due process hearing request.
2. A description of the following:
 - a. Other options considered by the case conference committee (CCC) and the reasons why those options were rejected.

- b. Each:
 - i. Evaluation procedure;
 - ii. Assessment;
 - iii. Record; or
 - iv. Report;the public agency used as the basis for the proposed or refused action.
- c. Other factors that are relevant to the public agency's proposed or refused action. 34 CFR §300.508(e); 511 IAC 7-45-5(b).

A response by the public agency under 511 IAC 7-45-5(b) or 34 CFR §300.508(e) does not preclude the public agency from asserting, when appropriate, that the parent's hearing request was insufficient. 34 CFR §300.508(e)(2); 511 IAC 7-45-5(c).

Further, if the party receiving the due process hearing request is the public agency, it shall provide the parent and the hearing officer with a copy of every IEP developed and report of every educational evaluation conducted by the public agency during the two (2) years immediately preceding the filing of the hearing request. If the public agency did not conduct an educational evaluation within the two (2) year period, it shall provide a copy of the report from the most recent educational evaluation conducted regardless of the time period. 511 IAC 7-45-5(c). The IEPs and educational evaluation(s), hereinafter referred to as core documents, are to be used solely for the purpose of assisting the IHO and parties in identifying issues during the initial prehearing conference.

If a party wishes to rely on any of these documents in the presentation of its case, the document(s) must be offered and admitted into evidence during the course of the hearing. The IHO cannot use any of the information contained in these documents in determining findings of fact or conclusions of law unless the document has been properly admitted into evidence at the hearing.

D. Sufficiency

The due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the IHO and the other party in writing, within fifteen (15) calendar days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of 511 IAC 7-45-3(b) and 34 CFR §300.508(b). The notice of insufficiency must identify how the complaint is insufficient. **No extensions of time are permitted.**

34 CFR §300.508(d)(1); 511 IAC 7-45-4(b).

Within five (5) calendar days of receipt of notification of insufficiency, the IHO must make a determination **on the face of the due process hearing request** of whether it meets the requirements and immediately notify the parties in writing of that determination. 34 CFR §300.508(d)(2); 511 IAC 7-45-4(c).

There is no right of a party to file a response to the notice of insufficiency, nor can a party supplement its due process complaint to avoid an IHO determination of

insufficiency. The IHO must rule on the face of the due process complaint.

If the IHO deems the hearing request is not sufficient, the IHO must identify how the request is insufficient and provide a date by which the filing party can amend the due process complaint if appropriate.

34 CFR §300.508(d)(2); 511 IAC 7-45-4(c).

E. Amended Due Process Complaint

For reasons other than insufficiency, a party may amend its complaint *only* if: the party submits a motion identifying the reasons for the proposed amendment and the IHO grants permission; or the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting.

34 CFR §300.508(d)(3); 511 IAC 7-45-4(d).

Should a party attempt to file an amended complaint without the written consent of the other party or permission of the IHO, the IHO shall deny the requested amendment and direct the party to comply with the requirements of 34 CFR §300.508(d)(3) and 511 IAC 7-45-4(d).

If amended, the timelines for the resolution meeting begin again.

34 CFR §300.508(d)(4); 511 IAC 7-45-4(e)

II. Resolution Meeting

(Note: The thirty (30) calendar day resolution period, and requirement for the public agency to conduct a resolution meeting with the parent do not apply if the public agency is the party that filed the due process complaint.)

A. Purpose

The purpose of the resolution meeting is for the parent to discuss the request for due process hearing and facts that form the basis of the request so that the public agency has the opportunity to resolve the dispute that is the basis of the request. 34 CFR §300.510(a)(2); 511 IAC 7-45-6(c).

The purpose of the resolution process is to attempt to achieve a prompt resolution of the parent's due process complaint as early as possible at the local level and to avoid the need for a more costly, adversarial, and time-consuming due process proceeding. Thus, the IDEA's due process procedures emphasize prompt and early resolution of disputes between parents and public agencies through informal mechanisms at the local level without resorting to the more formal and costly due process hearing procedures and potential for civil litigation. *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A C-1 & D-1. (Appendix B). (There is no resolution period, nor is a resolution meeting required, when the public agency requests a hearing. Hearing timelines begin when the parent receives the public agency's due process complaint.)

B. Timeline

Within fifteen (15) calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing, the public agency must convene a meeting with the parent and relevant members of the CCC who have specific knowledge of the facts identified in the hearing request. A resolution meeting is not required if the hearing was requested by the public agency.

34 CFR §300.510(a)(1); 511 IAC 7-45-6(a) & (b); *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-2. (Appendix B).

C. No Extension of Time (EOT) for Resolution Meeting

There is no provision in the IDEA statute or in federal or state regulations that permits an IHO to grant an EOT for the parties to conduct a resolution session. Nor, for that matter, can the public agency or IDOE extend the timelines to take into account periods of public agency breaks. Letter to Anderson, 110 LRP 70096 (OSEP November 10, 2010). (Appendix B).

D. Participants

The participants in the resolution meeting are the parents and relevant members of the CCC who have specific knowledge of the facts identified in the due process hearing request, as determined by the parents and the public agency. Each party determines its own appointees to the dispute resolution meeting. The participants must include a representative of the public agency who has decision-making authority on behalf of the public agency and may not include an attorney for the public agency unless the parent is accompanied by an attorney. 34 CFR §300.510(a); 511 IAC 7-45-6(a) & (e).

E. Waiver of Resolution Meeting

The resolution meeting need not be held if the parents and the public agency agree in writing to waive the meeting. 34 CFR §300.510(a)(3)(i); 511 IAC 7-45-6(d)(1). The forty-five (45) calendar day hearing timeline begins the day following the written agreement to waive the resolution meeting. 34 CFR §300.510(c)(1); 511 IAC 7-45-6(f)(1).

F. Mediation in Lieu of Resolution Meeting

The resolution meeting need not be held if the parents and the public agency agree to use the mediation process **described in 511 IAC 7-45-2**. (34 CFR §300.510(a)(3)(i); 511 IAC 7-45-6(d)(2)). If the parties agree to use an outside mediation service or provider, the public agency is still required to conduct a resolution meeting as the outside mediation is not the process described in 511 IAC 7-45-2.

G. EOT for Mediation

Mediation does not extend the thirty (30) calendar day resolution process timeline in 511 IAC 7-45-6(f) unless the parties agree in writing to extend the timeline to use the mediation process described in 511 IAC 7-45-2. (511 IAC 7-45-6(d)). The IHO cannot extend the resolution timeline

if the parties are engaging in other settlement processes, such as arbitration, settlement negotiations or meetings, or mediation other than as provided for in 511 IAC 7-45-2. If the parties agree to use the mediation process described in 34 CFR §300.506 instead of the resolution process described in 34 CFR §300.510, the resolution meeting does not need to be held but the 30-day resolution period would still apply. If the parties agree in writing to continue the mediation process beyond the end of the thirty (30) day resolution period that began when the due process complaint was received, the forty-five (45) calendar day due process hearing timeline does not begin until one of the parties withdraws from the mediation process or the parties agree in writing that no agreement can be reached through mediation. 34 CFR §300.510(c)(2) and (3). *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-24 (Appendix B).

If the parties agree in writing to continue the mediation process beyond the end of the thirty (30) calendar day resolution period, they must file a motion with the IHO to extend the resolution period. The IHO must enter an order indicating the forty-five (45) calendar day due process hearing timeline will begin on the earliest of the date the parties agree in writing that no agreement can be reached, one of the parties withdraws from mediation, or the date of the mediation. The order must specify a time, not later than thirty (30) calendar days, within which the mediation must be conducted. Failure to comply with the order may result in dismissal of the due process complaint. If the mediation cannot be conducted within thirty (30) calendar days, the parties may request a specific extension of time. A sample order is included in Appendix A.

If the parties use an outside mediation service or provider rather than the mediation process described in 511 IAC 7-45-2, the thirty (30) calendar day resolution period cannot be extended.

H. Parent Failure to Participate

If the parent fails to participate in the resolution meeting, the timelines for conducting the hearing will be delayed until the meeting is held.

If the parent refuses to participate after reasonable efforts have been made and documented in accordance with 511 IAC 7-45-6(h), the public agency may request that the IHO dismiss the parent's due process complaint at the expiration of the thirty (30) calendar day resolution period. 34 CFR §300.510(b)(4); 511 IAC 7-45-6(i).

I. Public Agency Failure to Conduct or Participate

If the public agency fails to hold or participate in the resolution meeting within fifteen (15) calendar days of receiving the parent's due process complaint, the parent may seek the intervention of the IHO to begin the forty-five (45) calendar day due process hearing timeline. 34 CFR §300.510(b)(5); 511 IAC 7-45-6(j).

If a party fails to participate in the resolution meeting and neither party seeks the intervention of the IHO to adjust the thirty (30) calendar day resolution period, the forty five (45) calendar day timeline for the due process hearing would remain in effect beginning at the end of the thirty (30) calendar day resolution period. 34 CFR §§300.510(b)(2) & 300.515(a); 511 IAC 7-45-7(b);

Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B), 61 IDELR 232 (OSEP 2013), Q/A D-14. (Appendix B).

J. Confidentiality

Unlike Mediation, the IDEA and its implementing regulations do not prohibit or require discussions that occur during a resolution meeting to remain confidential. Neither a public agency nor a parent may require a confidentiality agreement as a precondition to engage in a resolution meeting. Similarly, an IHO may not require the parties execute a confidentiality agreement prior to participating in a resolution meeting. There is no requirement under the IDEA or Article 7 requiring parties to a resolution meeting to keep the discussions that occur in those meetings confidential, including prohibiting the introduction of those discussions at any subsequent due process hearing or civil proceeding. There is also nothing in the IDEA or its implementing regulations that would prohibit the parties from entering into a confidentiality agreement as part of their resolution agreement resolving the dispute that gave rise to the parent's request for a due process hearing. However, absent an enforceable agreement by the parties requiring that these discussions remain confidential, either party may introduce information discussed during the resolution meeting at a due process hearing or civil proceeding when presenting evidence and confronting or cross-examining witnesses consistent with 34 CFR §300.512(a)(2). Analysis of Comments and Changes, 71 FR 46704 (August 14, 2006); *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-16, 17 & 18. (Appendix B).

K. Resolution Agreement

Pursuant to 34 CFR §300.510(d), if a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement. Either party may void the agreement within three business days of the agreement's execution. This regulation contemplates that an agreement might not be finalized at the resolution meeting and therefore allows for a thirty (30) calendar day resolution period. At a time subsequent to the resolution meeting, the parties may have additional discussions and may execute a written settlement agreement within the thirty (30) calendar day resolution period. Only a legally binding agreement reached during the thirty (30) calendar day period that meets the requirements of 34 CFR §300.510(d) and (e), is considered an agreement under the resolution process requirements. *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, 113 LRP 30291 (OSEP 2013), Q/A D-19. (Appendix B)

If agreement is reached, the parties execute a legally binding agreement that is signed by both parties. The signed, written agreement is enforceable in any state court with jurisdiction or a federal district court. The parent may also seek enforcement through the state complaint process outlined in 511 IAC 7-45-1. Either party may void the agreement by notifying the other party in writing within three (3) business days of the agreement's execution. (34 CFR §300.510(d) & (e); 511 IAC 7-45-6(k), (l), & (m)). If agreement is reached, the parent should either withdraw the hearing request or request that the IHO dismiss the matter. If the parent fails to do so, the public agency may request that the IHO dismiss the matter. If the IHO receives a request to dismiss from the public agency, unless the motion to dismiss was filed jointly, the IHO

may require that the public agency submit a copy of the resolution agreement showing the issues have been resolved and must give the parent an opportunity to respond.

III. Prehearing Conference(s)

A. Introduction

The IHO shall conduct an initial prehearing conference (PHC) to, among other matters, identify the parties and their representatives, advise the parties of their rights, establish hearing dates and other timelines, identify and clarify the issues, explore settlement possibilities, determine the need for discovery, and to rule on any pending motions. 511 IAC 7-45-6.5. The IHO may, on the IHO's own motion, and shall, on the motion of a party, conduct additional PHCs. The IHO may deny a motion for a PHC if the IHO has previously conducted a PHC in the proceeding. I.C. 4-21.5-3-18(a).

B. Notice

The notice of PHC must include the following:

1. The names and mailing addresses of the parties and other persons to whom notice is being given by the IHO.
2. The name, official title, and mailing address of any counsel or employee who has been designated to appear for a party and a telephone number through which the counsel or employee may be reached.
3. The official due process complaint number, the name of the proceeding, and a general description of the subject matter.
4. A statement of the time, place, and nature of the PHC, including telephone numbers or login if the PHC is conducted by telephone or virtually.
5. A statement of the legal authority and jurisdiction under which the PHC and the hearing are to be held.
6. The name, title, and mailing address of the IHO and how information concerning hearing schedules and procedures may be obtained.
7. A statement that a party who fails to attend or participate in a PHC, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under I.C. 4-21.5-3-24. I.C. 4-21.5-3-18. A sample notice of PHC is included in Appendix A.

C. Initial PHC

If the due process complaint was filed by the parent, the IHO shall conduct an initial PHC as soon as practical after the time for the resolution meeting but before the expiration of the resolution period and start of the hearing timeline. If the due process complaint was filed by the public agency, PHC shall be conducted no later than fifteen (15) calendar days after the parent receives the due process complaint.

D. The PHC may be conducted in person, or by telephone or video conference as long as each participant has an opportunity to participate in; to hear; and if technically feasible, to see; the entire proceeding while it is taking place. I.C. 4-21.5- 3-19(b).

E. Purpose

The initial PHC **must** address the following:

1. Identification of the parties and their representatives. If a party is represented by more than one attorney, a lead attorney shall be designated. Only the calendar of the lead attorney need be consulted for scheduling.
2. Mailing addresses, fax numbers and other contact and service information of the parties and their representatives.
3. Advise parties of their rights, including the right to:
 - a. Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to special education or the problems of students with disabilities.
 - b. Be represented by an individual who is not an attorney as permitted by I.C. 4-21.5-3-15(b).
 - c. Present evidence and:
 - d. Confront,
 - e. Cross-examine; and
 - f. Compel the attendance of: witnesses.
 - g. Conduct discovery in accordance with I.C. 4-21.5-3, Indiana Rules of Trial Procedures (T.R. 26 – 37), and 511 IAC 7-45-7 after the identification of issues.
 - h. Prohibit the introduction of any evidence that has not been disclosed at least five (5) business days prior to the hearing.
 - i. Separation of witnesses who are not parties to the dispute.
 - j. Obtain a written, or at the option of the parents, an electronic verbatim transcript of the hearing.
 - k. Obtain a written, or at the option of the parents, electronic findings of fact and decision.
 - l. Be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English. An interpreter will also be provided if required by a witness under the same circumstances. 511 IAC 7-45-7(d).
4. Additional rights of parents include the right to:
 - a. Have the student who is the subject of the hearing attend.
 - b. Have the hearing open or closed to the public.
 - c. Inspect and review, prior to the hearing, any records pertaining to the student maintained by the public agency, its agents, or employees, including all tests and reports upon which the proposed action may be based.
 - d. Recover reasonable attorney's fees if a court determines the parent ultimately prevailed at the:
 - e. Due process hearing; or
 - f. Judicial review.

- g. Obtain a written or electronic verbatim transcript of the proceedings at no cost.
 - h. Obtain a written or electronic findings of fact and decisions at no cost. 511 IAC 7-45-7(e).
5. Resolution of the issues when the IHO has received a motion for summary judgment.
 6. Identification and clarification of the issues. For each issue identified, the party requesting the hearing shall provide facts specific to the issue, as well as a proposed resolution. In the event that additional issues are added by the other party, that party shall provide facts specific to the additional issues as well as a proposed resolution. Framing and consolidating the issues is the responsibility of the IHO and is crucial for determining the course of the hearing and providing clarity to parties. 511 IAC 7-45-7(f)(3). The IEPs and educational evaluations (core documents) provided in response to the parent's due process complaint, as required by 511 IAC 7-45-5(c) shall be used for reference to identify the areas of dispute and the issues. These documents are not considered evidence unless and until they are offered and admitted into evidence during the course of the due process hearing.
 7. Exploration of settlement possibilities.
 8. Preparation of stipulations by the parties and deadline for submission of stipulations on evidence to be admitted at hearing.
 9. Scheduling – maintaining timelines.
 - a. Resolution meeting/resolution period.
 - b. Decision deadline.
 - c. Discovery issues and deadlines. (See Chapter IV Discovery)
 - d. Disclosure of witness list and exhibits.
 10. A determination on the number of days for the hearing and the limit on the length of time for each witness to testify.
 11. Objections to proffers of evidence.
 12. The order of presentation of evidence and cross-examination.
 13. Rulings regarding issuance of subpoenas, discovery orders, and protective orders.
 14. Such other matters as will promote the orderly and prompt conduct of the hearing. I.C. 4-21.5-3-19(c); 511 IAC 7-45-6.5.

F. Initial and Subsequent PHC

In addition to the matters that must be addressed during the initial PHC, the following matters should be addressed either at the initial PHC or a subsequent PHC prior to the due process hearing:

1. Along with the limit on the length of time for each witness to testify, rulings on identity and limitation of the number of witnesses. If the parent intends to call public agency employees as witnesses, the parent needs to provide sufficient notice to the public agency of the date and time for the testimony so the public agency can provide for a substitute if necessary.
2. A determination of the extent to which direct evidence, rebuttal evidence, or cross examination will be presented in written form.

G. Final PHC Immediately Prior to Hearing

A final PHC shall be held immediately prior to the start of the hearing to rule on any outstanding motions, finalize any stipulations as to facts or evidence, and address any other matters.

H. For each PHC held, the IHO shall issue a prehearing order incorporating the matters determined at the PHC. The final PHC should be reflected in the procedural history portion of the written decision. I.C. 4-21.5-3-19(c); 511 IAC 7-45-6.5.

IV. Discovery

A. Discovery in due process hearings is governed by 511 IAC 7-45-6.5 & 7 as well as the AOPA and the Indiana Rules of Trial Procedure. The IHO has discretion and authority to rule on all discovery requests. 511 IAC 7-45-6.5 & 7(d) & (f). A party seeking a discovery order shall submit the request to the IHO. The IHO has discretion to grant reasonable requests for discovery. A discovery request may be denied if the IHO determines it is vague, overly broad, unduly burdensome, irrelevant, made for an improper purpose, or for other just reason. A due process complaint must include a description of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution to the extent known and available to the party at the time. 34 CFR §300.508(b)(5) & (6). Discovery, therefore, is not to determine issues for the hearing. Discovery requests may be made after the IHO frames the issues at the initial prehearing conference. The framing of the issues is based on the description of the problem and facts identified in the due process complaint.

B. Informal Discovery

Because all due process hearings involve issues concerning the provision of a free appropriate public education to a student with a disability, in addition to any core documents provided by the public agency in its due process complaint response, the parties should be encouraged to freely disclose all relevant records and documents concerning the student's education, disability and how the disability affects educational performance, the need for special education and related services, and placement decisions without the need to resort to formal discovery procedures. Unless otherwise prohibited, informal discovery can occur at any point prior to the due process hearing.

C. Student Educational Records

The public agency must comply with a request from a parent or student of legal age to inspect and review the educational record before any meeting regarding an individualized educational program (IEP), an interim alternative educational setting (IAES), or a manifestation determination. The public agency must also comply with a request to inspect and review the educational record prior to a resolution meeting, a due process hearing, or an expedited due process hearing. 34 CFR §300.613; 511 IAC 7-38-1(g). The right to inspect and review educational records includes the right to receive a copy of the student's educational record from the public agency for use in a pending due process hearing. 511 IAC 7-38-1(d)(4). However, this does not mean that the public agency must provide a copy of the student's educational record prior to the resolution meeting absent a request from the parent. The parent, or parent's attorney, bears the responsibility to review the record prior to the hearing request and prior to the resolution meeting. The public agency must provide a copy of the student's educational record at least five (5) business days prior to the hearing unless the IHO designates some other time.

D. Formal Discovery

The IDEA does not contain any discovery rules per se. Whether it is permissible for a party to be requested to produce documents or answer interrogatories prior to a due process hearing is within the discretion of the IHO, subject to State or local rules of procedures. Letter to Stadler, 24 IDELR 973 (OSEP 1996). While parties often try to rely on the discovery provisions of the Indiana Rules of Trial Procedure,⁴ due process hearings are not typical administrative hearings as they involve disagreements between public agencies and parents concerning the provision of a FAPE for students with disabilities.

They do not involve a dispute, disagreement nor a challenge to a determination made by a state administrative agency. Although the IDEA requires the state educational agency (SEA) to establish procedures for conducting due process hearings, such hearings do not typically involve disputes with a state agency. Due process hearings involve disputes or disagreements between parents and local educational agencies (LEA) concerning the provision of a free appropriate public education to students with disabilities.

Special education due process hearings are conducted pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC §1415; 3 CFR §§300.507 – 300.517, 511 IAC 7-45-3 – 7-45-11 (Art. 7), and the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3. AOPA provides a general procedural framework for conducting hearings providing some guidance and a procedural framework in areas not covered by the IDEA and Art. 7. AOPA must be applied in a way that is not inconsistent with the more specific requirements of the IDEA and Art. 7.

Although discovery in IDEA proceedings in Indiana is regulated by the AOPA and Art. 7, as noted supra, AOPA does not provide a party the right to serve interrogatories or discovery on another party except by order issued through the IHO. I.C. 4-21.5-3-22 is unmistakable in this regard. I.C. 4-21.5-3-22(b) provides that a party seeking the discovery order shall do so in accordance with AOPA rules of procedure. Parties and IHOs should be mindful that resorting to T.R. 28(F) could be inconsistent with the IDEA given the timeframe for responding to discovery found within the Trial Rules.

Answers to interrogatories or the production of documents, for example, would be provided “not less than thirty (30) days after service” T.R. 33(C), T.R. 34(B). This timeframe would be or could be inconsistent with the Congressional intent that IDEA due process procedures are to be resolved as quickly as possible, consistent with a fair consideration of the issues involved.

To ensure that the mandates and purposes of the IDEA are met, IHOs have the “discretion and authority to...rule on any other matters with respect to the conduct of a due process hearing, subject to administrative or judicial review of abuse of such discretion or authority, mistake in

⁴ TR 28(F) provides that: whenever an adjudicatory hearing, including any proceeding subject to judicial review, is held by or before an administrative agency, any party to that adjudicatory hearing shall be entitled to use the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure. Such discovery may include any relevant matter in the custody of the administrative agency.

law as to the exercise of such discretion or authority, or that such authority was exercised in an arbitrary or capricious manner.” 511 IAC 7-45- 7(f)(4).

The IHO has the authority to consider discovery requests and issue discovery orders, and it is the IHOs responsibility to promote an orderly, prompt, and just conduct of the proceedings. This is particularly necessary given the IDEA’s short time frames and general purpose that such proceedings be concluded in as expeditious a manner as practicable to ensure students with disabilities receive a FAPE, including special education and related services. With respect to interrogatories and the production of documents, the IHO would likely have to issue a discovery order that indicates a shorter time frame for response than that provided by the Trial Rules. The IHO may also decide that some interrogatories or requests for production of documents are overly burdensome, inappropriate, irrelevant, immaterial, or cumulative. Such a discovery order is subject to appeal.

Article 7 due process hearings must comport with federal law requirements. To that end, the AOPA will apply to the extent it is not inconsistent with the IDEA and Art. 7. T.R. 28(F) does not have any priority for applicability over a proceeding subject to AOPA and the IDEA/Art. 7. As a result, parties to an Art. 7 due process hearing do not have the same unilateral recourse to engage in discovery as in other administrative proceedings not involving the IDEA/Art. 7. The IHO has discretion and authority to control discovery and ensure discovery is not oppressive or burdensome, is related to the issues, is not being used for improper purposes, and does not delay hearing timelines.

E. Order Compelling Discovery

A party may seek an order compelling discovery. The IHO shall not grant the order unless the party requesting the discovery order shows that the opposing party failed to respond to an informal request; the information requested is relevant to an identified issue; and the request is not overly burdensome. 511 IAC 7-45-6.5(e). An IHO may impose sanctions upon a party that fails to comply with a discovery order. As an example, if a party refuses to respond to a request for information on a particular issue, or refuses consent for another party to respond, the IHO may prohibit the noncompliant party from introducing evidence or testimony on that issue.

F. Protective Orders

The IHO has discretion, upon good cause shown, to issue protective orders to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense. The protective order may include, but is not limited to, one or more of the following:

1. That discovery not be had.
2. That discovery may be had only on specified terms and conditions, including a designated time and place.
3. That discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
4. That certain matters not be inquired into, or that the scope of discovery be limited to certain matters.
5. Other protections within the sound discretion of the IHO.

See, T.R. 26(C).

G. Failure to comply with discovery orders: Sanctions – IC 4-21.5-3-8 (AOPA) The AOPA at IC 4-21.5-3-8 specifically allows for the imposition of sanctions. Before imposing sanctions, the IHO must provide notice and an opportunity to be heard. Indpls. Public Schools (Ind. SEA 729-93, Aug. 1, 1994), 21 IDELR 423, 21 LRP 2871. (Decision of the BSEA affirming the decision of IHO James Roth, but amending the order on sanctions directing that Petitioner’s attorney rather than Petitioner be responsible for the sanction.

V. Motions

At appropriate stages, the independent hearing officer (IHO) shall give the parties full opportunity to file pleadings, motions, and objections. I.C. 4-21.5-3-17(a). The IHO shall rule on all prehearing motions before the start of the hearing and all orders shall be provided in writing to the parties. Other than an objection to the sufficiency of the request for hearing, if a party files a motion, the IHO should allow the opposing party an opportunity to respond before ruling on the motion. During the course of the hearing or during prehearing proceedings, if an IHO takes a motion or objection under advisement, the ruling on the motion or objection shall be made prior to the close of the hearing and shall be made on the record or in writing such that the parties have notice of the ruling prior to the close of the hearing. If a party files a written motion, the IHO must issue a written order addressing the motion. Oral motions made during a prehearing conference must be addressed in the written prehearing order. Oral motions made during the hearing may be addressed through an oral order on the record or addressed in the written hearing decision.

Such motions may include, but are not limited to:

- A. Motion to Disqualify – a request to disqualify an IHO, typically if a party believes the IHO is subject to disqualification under I.C. 4-21.5-3-10 or I.C. 4-21.5-3-12, or if such is necessary to eliminate the effect of an ex parte communication.
- B. Motion to Strike – a request to amend by deleting one or more words.
- C. Motion to Compel Discovery – a request to force the opposing party to respond to a discovery request.
- D. Motion to Dismiss – a request that the IHO dismiss the case or one or more issues because of settlement, voluntary withdrawal, or a procedural defect.
- E. Motion for Summary Judgment – a request for judgment without a hearing because there are no genuine issues of material fact to be decided by the IHO, and the party is entitled to judgment as a matter of law. A motion for summary judgment must be served at least 5 days before any hearing on the motion. The opposing party may submit opposing affidavits before the day of the hearing. The IHO shall grant the judgment if the pleadings, depositions, answers to interrogatories, and admissions on file show that a genuine issue as to any material fact does not exist and the moving party is entitled to judgment as a matter of law. I.C. 4-21.5-3-23.

- F. Motion for Protective Order – request that the IHO protect the party from abusive action by the other party, usually related to discovery.
- G. Motion in Limine – a pretrial request that certain testimony or evidence not be referred to or offered at hearing, typically when a party believes that the mere mention of the evidence would be highly prejudicial and could not be remedied by an instruction to the jury.
- H. Motion for Stay-Put Order – a request to determine the placement of a student during the due process hearing or appeal of disciplinary action pursuant to 511 IAC 7-44-8 or 511 IAC 7-45-7(s)-(u).

VI. Disclosure of Witnesses and Evidence

A. Exchange Witness List and Evidence – Five (5) Business Day Rule

1. A party to a due process hearing has the right to prohibit the introduction of any evidence at the hearing that was not disclosed at least five (5) business days prior to the hearing. 34 CFR §300.512(a)(3); 511 IAC 7-45-7(d)(5). The parties must, therefore, exchange exhibits, and witness and exhibit lists at least a week before the hearing. The witness and exhibit list should also be provided to the IHO. However, exhibits are not to be submitted to the IHO prior to the hearing other than the core documents that were provided prior to the resolution meeting or within fifteen (15) days of the filing of the due process complaint. If a party intends to offer any of the core documents into evidence, those documents do not need to be provided to the opposing party again, but they do need to be identified on the list of proposed exhibits.
2. At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without consent of the other party. 34 CFR §300.512(b); 511 IAC 7-45-7(h).

B. Order of Witnesses

The IHO may require the parties to provide the IHO with a list of the order in which witnesses will be called, including the approximate time. This is important as schools may need to schedule substitutes or otherwise schedule to cover classes if a teacher or other school employee is being asked to testify. It is within the IHO's discretion to permit witnesses to be called out of order to accommodate schedules and to permit witnesses to testify by telephone or videoconference or other electronic means.

C. Subpoenas for Witnesses

Subpoenas are often required for non-party witnesses to ensure their attendance or to enable the witness to be excused from work. The IHO should inquire whether subpoenas are required for the attendance of witnesses. Schools may agree to make their employees available without

a subpoena provided the parent provides notice as to when the employee will be needed. The IHO may require counsel to prepare the subpoena for IHO signature. The IHO may prepare the subpoena for pro se parties.

D. Evaluations

Evaluations that were conducted by either party and considered by the student's CCC are part of the student's education record. Any evaluation conducted by a party in preparation for the hearing or that has not been provided to the other party must be disclosed as set forth above in section VI.(A)(2).

E. Expert Witnesses

An expert witness is one who is qualified by knowledge, skill, experience, training, or education to provide technical or specialized opinion about the evidence or a fact issue. The IHO has the discretion to determine whether a witness qualifies as an expert, and to determine the areas of expertise. If a school psychologist is testifying only about his/her own evaluation or observations rather than opinion as to other matters not within the psychologist's direct observation and knowledge, then the psychologist is testifying as a witness with first-hand knowledge and not as an expert witness.

VII. Conducting a Hearing

The independent hearing officer (IHO) shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts. I.C. 4-21.5-3-25(b). The IHO may, after a prehearing order is issued under I.C. 4-21.5-3-19, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding. I.C. 4-21.5-3-25(d)(2).

A. Final Prehearing Conference (PHC)

A final PHC should be conducted on the morning of the first day of the hearing. The purpose of the final PHC is to ensure that all parties understand the hearing procedures and how the hearing will be conducted. Concerns that were addressed at earlier PHCs may also be reviewed. The following may also be addressed:

1. Pending Motions
The IHO should address any pending motions.
2. Separation of Witnesses/Presence of Party Representative
Parties to due process hearings have a right to a separation of witnesses who are not parties. If requested, the IHO must order a separation of witnesses. A separation of witnesses order does not apply to a party, even if the party may be called upon to testify. A public agency is entitled to have a public agency representative, in addition to the public agency's attorney, remain during the hearing. If a special education cooperative or interlocal is also named as a party, the cooperative or interlocal is also entitled to have a representative remain during the hearing.
3. Witnesses
Review any special arrangements or considerations for witnesses that may be required, such as the need for interpreters, testifying by telephone, joint witnesses, or calling witnesses out of order. To expedite the proceedings, the parties may agree, or the IHO may order, that some testimony be presented by affidavit and with the opposing party being provided with the opportunity to cross-examine.
4. Whether the parent is choosing to have the hearing closed or open to the public. If the hearing is closed, the IHO should ensure that the individuals in the room are limited to parties and their representatives, with witnesses only permitted when they are testifying. A witness may observe part of the hearing after the witness has testified only if the parties stipulate that the witness will not be recalled.
5. Whether the student will be present for all or part of the hearing. The parent has the right to determine whether the student will be present.
6. Time limits for presentation of case.
7. Any other concerns of a party.
8. Any other matters the IHO needs to address.

B. Recording

The IHO shall have the hearing recorded and a transcript prepared at the public agency's expense. The parent has the right to designate whether the parent would like an electronic or paper copy of the transcript. The parent can obtain the copy of the transcript from the Indiana Department of Education (IDOE) as set forth in section XI. H. (Miscellaneous – Obtaining the Transcript or Record from the IDOE).

C. Burden of Persuasion

The party requesting the hearing has the burden of proof and presents its case first.

D. Opening Statements

The IHO may permit the parties to make short opening statements. The parties should be reminded that opening statements are not evidence and that only the testimony of witnesses, documentary evidence admitted during the hearing, and any stipulations of the parties will be considered in rendering the decision.

E. Witnesses

All testimony must be given under oath or affirmation. The IHO may ask the court reporter to administer the oath or the IHO may administer the oath.

F. Interpreter Oath - I.C. 4-21.5-3-16

A person who cannot speak or understand the English language, or who, because of hearing, speaking, or other impairment, has difficulty communicating with other persons and who is a party or witness in the hearing is entitled to an interpreter to assist the person throughout the proceeding. Every interpreter for another person in a proceeding shall take the following oath:

“Do you affirm, under penalties of perjury, that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (her), the questions that may be asked him (her), and the answers that he (she) shall give to the questions, relative to the cause now under consideration before this hearing officer?”

G. Order of Questioning

1. Direct Examination – questioning of the witness by the party who called the witness to testify.
2. Cross-Examination – questioning of the witness by the party opposed to the party who called the witness to testify. Typically, the cross-examiner is allowed to ask leading questions, but is traditionally limited to matters covered on direct examination and to credibility issues. Sometimes an individual is on the witness list for both parties. When that is the case, the parties may agree that the cross-examiner may also conduct direct examination so the witness will not need to be called to testify later. Whether to permit this is within the discretion of the IHO. However, leading questions should not be permitted during what is, in essence, direct examination.

3. IHO – questioning by the IHO for clarification. Generally, any questioning by the IHO should be limited to matters requiring clarification and not to elicit new testimony. It is not the role of the IHO to make, or refute, a case for a party. Care should be taken so the IHO is not perceived as advocating for a party.

H. Evidentiary Considerations – I.C. 4-21.5-3-26

Evidence must be relevant and material. All testimony must be under oath or affirmation. Documentary evidence may be in the form of a copy or excerpt. Upon request, parties shall be given the opportunity to compare the copy with the original if available. A party offering an excerpt may be required to produce the entire document if there are questions as to the context in which the excerpt appeared.

1. Exhibits
All exhibits should be clearly numbered and labeled to identify the party submitting the exhibit. (E.g.: P-1, P-2, etc. (for parent or petitioner) and R-1, R-2, etc. or S-1, S 2, etc. (for respondent or public agency)). A party to a due process hearing has the right to prohibit the introduction of any evidence at the hearing that was not disclosed at least five (5) business days prior to the hearing. 34 CFR §300.512(a)(3); 511 IAC 7-45-7(d)(5).
2. Relevant/Redundant
Upon proper objection, the IHO shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts. In the absence of an objection, the IHO may exclude objectionable evidence. I.C. 4-21.5-3-26(a).
3. Hearsay
The IHO may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence. I.C. 4-21.5-3-26(a).
4. Official Notice may be taken of the following:
 - a. Any fact that could be judicially noticed in the courts. (See, I.R.E 201, Appendix F).
 - b. The record of other proceedings before the agency.
 - c. Technical or scientific matters within the agency's specialized knowledge.
 - d. Codes or standards that have been adopted by an agency of the United States or this state.
IC 4-21.5-3-26(f).

Parties must be notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under IC 4-21.5-3- 26(f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and date, and afforded an opportunity to contest and rebut the facts or material noticed. IC 4-21.5-3-26(g).

I. Ruling

The IHO should rule on motions and objections at the time they are made. There may be times, however, when additional information is needed and the IHO takes the matter under advisement. The IHO must still rule on the motion or objection in a timely manner.

J. Closing Statements

At the conclusion of the hearing the IHO may permit the parties or their representatives to make closing statements. Closing statements give the parties an opportunity to summarize the evidence and make a legal argument for the party's position. Closing statements are not made under oath, are not considered testimony or evidence, and are not subject to cross-examination. The IHO should impose and enforce a time limit for closing statements. Closing statements are not required and may be waived by a party.

K. Post-Hearing Briefs

Post-hearing briefs may be submitted by the parties at the discretion of the IHO. The submission of post-hearing briefs should not, however, be used to delay the issuance of the final decision in the case. The IHO should not require the parties file post-hearing briefs unless there is a particularly complex legal issue that needs to be briefed to provide the IHO a legal analysis to aid in reaching a decision. In that event, the IHO should clearly indicate to the parties the issue or issues to be briefed. Because preparing post hearing briefs raises the costs to the parties, such briefs should not be required as a general rule.

L. Proposed Findings

The IHO may allow the parties a designated amount of time after the conclusion of the hearing to submit proposed findings. I.C. 4-21.5-3-27(f). However, the IHO should not require this. If a party requests the opportunity to submit proposed findings, it is within the IHO's discretion to permit such submission provided that it is done within the time prescribed for the issuance of the final decision, or the party specifically requests an extension of time, which is granted, without the IHO requesting that the party ask for an extension of time.

M. Request for Expedited Transcript

Should a party request an expedited transcript, the party requesting the expedited transcript is responsible for making the arrangements with the court reporter for obtaining the expedited transcript and for paying the court reporter the fees associated with providing the expedited transcript. A parent is entitled to a copy of the transcript at no cost from the IDOE. 511 IAC 7-45-7(o). There is no right to receive a transcript at no cost from the court reporter, from the IHO, or from any other entity or party. To receive a transcript at no cost, the parent (or the parent's attorney) will need to make a request, in writing, to the IDOE after the conclusion of the hearing. After the hearing record has been received, the IDOE will provide a copy of the transcript to the parent. When possible, the transcript will be uploaded to the electronic filing system and made available to all parties.

VIII. Written Decision - 511 IAC 7-45-7(j)

A. Timelines

If the hearing was requested by the parent, the IHO's written decision must be issued within forty-five (45) calendar days after the thirty (30) calendar day resolution period in 511 IAC 7-45-6(f), or one of the events specified in 511 IAC 7-45-6(f)(1) through (3). 511 IAC 7-45-7(b).

If the hearing is requested by the public agency, the IHO's written decision must be issued within forty-five (45) calendar days after the request for hearing was received by the parent. 511 IAC 7-45-7(a).

B. Service of Decision

Parties who are utilizing the electronic filing system will receive the written decision electronically. For pro se parents, the IHO shall mail a copy of the hearing decision via certified mail, return receipt requested. 511 IAC 7-45-7(m). The IHO should identify the hearing number on the return receipt and have the return receipt sent to the OSE to the attention of the Dispute Resolution Team.

C. Content – 511 IAC 7-45-7(j)

The decision of the IHO shall be based solely upon the oral and written evidence presented at the hearing. 511 IAC 7-45-7(k). Oral and written statements and arguments of the attorneys or representatives are not evidence and cannot be used to establish the facts in the matter before the IHO. An IHO may not find that a student was denied a free appropriate public education (FAPE) based upon procedural violations alone unless the procedural inadequacies: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or (3) caused a deprivation of educational benefit. 511 IAC 7-45-7(k).

1. Findings of Fact

The order must include separately stated findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. I.C. 4-21.5-3-27(b). Findings of fact must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in the proceeding. Findings must be based upon the kind of evidence that is substantial and reliable. The IHO's experience, technical competence, and specialized knowledge may be used in evaluating evidence. I.C. 4-21.5-3-27(d).

2. Conclusions of Law – Findings of Ultimate Fact

Conclusions of law (or findings of ultimate fact as used in AOPA) must be accompanied by a concise statement of the underlying basic facts of record to support the findings.

3. Orders

All orders issued must be directly related to the issues in the hearing and supported by the findings of fact and conclusions of law. Orders should be clear and unambiguous. No order should be directed to a nonparty.

4. Notice of Right to Seek Judicial Review

The IHO's decision must include a notice that a party may seek judicial review of the decision and orders by filing a petition for judicial review in a civil court with jurisdiction within thirty (30) calendar days after receipt of the IHO's decision. 511 IAC 7-45-7(j)(3).

5. Notice Concerning Action for Attorney Fees

The IHO's decision must include a notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the IHO's decision if no request for judicial review is filed. 511 IAC 7-45-7(j)(4).

D. Modification of Final Order

Although I.C. 4-21.5-3-31 provides that an agency has jurisdiction to modify a final order before the earlier of thirty (30) calendar days or a court assumes jurisdiction, there is no provision in Article 7 or the IDEA that would similarly extend the forty-five (45) calendar day timeline for issuing a final decision in a one-tier state. There is no authority to modify the hearing decision once the final hearing decision deadline has passed. Clerical mistakes or other errors resulting from oversight or omission in a final order may be corrected provided the corrections do not substantively modify the IHO's decision. Any such correction of clerical errors does not toll the period in which a party may file a petition for judicial review. I.C. 4-21.5-3-31(e).

Under 34 CFR §300.514(a), a decision made in a due process hearing conducted by the SEA is final, except that a party involved in the hearing may appeal the decision by bringing a civil action in a court of competent jurisdiction under 34 CFR §300.516. Once a final decision has been issued, no motion for reconsideration is permissible. Motions for reconsideration of interim orders are permitted as long as the final decision is issued within the 45-day timeline or a properly extended timeline. A party may request correction of technical or typographical errors when the correction does not change the outcome of the hearing or substance of the final hearing decision. This type of request does not constitute a request for reconsideration. Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B), 61 IDELR 232 (OSEP 2013), Q/A C-25. (Appendix B).

IX. Dismissal and Default

A. Dismissal

Dismissal most often occurs when the petitioner withdraws the request for hearing or requests dismissal because the parties have reached an agreement or have agreed to utilize an alternative means of dispute resolution. Dismissal may also occur as a sanction for the petitioner's failure to participate in the resolution meeting, comply with discovery or other orders, or as a sanction for delay or contumacious conduct. Dismissal may either be without or with prejudice. Before ordering an involuntary dismissal, the IHO should warn the party of the possibility of dismissal if nonconforming behavior continues.

1. Without prejudice

Dismissal without prejudice means that the petitioner has not forfeited or lost any rights

and may request another hearing concerning the same issues. However, the petitioner should be aware of any applicable statute of limitations if contemplating refiling concerning the same issues.

2. With prejudice

Dismissal with prejudice is as conclusive of the rights of the parties as if the action had proceeded to final judgment adverse to the petitioner. The petitioner is foreclosed from refiling another request for hearing concerning the same issues and same parties.

Dismissal with prejudice occurs most often as a result of the parties reaching a settlement agreement. In that case, dismissal with prejudice is part of the agreement of the parties and the IHO may dismiss with prejudice. If the parent is not represented by counsel, the IHO should ensure that the parent understands what it means to agree to a dismissal with prejudice.

B. Default judgment – I.C. 4-21.5-3-24

If a party fails to file a required responsive pleading or fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding, the IHO may serve upon the parties written notice of a proposed default or dismissal order, including a statement of the grounds. The IHO must give the party the opportunity to respond to a proposed default or dismissal.

X. Expedited Hearings - 511 IAC 7-45-10

A. An expedited due process hearing will be conducted in the following situations:

1. The parent requests a hearing because the parent disagrees with:
 - a. a determination that the student's behavior was not a manifestation of the student's disability; or
 - b. the public agency's decision regarding the student's disciplinary change of placement under 511 IAC 7-44-2.
2. The public agency requests an expedited hearing because the public agency maintains that it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student's placement in an interim alternative educational setting.

B. The same rules for conducting a due process hearing apply to expedited hearings except that:

1. the expedited hearing must occur within twenty (20) instructional days of the date the request was received by the other party and result in a determination within ten (10) instructional days after the hearing;
2. a resolution meeting must occur within seven (7) calendar days of the date the hearing request was received by the other party unless the parties agree in writing to waive the resolution meeting or to use mediation under 511 IAC 7-45-2;
3. the hearing may proceed if the parties have not resolved the matter within fifteen (15)

- calendar days of receipt of the hearing request;
4. the IHO shall not grant any extensions of time; and
 5. the requirements of sufficiency under 511 IAC 7-45-4 are not applicable.

XI. Miscellaneous

A. Ex Parte Communications – I.C. 4-21.5-3-11; I.C. 4-21.5-3-33; I.C. 4-21.5-3-36; I.C. 4-21.5-3-37

During the pendency of a proceeding, an IHO may not communicate, directly or indirectly, with any party regarding any issue in the proceeding. Should an IHO receive an ex parte communication in violation of I.C. 4-21.5-3-11, the IHO shall place on the record all written communication received, all written responses to the communication, and a memorandum stating the substance of all oral communication received, all responses made, and the identity of each individual from whom the IHO received an ex parte communication. A violation is subject to the sanctions set forth in I.C. 4-21.5-3-36 & 37.

B. Corresponding Via Email

No correspondence, documents, or pleadings are to be sent by email, and email will not be accepted by the IHO in connection with any due process hearing. An electronic filing system (I-CHAMP) has been provided for the parties to send and receive all communications about due process hearings. In addition to ensuring confidentiality concerning the issues involving the student, this system will help prevent ex parte communications.

C. Filing by Facsimile (FAX) or Mail

Most pleadings will be filed using the electronic filing system. If a party is unrepresented and is unable to utilize the electronic filing system, pleadings may be sent by mail or FAX. Pleadings or other documents submitted by FAX will be considered filed on the date sent by FAX provided they are sent prior to the close of business as identified by the IHO. Pleadings sent after the close of business will be considered filed on the next business day. Because documents sent by FAX are sometimes difficult to read, a party should send a hard copy by mail. Pleadings sent by mail will be considered filed upon receipt. If a party is not using the electronic filing system, the party's receipt of documents, pleadings, or orders through the mail will necessarily be delayed.

D. Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C 1232g; 34 CFR Part 99, provides, in part, that a student's educational record is confidential. Similar requirements are included in Article 7 and the IDEA. Disclosures of student information from a public agency or a parent to the IHO are made for the purpose of resolving a dispute through the hearing process. An IHO must keep all student information confidential. The written decision is not to include a student's name or the name of the student's parents or other information that would make the

student easily identifiable. At the conclusion of a hearing, the IHO must submit the official record of the proceedings to the IDOE. The IHO shall not retain copies of exhibits or other documents containing personally identifiable student information.

E. Ensuring Civility

The IHO has the discretion and authority to maintain order and civility throughout the proceedings. The IHO may require a party or a party's representative to sign a statement as to the appropriate standard of conduct expected in the proceedings. An IHO may impose sanctions on a party or a party's representative who continues to disregard orders or engages in contumacious behavior, up to and including dismissal. *Edward S. and Virginia S. v. West Noble School Corporation*, 63 IDELR 34, 2014 WL 1319358 (N.D. Ind. 2014). (Appendix C).

F. Controlling Timelines and Proceedings

The IHO has the responsibility to maintain timelines pursuant to the requirements of the IDEA and Article 7. The IHO has discretion and authority to control the proceedings.

G. Providing Record to the IDOE

Upon the conclusion hearing and after the decision has been issued and sent to the parties, the IHO must ensure that the record of the proceedings is organized. The IHO must certify the record and submit the record to the IDOE.

H. Obtaining the Transcript or Record from the IDOE

After the conclusion of the hearing, a parent may obtain an electronic or paper copy of the transcript (as specified by the parent during the prehearing conference) upon submitting a written request to the IDOE. If a party requests a copy of the transcript directly from the court reporter, the party does so at its own expense. If the IHO is aware of such a request, the IHO should advise the party that if the party requests a transcript from the court reporter, the party will be responsible for the cost. A party may obtain a copy without cost from the IDOE after the conclusion of the hearing.

Appendix Table of Contents

A. Sample Forms and Orders Available to IHOs (Not Included)

- Preliminary Scheduling Order – filed by parent
- Preliminary Scheduling Order – filed by school
- Preliminary Scheduling Order – expedited filed by parent
- Preliminary Scheduling Order – expedited filed by school
- Notice of Prehearing Conference
- Order on Prehearing Conference
- Notice of Hearing
- Order Subsuming Complaint Issues into Hearing
- Order Granting Request for Extension of Time
- Order of Dismissal
- Order of Dismissal Hearing/Complaint
- Order of Dismissal Expedited
- Due Process Hearing Decision
- Expedited Due Process Hearing Decision

B. Office of the Special Education (OSEP) and Office of Special Education and Rehabilitative Services (OSERS) Guidance

1. *Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)* (OSEP 2013). US Department of Education, Office of Special Education and Rehabilitative Services.
2. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions* (OSEP Q&A 22-02, July 19, 2022). US Department of Education, Office of Special Education and Rehabilitative Services.
3. *Dear Colleague* (OCR, OSERS November 12, 2014), *Frequently Asked Questions on Effective Communication for Students with Hearing, Vision or Speech Disabilities in Public Elementary and Secondary Schools*
4. *Dear Colleague* (OSEP April 15, 2015). IDEA dispute resolution procedures.
5. *Letter to Zirkel* (August 22, 2016). Expedited hearing – parties may not agree to take hearing out of expedited process.
6. *Letter to Snyder* (OSEP December 13, 2015). Expedited hearing – SEA is responsible to arrange for expedited hearing if due process complaint is filed concerning discipline. Hearing officer could bifurcate if non-expedited issues are included in due process complaint.
7. *Letter to Zirkel* (March 3, 2023). Dispute resolution issues and enforcement.
8. *OSEP Policy Letter 22-04, Letter to Zirkel* (April 15, 2022). Dispute resolution issues.
9. *Letter to Price* (OSEP Oct. 13, 2010). Test protocols.
10. *Letter to Eig* (OSEP Jan. 28, 2009). Child find – nonresident student.

11. *Letter to Anderson* (OSEP Nov. 10, 2010). No extension of resolution timelines due to school breaks or vacations.
12. *Letter to Blessing* (OSEP December 5, 2018). A state may not impose prerequisites before a parent can file a due process complaint that are inconsistent with the IDEA.
13. *Letter to Manna* (FPCO February 13, 2013). FERPA places limits on parent's right to inspect and review education records involving other students.

C. Case Law and Authorities

United States Supreme Court Cases:

1. *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017); *Questions and Answers (Q & A) on U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District RE-1* (US Dept. of Education, December 7, 2017); Memorandum from Indiana Deputy Attorney General Kevin C. McDowell on *Endrew F.* (March 23, 2017); Memorandum from Indiana Deputy Attorney General Kevin C. McDowell on *Methodology & FAPE Post-Endrew* (August 10, 2017).
2. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).
3. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); Memorandum from Ind. Dep't of Educ. Dana Long to IHOs and the BSEA on *Forest Grove Sch. Dist. v. T.A.* (June 22, 2009).
4. *Schaffer v. Weast*, 546 U.S. 49 (2005); Memorandum from Ind. Dep't of Educ. Kevin McDowell to NCOSEA on *Schaffer v. Weast* (Nov.15, 2005).
5. *Schaffer v. Weast*, 546 U.S. 49 (2005), *remanded* to 554 F.3d 470 (4th Cir. 2009); Memorandum from Ind. Dep't of Educ. Dana Long to IHOs and the BSEA on *Schaffer v. Weast*, *Judicial Discretion, and Additional Evidence* (Feb.13, 2009).
6. *Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426 (2002).
7. *Cedar Rapids Comm. Sch. Corp. v. Garrett F.*, 526 U.S. 66 (1999).
8. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).
9. *Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985).
10. *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984).
11. *Fry v. Napoleon Community Schools*, 137 S.Ct. 743 (2017); Memorandum from Indiana Deputy Attorney General Kevin C. McDowell on *Fry v. Napoleon Community Schools and Service Dog; Exhaustion of IDEA Administrative Remedies* (February 23, 2017).

Seventh Circuit Court of Appeals Case:

1. *M.B. v. Hamilton Southeastern Sch. and Hamilton-Boone-Madison Special Serv.*, 668 F.3d 851 (7th Cir. 2011) (No. 10-3096); Memorandum from Ind. Dep't of Educ. on *M.B. v. Hamilton Southeastern Sch. and Hamilton-Boone-Madison Special Services* (Jan. 5, 2012).

Indiana Northern and Southern District Court Cases:

1. *Edward S. v. West Noble Sch. Corp.*, 2014 WL 1319358 (N.D. Ind. Mar. 31, 2014).
2. *A.B. v. Franklin Twp. Comm. Sch. Corp.*, 898 F. Supp. 2d 1067 (S.D. Ind. 2012); Memorandum from Ind. Dep't of Educ. on *A.B. v. Franklin Twp. Comm. Sch. Corp.* (Oct. 4, 2012).
3. *M.C. v. M.S.D. of Southwest Allen Cnty. Sch. and Green-West Allen Special Educ. Coop.*, 628 F. Supp. 2d 902 (N.D. Ind. 2008); Memorandum from Ind. Dep't of Educ. Dana Long to NCOSEA on *M.C. v. M.S.D. of Southwest Allen Cnty. Sch. and Green-West Allen Special Educ. Coop.* (May 17, 2009).
4. *J.K. v. Metro. Sch. Dist. Southwest Allen Cnty.*, 2005 U.S. Dist. LEXIS 42438 (N.D. Ind. September 27, 2005).

D. Other

1. Memorandum from Indiana Deputy Attorney General Kevin C. McDowell. *Matthew Oskowis v. Sedona Oak-Creek Unified School District #9*, F.Supp.3d_____, 2016 WL 1118038 (D Arizona, March 22, 2016): *IDEA* Hearing Procedures & Timelines (March 30, 2016).
2. Memorandum from Indiana Deputy Attorney General Kevin C. McDowell. *I.K. on behalf of Z.S. v. Montclair Board of Education*, 2018 WL 2441761 (D. New Jersey, May 31, 2018): *IDEA* Hearing Procedures: Sufficiency of the Complaint and Judicial Review; Mediation Agreements (June 7, 2018).
3. *H.T. and S.T. on behalf of V.T. v. Hopewell Valley Regional Board of Education*, 2015 WL 4915652 (D. New Jersey, August 18, 2015). (Not for Publication)
4. Case law summaries re: Sufficiency and Timelines.
5. Kevin C. McDowell Memorandum to Thomas E. Wheeler, January 12, 2005.
6. Excerpts/Summary Senate Committee (S.Rep. 108-185)