

3525.3900 INITIATING A DUE PROCESS HEARING.

Subpart 1. **Request to be filed with department.** A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. A request for a due process hearing must be in writing and filed with the department. A school district administrator receiving a request for a due process hearing must immediately file the request with the department and in no case more than two business days following receipt of the request. If the request for a due process hearing is filed directly with the department, the department must notify the district of the request immediately and in no case more than two business days following receipt of the request. The department must not deny a request for hearing if it is incomplete. When a district is notified of a due process hearing request it must serve notice on the parent, within two business days, which includes the federally required procedural safeguards notice and the information required under subpart 3, item J, if it has not already done so as part of the pending dispute.

Subp. 2. **Parent request for hearing.** A parent request for hearing must include:

- A. a statement indicating the parents request a hearing;
- B. the name and address of the child involved;
- C. the name, address, and telephone number, if available, of the parent;
- D. the name of the school the child is attending at the time of the request;
- E. the name or number of the school district of the parent's residence;
- F. a description of the nature of the problem about the provision of special education services to the student, including facts relating to the problem; and
- G. a proposed resolution of the problem to the extent known and available to the parents at the time of the request.

Subp. 3. **District request for hearing.** A district must serve a written notice of hearing on the parents and file it with the department in order to initiate a hearing. The notice must include:

- A. a statement that the district requests a hearing;
- B. the name and address of the child involved;
- C. the name, address, and telephone number, if available, of the parent;
- D. the name of the school the child is attending at the time of the request;
- E. the name or number of the school district of the parent's residence;

- F. a description of the proposed initiation or change, including facts relating to the proposal or change;
- G. a proposed resolution of the problem;
- H. a copy of the current or proposed IEP, evaluation plan, and any relevant progress information;
- I. a copy of the prior written notice; and
- J. a statement of the basic procedures and safeguards for due process hearings that includes the items in subpart 4.

Subp. 4. **Requirements of basic procedures and safeguards notice.** The statement of the basic procedures and safeguards in subpart 3, item J, must include:

- A. the names and telephone numbers of any free or low-cost legal or other advocacy services available in the area and a statement that both parties have the right to be assisted by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- B. a statement that the hearing will take place before an impartial hearing officer assigned by the department. If the department is the provider of services to the child, this statement must indicate that the department will request the Office of Administrative Hearings to appoint a qualified hearing officer;
- C. a statement that the parent will receive notice of the time, date, and place of the evidentiary hearing from the hearing officer at least ten calendar days in advance of the evidentiary hearing. This statement must also state that, with the exception of an expedited hearing, the evidentiary hearing must be held within 30 calendar days from the date the hearing request was filed with the department, at a location within the district responsible for ensuring a free appropriate public education is provided to the student;
- D. a statement that both parties have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- E. a statement that the hearing officer will prohibit, at the request of either party, evidence not disclosed five business days before the evidentiary hearing, including evaluations completed by that date and recommendations based on those evaluations;
- F. a statement that the burden of proof at a due process hearing is on the district to demonstrate, by a preponderance of the evidence, that it is complying with the law and offered or provided a free appropriate public education to the child in the least restrictive environment. If the district has not offered or provided a free appropriate public education in the least restrictive environment and the parent wants the district to pay for a private placement, the burden of proof is on the parent to demonstrate, by a preponderance of the evidence, that the private placement is appropriate;

G. a statement that, with the exception of an expedited hearing for which a decision must be rendered within ten days, the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 calendar days from the date the hearing request was filed with the department and that the proposed action or refusal will be upheld only upon showing by the school district by a preponderance of the evidence;

H. a statement that the parent or district may appeal a decision of the hearing officer to the Minnesota Court of Appeals within 60 calendar days of receipt of the decision or to the United States District Court for the District of Minnesota;

I. a statement that unless the district and parents agree otherwise, the pupil shall not be denied initial admission to school and the pupil's education program shall not be changed;

J. a statement that the parents have the burden of proving, by a preponderance of the evidence, that services for which the parents are paying or have paid, and for which the parents are seeking public funds, are appropriate for the pupil. This statement must also indicate that in order for parents to prevail, the hearing officer must have found that the district has failed to provide a free appropriate public education in the least restrictive environment;

K. a statement that the parents may choose to have the pupil, who is the subject of the hearing, present and that they may open the evidentiary hearing to the public;

L. a statement that the department will provide the parents with a written verbatim record of the hearing, at no cost, as well as the findings of fact and decision;

M. a statement that parents prevailing at a hearing may be entitled to reasonable attorney fees at the discretion of the court; and

N. a statement that the hearing officer may apply a statute of limitations that may limit the complaints that will be heard.

Subp. 5. **Appointment.** The department must appoint a hearing officer within two business days of the date the hearing request was filed with the department.

Statutory Authority: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *14 SR 281; L 1991 c 265 art 3 s 38; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657; 28 SR 1292*

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