NEW JERSEY DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION

September 2026

PRO SE LITIGATION GUIDE

A PARENTS HANDBOOK TO NAVIGATE THE DUE PROCESS SYSTEM

SCOPE OF THIS GUIDE

This guide is intended to help parents and adult students better understand and participate in New Jersey's special education due process system. It explains due process hearings, expedited due process hearings, emergent relief requests, and what to expect if a case is sent to the Office of Administrative Law, or OAL.

The guide follows the process in the order a family may experience it: understanding due process, deciding what type of request may be needed, filing or responding to a petition, understanding legal issues or urgent requests, and preparing for the case if it is sent to OAL. Families with questions about the information in this guide may contact the Office of Special Education (OSE) at oseinfo@doe.nj.gov or 609-376-9060 for additional assistance and information regarding New Jersey's special education dispute resolution processes for special education.

The information in this guide is general and addresses common situations. It does not cover every circumstance that may arise and is not legal advice. For pro se parties seeking further support, please review this Litigation Guide produced by Class Counsel in *C.P. v. New Jersey Department of Education.* Please note that Class Counsel's litigation guide was not prepared by the New Jersey Department of Education (NJDOE) and does not necessarily represent the legal interpretations, policies, guidance, or positions of the NJDOE. Questions regarding the contents of Class Counsel's guide should be directed to its authors at info@nj45dayclassaction.com.

CONTENTS

PART 1: DUE PROCESS BASICS AND SUPPORT

Understanding Due Process Hearings 1

Who Can File? 1

Types of Due Process Requests and Key Rights 2

Representation and Support 4

PART 2: FILING A DUE PROCESS PETITION

Filing Procedures 6

Understanding the “Knew or Should Have Known” Date 6

Preparing a Due Process Petition: Required Information 7

Issues That May Be Raised in a Due Process Petition 8

Relief Available Through a Due Process Hearing 9

Educational Rights After a Student Reaches Eighteen 9

PART 3: WHAT HAPPENS AFTER A PETITION IS FILED?

District Response to a Due Process Petition 11

When a School District Files Due Process 12

Response to a School District’s Due Process Petition 12

Challenges to the Sufficiency of a Due Process Petition 12

Resolution Period 13

Resolution Meeting Agreements 14

CONTENTS (CONTINUED)

PART 4: LEGAL ISSUES AND SPECIAL REQUESTS

Written Notice and Proposed Changes 15

IDEA's Stay-Put Right 16

How Expedited Due Process is Different 17

Emergent Relief 18

PART 5: WHEN YOUR CASE IS SENT TO OAL

When Your Case Is Sent to OAL 19

What OAL Staff Can and Cannot Do 21

Representation at OAL 21

Scheduling and Adjournments 21

Pre-Hearing Conferences with the ALJ 22

Settlement Agreements at OAL 24

Nonpublic School Placement 24

Discovery at OAL 25

Subpoenas 26

Motions 26

Emergent Relief at OAL 27

Stay-Put at OAL 28

Expedited Discipline Matters and Safety-Based Requests 28

Withdrawal of Hearing Request 29

Failure to Appear 29

Preparing for a Hearing 30

CONTENTS (CONTINUED)

PART 5: WHEN YOUR CASE IS SENT TO OAL (CONTINUED)

On the Hearing Day 31

The Due Process Hearing 31

At the End of Testimony 32

The ALJ's Decision 32

Transcript, Hearing Record, and Recordings 33

Appeals 33

Enforcement of an ALJ Decision or Mediation Agreement 33

Final Reminder 34

Parent Checklist for the OAL Stage 36

Appendix A: Key Terms 37

References 40

PART 1: DUE PROCESS BASICS AND SUPPORT

This section provides an overview of special education due process hearings in New Jersey. It explains what due process is, who may request a hearing, the different types of due process requests, and the basic rights that apply.

It also explains support options that may be available to parents, guardians, and adult students, including attorneys, non-lawyer representatives, and free or low-cost legal and advocacy services. The goal is to help families understand their options before filing a request or responding to a request filed by a school district.

UNDERSTANDING DUE PROCESS HEARINGS

A due process hearing is a formal legal proceeding used to resolve disputes between parents, guardians, adult students, and school districts about the identification, evaluation, program, placement, or provision of a free appropriate public education (FAPE) to a student with a disability. The right to request a due process hearing is established under the Individuals with Disabilities Education Act (IDEA) and implemented in New Jersey through N.J.A.C. 6A:14. These laws give students with disabilities and their parents the right to challenge school decisions about the student's special education and services. In New Jersey, these hearings are conducted by an Administrative Law Judge (ALJ) from the Office of Administrative Law, who serves as an impartial decision-maker. During the hearing, both parties have the opportunity to present evidence, call and cross-examine witnesses, and make legal arguments regarding the issues in dispute. After considering the evidence and applicable law, the ALJ issues a written decision that is binding unless appealed to state or federal court.

WHO CAN FILE?

Either the parent/guardian, an adult student, or the school district can request a hearing. A request for a due process hearing must be made in writing to the director of the Office of Special Education, by email or by mail.

The party requesting the due process hearing must send a copy of the request to the other party. A copy may be sent by mail, email, hand delivery, fax, or another reliable method. The written request must state that a copy was sent to the other party.

Email:
osepdisputeresolution@doe.nj.gov

Mail:
Office of Special Education (OSE)
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

TYPES OF DUE PROCESS REQUESTS AND KEY RIGHTS

Parents, guardians, adult students, and school districts have certain rights during special education due process proceedings. The rights and timelines may look different depending on the type of request.

The NJDOE provides model forms for mediation, due process, expedited due process, and emergent relief. Use of the model forms is not required, but using them may help make sure the required information is included. Translated dispute resolution forms are also available on the NJDOE Dispute Resolution webpage.

DUE PROCESS HEARING

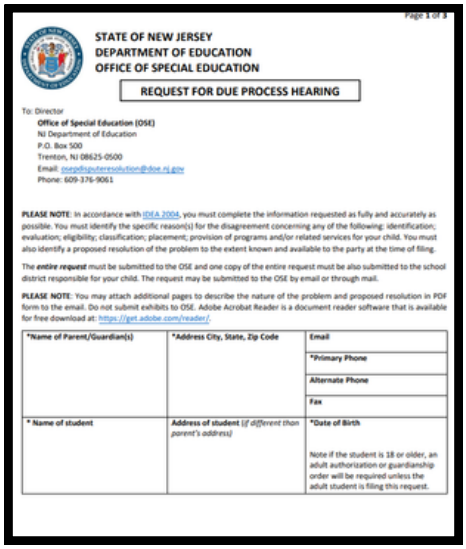
A due process hearing may be requested when there is a disagreement about identification, evaluation, reevaluation, classification, educational placement, the provision of FAPE, or discipline.

Before the hearing, you have the right to:

- Participate in a resolution meeting or mediation;

During the hearing, you have the right to:

- Share your own information, ask questions of the other side's witnesses, and require specific people to attend the hearing to testify;
- Stop any evidence from being used in the hearing if the district didn't share it with you at least five business days before the hearing;
- At least five business days before the hearing, both sides must share all evaluations and recommendations they plan to use as evidence.



STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION

REQUEST FOR DUE PROCESS HEARING

To: Director
Office of Special Education (OSE)
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500
Email: ospdisputeresolution@doe.nj.gov
Phone: 609-376-9061

PLEASE NOTE: In accordance with IDEA 2004, you must complete the information requested as fully and accurately as possible. You must identify the specific reason(s) for the disagreement concerning any of the following: identification; evaluation; eligibility; classification; placement; provision of programs and/or related services for your child. You must also identify a proposed resolution of the problem to the extent known and available to the party at the time of filing.

The ***entire request*** must be submitted to the OSE and one copy of the entire request must be also submitted to the school district responsible for your child. The request may be submitted to the OSE by email or through mail.

PLEASE NOTE: You may attach additional pages to describe the nature of the problem and proposed resolution in PDF form to the email. Do not submit exhibits to OSE. Adobe Acrobat Reader is a document reader software that is available for free download at: https://get.adobe.com/reader/.

*Name of Parent/Guardian(s)	*Address City, State, Zip Code	Email *Primary Phone Alternate Phone Fax
* Name of student	Address of student (*if different than parent's address*)	*Date of Birth Note if the student is 18 or older, an adult authorization or guardianship order will be required unless the adult student is filing this request.

NJDOE Request for Due Process Form

Parents also have the right to have the student present at the hearing and to decide whether the hearing will be open to the public.

Expedited Due Process Hearing

An expedited due process hearing is used for certain discipline-related disputes. These cases move more quickly than regular due process hearings.

An expedited hearing may be requested when there is a disagreement about a manifestation determination or a disciplinary placement decision. A school district may also request an expedited hearing if it believes maintaining the student's current placement is substantially

likely to result in injury to the student or others.

In an expedited hearing, you have many of the same rights as in a regular due process hearing, including the right to present evidence, call and question witnesses, be accompanied by an attorney or other knowledgeable person, and receive a written decision. Because expedited hearings move quickly, read all notices carefully and prepare documents and witnesses as soon as possible.

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
REQUEST FOR EXPEDITED DUE PROCESS HEARING **

NJDOE Request for Expedited Due Process Hearing

Emergent Relief

Emergent relief is a request for a temporary order while the due process case is pending. It is used only when a temporary (interim) decision is needed before the full due process case is completed.

Emergent relief may be requested for limited urgent issues, such as a break in the delivery of services, placement while due process is pending, issues involving disciplinary action, graduation, or participation in graduation ceremonies.

Because emergent relief is heard quickly, it is not the same as a full due process hearing. Some rights that apply in the full due process process, such as participating in a resolution meeting or mediation, presenting and cross-examining witnesses, and subpoenaing witnesses do not apply to the emergent relief request itself. Those rights remain available in the full due process case.

Where practical, the five-day disclosure rule is equally applicable to emergent relief hearings. Even in an emergency hearing, parents should be given access to the evidence and documents being used so they have a fair chance to prepare and respond.

An emergent relief decision does not decide the entire case. It only decides whether a temporary order is needed while the case is pending. When you request a due process hearing, the request continues through the required process, including the opportunity for a resolution meeting or mediation. If the request is not resolved within 30 days of receipt, it will be transmitted to OAL for a full due process hearing on all issues in the request.

Important Note:
Emergent relief does not replace a due process hearing. If you request emergent relief, you must submit:

- Request for Emergent Relief
- Request for Due Process Hearing or Request for Expedited Due Process Hearing
- Certification in Lieu of Affidavit or Notarized Statement

FORMS TO USE:

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
REQUEST FOR EMERGENT RELIEF

NJDOE Request for Emergent Relief

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
*CERTIFICATION IN LIEU OF AFFIDAVIT OR NOTARIZED STATEMENT OF PETITIONER SEEKING EMERGENT RELIEF

CERTIFICATION IN LIEU OF AFFIDAVIT OR NOTARIZED STATEMENT OF PETITIONER SEEKING EMERGENT RELIEF

REPRESENTATION AND SUPPORT

REPRESENTATION BY AN ATTORNEY

You have the right to be represented by an attorney at any stage of a special education due process proceeding in New Jersey. You may hire an attorney at your own expense, seek representation through a legal services organization, or, if eligible, receive free or reduced-cost legal assistance. The availability of free or reduced-cost legal assistance is determined by the legal services organization, not by NJDOE.

FREE AND LOW-COST LEGAL AND ADVOCATE SERVICES

Limited free and low-cost legal and advocacy services are available to help parents, guardians, and adult students with disabilities settle disputes with a school district about special education services.

The New Jersey Department of Education (NJDOE) provides a resource guide that includes information about available legal and advocacy service options. The guide is not a complete list of all services available throughout New Jersey, and inclusion in the guide does not constitute an endorsement by the NJDOE. The services provided, and the nature and extent of assistance offered, are determined by the parent, guardian, adult student, and the legal or advocacy organization.

Free and Low Cost Legal and Advocate Services

INTERPRETATION AND TRANSLATION SERVICES

If you need an interpreter, include a request for an interpreter on your due process hearing request. If you need one, the ALJ will request that the Department of Education give you an interpreter at the hearing. The ALJ can also request a written translation of the hearing, or both. You do not have to pay for this. (See also page 19 of this guide for further information.)

APPEARING PRO SE

Parents and adult students are not required to have a lawyer to participate in a special education due process hearing. A parent or adult student may choose to represent themselves. This is sometimes called appearing pro se, which means “on one’s own behalf” or “for oneself.”

This section applies to parents and adult students. School districts must be represented by an attorney in due process proceedings.

If you represent yourself, it is important to understand the steps involved in the due process hearing process.

When you file a petition, you must clearly describe the facts and issues involved in your case. The information you provide should explain why you believe your rights, or the rights of the student, may have been affected and explain what relief you are seeking.

REPRESENTATION BY A NON- LAWYER

If you do not have an attorney, you may choose to have a qualified non-lawyer representative assist you during your special education due process hearing. A non-lawyer representative should be knowledgeable about the issues affecting students with disabilities and can help present your case.

A non-lawyer representative may:

- Help you present your side of the case.
- Introduce evidence.
- Speak on your behalf during the hearing.
- Make legal and factual arguments.
- Question witnesses.
- Respond to questions from the school district's attorney.

However, a non-lawyer representative cannot:

- Sign a consent order on your behalf.
- Agree to facts or enter into legal agreements for you.
- Sign legal documents on your behalf.

Anyone who will represent you and is not a lawyer must complete an OAL Notice of Appearance/Application form. On the form, they should describe their knowledge of students with disabilities and explain any education, training, work experience, or other qualifications that prepare them to assist you.

After the form is completed, send it to the Administrative Law Judge (ALJ) assigned to your case and provide a copy to the school district's attorney. If you do not know who your ALJ is, send the form to the Clerk instead. The ALJ must receive the completed form at least 10 days before your hearing.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Petitioner,
v.
APPEARANCE/APPLICATION
Respondent.

OAL DKT. NO.:
AGENCY DKT. NO.:
NOTICE OF
SPECIAL EDUCATION HEARINGS

TO: ALJ

I, _____, hereby apply to represent _____ in the above-captioned case, pursuant to N.J.A.C. 1:1-5.4(b), 20 U.S.C. § 1415(h), 34 C.F.R. § 300.512(a) and N.J.A.C. 1:6A-5.1(b). I submit the following information in support of my application.

1. I have the following knowledge or training with respect to handicapped pupils and their education needs: _____

2. My Address: _____
Phone Number: _____
E-Mail Address: _____
Fax Number: _____

Notice of Appearance/Application Form

PART 2:

FILING A DUE PROCESS PETITION

A due process petition is a written request for a hearing to resolve a special education dispute under IDEA and New Jersey special education law. This section explains when a petition may be appropriate, what information must be included, and how to file.

It also explains common issues that may be raised, possible remedies an ALJ may order, and special considerations such as expedited due process hearings, petitions filed by school districts, and students who are 18 years of age or older.

FILING PROCEDURES

A request for a due process hearing must be filed within two years of the date the party knew, or should have known, about the alleged action that forms the basis for the due process petition.

The two-year period for filing for a due process hearing may be extended by an ALJ if:

- A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the parent's satisfaction; or
- The district board of education withheld information that was required by law to be provided to the parent.

While due process is continuing, no change can be made to the student's classification, program or placement, unless both parties agree to the change. For more information, see Written Notice and Proposed Changes and IDEA's Stay-Put Right in Part 4.

UNDERSTANDING THE "KNEW OR SHOULD HAVE KNOWN" DATE

The two-year filing timeline usually begins when the parent knew, or reasonably should have known, about the action or problem that is the basis for the due process request.

This date is sometimes called the "knew or should have known" date. If the request includes issues from more than two years ago, the parent may need to explain why those issues should still be considered, including whether one of the limited exceptions applies.

PREPARING A DUE PROCESS PETITION: REQUIRED INFORMATION

A due process petition must include specific information to allow the petition to be reviewed, processed, and scheduled appropriately. The petition should clearly identify the parties involved, describe each issue or dispute being raised, provide the facts that establish the problem, and clearly describe the remedy or relief being requested. The subsections below describe the information that must be included in a due process petition:

- **Parent or Guardian Information:** The petition must include the name, address, and telephone number of the parent(s) or guardian(s). Providing one or more email addresses that are regularly monitored is also recommended, as OSE and OAL may send scheduling notices and other important communications by email.

- **Student Information:** The petition must include the student's full name, home address, and date of birth.

- **School Information:** The petition must identify the school district responsible for the student. Including the name of the school the student attends is also recommended.

- **Homeless Status**: For a child or youth who is homeless, the petition must include contact information for the child and the name of the school the child attends.

- **Description of the Problem:** The petition must include a description of each problem or dispute being raised.

- **Supporting Facts:** The petition must include the relevant dates, events, and details that support each problem identified.

- **Proposed Resolution of Each Problem:** The petition must clearly describe the remedy or relief being requested from the ALJ to resolve each issue.

It is important to review the petition carefully to ensure that each issue, the supporting facts, and the requested relief are clearly stated in the petition. Once a petition is submitted, it may be amended only with the consent of the other party or with permission from an administrative law judge.

ISSUES THAT MAY BE RAISED IN A DUE PROCESS PETITION

A due process petition may be filed regarding any matter relating to the identification, evaluation, educational placement of a student with a disability, or the provision of FAPE. You must identify the problem you want resolved in concrete terms. For example, “my son is only getting his speech services one time per week and the mandate is for three times per week”, or, “the school district wants to remove my daughter from the general education setting and we think she is making progress in that setting.” These facts establish the issue that the ALJ must resolve.

Examples of issues that may be raised include:

- Whether the school district denied FAPE.
- Whether the student is being educated in the least restrictive environment (LRE).
- Whether the school district improperly refused to evaluate the student.
- Whether the school district correctly determined that the student is not eligible for special education and related services.
- Whether the school district implemented the student's individualized education program (IEP).
- Whether the school district appropriately determined that the student is no longer eligible for special education and related services.
- Whether the parent is entitled to an independent educational evaluation (IEE) at public expense.

A due process petition may also allege that the school district failed to comply with the procedural requirements of IDEA or applicable state law.

Examples of procedural issues include:

- Whether the school district provided the parent with an opportunity to participate in IEP meetings.
- Whether the school district predetermined the student's program or services before the IEP team meeting.
- Whether the school district responded to a parent's request for an IEP meeting as required.
- Whether the school district provided written notice when required.

An ALJ may order relief based on a procedural violation if the violation:

- Impeded the child's right to FAPE;
- Significantly impeded the parent's opportunity to participate in decision-making regarding the provision of FAPE; or
- Caused a deprivation of educational benefit.

These are examples only. The issues included in a due process petition should be based on the facts of the individual case.

If the ALJ determines that a school district violated IDEA or New Jersey special education requirements, the ALJ may order relief. The relief ordered depends on the facts of the case and the student's individual needs.

Relief may include actions the school district must take going forward, such as changing the student's placement, revising the IEP, providing additional supports or services, conducting an evaluation, funding an independent educational evaluation, or determining that the student is eligible or remains eligible for special education and related services.

COMPENSATORY EDUCATION

Compensatory education may be ordered when a student did not receive appropriate special education or related services. Its purpose is to help address the educational impact of missed or inappropriate services.

Compensatory education may include services before or after school, on weekends, during the summer, or in another form ordered by the ALJ. The amount and type of compensatory education depends on the facts of the case, the services missed, and the student's needs.

Note: Court decisions that govern ALJs have generally required compensatory education to be calculated using an "hour-for-hour" approach, meaning one hour of compensatory education for each hour of appropriate services the student did not receive.

REIMBURSEMENT TO PARENTS

An ALJ may order a school district to reimburse parents for certain educational expenses, including private school tuition, when the district failed to provide appropriate services or otherwise did not meet its obligations under the IDEA. Reimbursement may include the cost of an out-of-district placement when appropriate. See N.J.A.C. 6A:14-2.10.

EDUCATIONAL RIGHTS AFTER A STUDENT REACHES AGE EIGHTEEN

If an adult student disagrees with the school district about the student's identification, evaluation, classification, educational placement, or the special education services needed to provide FAPE, the student may request mediation or a due process hearing. The adult student may also give written permission for a parent to request mediation or a due process hearing and to make educational decisions on the student's behalf during those proceedings.

PART 3: WHAT HAPPENS AFTER A PETITION IS FILED?

After a due process petition is filed, several steps may occur before the case is sent to the Office of Administrative Law, or OAL. These steps may include the school district's response, a response to a petition filed by the school district, a challenge to whether the petition includes all required information, and the resolution period.

This section explains what may happen after filing, including resolution meetings, mediation, waiving the resolution period, and what happens if the dispute is not resolved before the case moves to OAL.

DISTRICT RESPONSE TO A DUE PROCESS PETITION

When a parent files a request for a due process hearing or an expedited due process hearing regarding a disciplinary matter, the school district must provide a written response if it has not previously provided written notice regarding the subject matter of the request. The district must provide this written response within 10 days of receiving the petition. The response must include:

- An explanation of why the district board of education proposed or refused to take the action raised in the request for a due process hearing;
- A description of other options that the IEP team considered and the reasons those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the district board of education used as the basis for the proposed or refused action; and
- A description of the factors that are relevant to the district board of education's proposed or refused action.

WHEN A SCHOOL DISTRICT FILES DUE PROCESS

School districts may also file a due process petition to resolve disputes with parents. A school district may request authorization to evaluate a student when a parent refuses to provide consent, request permission to disclose student records to an outside program, or challenge a parent's request for an IEE.

When a school district files a due process petition, the OSE forwards the petition to OAL. School district petitions are not subject to the 30-day resolution period. Just like when a parent files a due process petition, the ALJ must issue a decision within 45 days, excluding any extensions of time specifically requested by a party and granted by the ALJ.

RESPONSE TO A SCHOOL DISTRICT'S DUE PROCESS PETITION

When a school district files a due process petition, the responding party must provide a written response to the issues raised in the petition. The response must address each issue identified by the school district and must be provided within 10 days of receiving the petition. The response must be sent to the district superintendent or board attorney, along with a copy to OSE, within 10 days of receipt of the request for a due process hearing.

If additional time is needed to prepare the response, the responding party should first request an extension from the school district's attorney. If the request is denied, the responding party may request additional time from the ALJ by email and must provide a copy of the request to the school district's attorney. The request should state that additional time was requested from the school district's attorney and was not granted. If the ALJ grants additional time, the responding party should obtain the new deadline in writing and provide a copy to the school district's attorney.

CHALLENGES TO THE SUFFICIENCY OF A DUE PROCESS PETITION

A due process petition must include the required information identified in the due process filing requirements. If a petition does not contain this required information, the responding party may challenge the sufficiency of the petition. A parent may challenge the sufficiency of a school district's petition, and a school district may challenge the sufficiency of a parent's petition. An ALJ must issue a decision within five days of receiving a sufficiency challenge.

If you believe the petition is insufficient, you must provide written notice of the deficiency to the school district and OSE within fifteen days after OSE receives the petition.

If the petition is found sufficient, the timelines for resolution activities and for conducting a due process hearing will continue and the stay-put program remains in place. If the notice is found insufficient, the administrative law judge may dismiss the case. Even if the case is dismissed, the petitioner can file it again. A re-filed case is treated as a new case, and all deadlines start over. The stay-put program would be the program in place at the time of the re-filed case. The judge may allow the petition to be amended. If the administrative law judge allows the petitioner to amend the request for a due process hearing as part of a sufficiency challenge, the timelines for resolution activities and for conducting a due process hearing would begin to run from the time of the judge's determination and the stay-put program would remain in place.

RESOLUTION PERIOD

Once a parent, guardian, or adult student files a due process hearing request, a 30-day resolution period begins. During this time, the parties have an opportunity to resolve the dispute before the case is transmitted to the Office of Administrative Law, or OAL.

IDEA requires the school district to convene a resolution meeting within 15 days of receiving the hearing request, unless both parties agree in writing to waive the resolution meeting or agree to use mediation instead.

The parties may also agree in writing to waive the 30-day resolution period. If the resolution period is waived, the case may be transmitted to OAL before the 30-day period ends.

If the dispute is not resolved during the resolution period, or if the parties agree to waive the resolution period, the case is transmitted to OAL for further proceedings.

Resolution Meeting	Mediation Request	Waive the Resolution Period
• A resolution meeting must occur within 15 days of receiving the hearing request. • Participants include the parent/guardian, adult student, relevant members of the IEP team and district representatives. • The school district may not include its attorney unless the parent is accompanied by an attorney. ◦ An advocate is not considered an attorney.	• Both parties may agree in writing to use mediation instead of the resolution meeting. • A mediator must be trained in effective mediation techniques, and knowledgeable about special education laws and regulations. • A mediator facilitates the session and drafts a mediation agreement if the matter is resolved. • The NJDOE enforces mediation agreements (discussed on page 34) but does not enforce agreements reached during resolution meetings.	Both parties may agree in writing to waive the 30-day resolution period. If the resolution period is waived, the case may be transmitted to OAL before the 30-day period ends.

RESOLUTION MEETING AGREEMENTS

If an agreement is reached during the resolution meeting, the terms must be documented in writing and signed by both parties. Either party has the right to void the agreement by providing written notice within three business days of signing. If neither party voids the agreement within that timeframe, the agreement becomes legally binding.

Once the agreement is legally binding, both parties are required to implement its terms. If either party fails to do so, the agreement may be enforced in a state court of competent jurisdiction or in the United States District Court. If a dispute arises regarding whether a resolution meeting agreement was properly voided, the matter will be referred to the Office of Administrative Law for a due process hearing.

If the dispute is not resolved during the resolution period, or if both parties agree to waive the resolution period, the case is transmitted to the Office of Administrative Law, or OAL.

Before explaining what happens when the case is sent to the Office of Administrative Law, the next section explains legal issues and special requests that may come up during due process, including stay-put, emergent relief, and expedited due process hearings.

PART 4: LEGAL ISSUES AND SPECIAL REQUESTS

Some due process cases involve issues that may affect what happens while the case is pending. This section explains key topics that may come up during due process, including written notice, proposed changes, stay-put, expedited due process hearings, and emergent relief.

These issues may have different rules, timelines, or requirements than a standard due process hearing. This section is intended to help parents, guardians, and adult students understand what to expect and what steps may be needed.

WRITTEN NOTICE AND PROPOSED CHANGES

A school district must provide written notice when it proposes to start or change, or declines to start or change, a student's identification, classification, evaluation, placement, or the provision of FAPE.

Written notice must be provided no later than 15 days after the school district makes its decision, or at least 15 days before the district implements a proposed action.

A school district may implement a proposed change 15 days after the parent receives written notice, unless the parent takes action before the change is implemented. The district may implement the change sooner only if the parent provides written consent.

If a parent disagrees with a proposed change and wants to prevent it from taking effect, the parent must file for mediation, due process, or expedited due process, as appropriate. A request for mediation or due process before the 15th calendar day expires will delay implementation of the proposed action.

In some cases, a school district may provide written notice more than 15 days before the proposed change. In that situation, the parent does not have to file within 15 days of receiving the notice, but the parent must file before the proposed change is implemented in order to seek stay-put protection.

IDEA'S STAY-PUT RIGHT

IDEA provides a procedural safeguard known as the stay-put right, which preserves a student's educational placement while a due process proceeding is pending. During the pendency of a due process proceeding, a student has the right to remain in their then-current educational placement unless the parent and the school district agree to a different placement. This protection is intended to maintain stability in the student's education and prevent unilateral changes during the course of the litigation.

There are circumstances in which the stay-put right does not apply. Instances may include:

- The parent and the school district agree to a different placement. The parties may mutually agree to change the student's educational placement while the due process proceeding is pending.
- The student has recently moved to New Jersey or transferred to a different school district within New Jersey. In these circumstances, the receiving school district must provide services comparable to those described in the student's previous IEP until it adopts the prior IEP or develops and implements a new one
- The school district files an expedited due process petition and demonstrates that maintaining the student's current placement, even temporarily, is substantially likely to result in injury to the student or others. If the administrative law judge grants the petition, the student's placement may be changed for a period not to exceed 45 calendar days to an appropriate interim alternative educational setting (IAES).
- There are three reasons that a district can remove a student from school for up to 45 days without an order from an ALJ or a court. Those are causing "serious bodily injury," having a weapon, or having drugs in school or on school grounds. If the facts are contested, the parent may argue that the district incorrectly used one of these special circumstances to remove your child.

EXPEDITED DUE PROCESS

An expedited due process hearing is addressed earlier in this guide. This section explains what makes it different from a standard due process hearing.

Expedited due process hearings are limited to certain discipline-related issues. The timeline is shorter, extensions are not permitted, and the parties must prepare more quickly.

An expedited due process hearing may involve a disagreement about a manifestation determination, a disciplinary placement decision, services in an interim alternative educational setting, or a school district request to temporarily change placement because maintaining the current placement is substantially likely to result in injury to the student or others.

HOW EXPEDITED DUE PROCESS IS DIFFERENT

An expedited due process hearing is similar to a standard due process hearing, but it moves faster and is limited to certain discipline-related issues.

Standard Due Process Hearing	Expedited Due Process Hearing
A due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services.	Limited to certain discipline-related disputes
Follows the standard due process timeline	Follows a shorter timeline
Extensions may be granted in some circumstances	Extensions are not permitted
A resolution meeting must occur within 15 days of receiving the request, unless both parties agree in writing to waive the meeting or use mediation instead	A resolution meeting must occur within 7 days of receiving the request. If both parties request mediation instead, mediation must be scheduled within 7 days and completed within 15 days of OSE receiving the request
If the matter is not resolved during the resolution period, the case is transmitted to OAL	If the matter is not resolved within 15 days of OSE receiving the request, the case is transmitted to OAL
The case may involve a broader range of special education issues	The hearing may address disciplinary issues, including manifestation determinations, disciplinary placement

The expedited hearing must be conducted and completed within 20 school days of OSE receiving the request. A written decision must be provided to the parties within 10 school days after the expedited hearing is completed, without exceptions or extensions.

Except for these differences, parents generally have the same rights and responsibilities in an expedited due process hearing as they do in a standard due process hearing.

EMERGENT RELIEF

Emergent relief is discussed in more detail on page 3. This section explains how it affects the due process case.

Emergent relief is temporary. It does not replace the full due process hearing. Because it is heard quickly, some rights that apply in a full due process hearing do not apply to the emergent relief request itself.

Those rights remain available in the full due process hearing. The due process request continues through the required process, including resolution or mediation, unless the case is resolved.

THE ROLE OF AN ADMINISTRATIVE LAW JUDGE (ALJ)

ALJs fill the role of hearing officers under IDEA. A hearing officer must not be an employee of the State Educational Agency or the school district involved in the education or care of the child, and must not have a personal or professional interest conflicting with their objectivity. They must have knowledge of, and the ability to understand, IDEA and the federal and state regulations, plus the knowledge and ability to conduct hearings, and to render and write decisions, in accordance with appropriate standard legal practice.

PART 5:

WHEN THE CASE IS AT OAL

Earlier sections of this guide explain how to file a due process petition, what issues may be raised, what remedies may be requested, and what may happen before the case is sent to the Office of Administrative Law, or OAL.

This section explains what happens after the case is sent to OAL for a hearing before an Administrative Law Judge, or ALJ.

WHAT IS THE OFFICE OF ADMINISTRATIVE LAW?

OAL is an independent State agency that provides neutral hearings in certain disputes involving State agencies. In special education due process cases, OAL assigns an ALJ to hear the case.

The ALJ does not represent the parent, adult student, or school district. The ALJ's role is to manage the hearing process, listen to the evidence, apply the law, and issue a written decision.

In many OAL cases, the ALJ writes an initial decision that is reviewed by another agency. Special education cases are different. In special education due process cases, the ALJ's decision is the final administrative decision.

WHAT HAPPENS WHEN THE CASE IS SENT TO OAL?

When the case is sent to OAL, you will receive a Notice of Filing, Notice of Hearing, or another order from the ALJ with important information, including the OAL docket number, the assigned ALJ, and hearing or conference information.

The OAL docket number is the number used to identify your case. This may be different from any agency reference number used by the Office of Special Education before the case was sent to OAL. Keep both numbers with your records and have them ready if you contact OSE or OAL.

If your address, phone number, or email changes, tell OAL and the school district or school district attorney right away. This is important because OAL and the ALJ will use your contact information to send notices, orders, hearing dates, and other case information.

OAL PROCESS AT A GLANCE

Once the case is sent to OAL, the process may include these steps:

- OAL sends a notice or order with the docket number, assigned ALJ, and conference or hearing information.
- The parties review the notice and update OAL if contact information changes.
- The ALJ may hold a pre-hearing conference to discuss issues, scheduling, discovery motions, witnesses, settlement, and hearing dates. Pre-hearing conferences are usually held via telephone and are recorded for pro se litigants.
- The parties exchange information for the hearing, including documents and witness information.
- Either party may file motions, such as a motion about discovery, emergent relief, stay-put, dismissal, or summary decision.
- The parties prepare for the hearing by organizing documents, identifying witnesses, and requesting subpoenas if needed.
- The due process hearing is held before the ALJ.
- The parties are permitted to provide an oral closing argument but may provide written argument instead (or in addition) if requested or permitted by the ALJ.
- The ALJ issues a written decision.
- The parties review the decision and consider next steps, such as implementation, appeal, or enforcement.

Not every case will include every step. The ALJ's notices and orders will explain what is required in your case.

Do you need an interpreter? Ask OSE for an interpreter when you file the petition or, if you have not done that, ask for an interpreter as soon as you can after the case is sent to OAL by calling OAL at (609) 438-6316 or by asking the ALJ assigned to your case. Do not wait until the hearing day.

WHAT OAL STAFF CAN AND CANNOT DO

OAL staff can explain how the OAL process works, provide some information from your case file, and usually answer general questions about deadlines or forms.

OAL staff cannot give legal advice. They cannot tell you what argument to make, what evidence to use, whether you will win, or what you should do next. They also cannot recommend a lawyer, talk to the ALJ for you, allow you to speak privately with the ALJ about your case, or change an order issued by the ALJ.

Quick Tip: When you contact OAL, write down the date, the name of the person you spoke with, and what you were told.

REPRESENTATION AT OAL

You may have an attorney represent you, or you may represent yourself. A person who represents themselves is sometimes called pro se.

A non-lawyer may be able to assist you in certain circumstances if permitted by the ALJ. See the earlier section of this guide on representation by a non-lawyer.

If you need an interpreter, request one as soon as possible. Do not wait until the hearing date.

SCHEDULING AND ADJOURNMENTS

OAL will schedule conferences, oral arguments, and hearing dates. The OAL is responsible for conducting the hearing in a manner consistent with federal law, which requires that hearings be held at a time and place that are reasonably convenient for the parents and child involved. If you cannot attend on a scheduled date because of work, childcare, transportation, illness, or another serious reason, ask for a new date as soon as possible. This is called an adjournment.

If your case has already been assigned to an ALJ, send your request to the ALJ and copy the school district's attorney or the school district. Explain why you cannot attend and provide dates and times when you are available.

Before asking for an adjournment, try to contact the other side to see if they agree to the new date.

Do not skip a scheduled conference, oral argument, or hearing. If you do not appear, the ALJ may dismiss your petition. If the school district filed the motion or petition, the ALJ may hear the school district's side and may grant the order the school district requested without you there. If the ALJ grants relief because you did not attend, the ALJ must give you notice of both the order and your right to ask to set aside or modify the order.

Important: Unless the ALJ grants the adjournment, assume the conference, oral argument, or hearing is still going forward.

PRE-HEARING CONFERENCES WITH THE ALJ

The ALJ may schedule a pre-hearing conference. Either side may also ask for one. If there are dates or times you cannot attend because of work, childcare, transportation, or another reason, let the ALJ know as soon as possible.

Pre-hearing conferences usually happen by telephone conference call. The notice will tell you the date, time, format, and topics to be discussed. If you want the ALJ to discuss a specific topic, send an email to the ALJ's assistant and copy the school district's attorney or the school district.

At the pre-hearing conference, the ALJ may discuss the hearing rules, the issues in the case, possible settlement, discovery, motions, witnesses, expert witnesses, exhibits, and hearing dates. Have your calendar ready and be prepared to explain how many witnesses you may call and how many hearing days you think you may need.

The ALJ may also ask about discovery, which is the process for sharing information before the hearing. The ALJ may ask whether either side plans to file motions, such as emergent relief or summary decision. A motion for summary decision asks the ALJ to decide all or part of the case without a full hearing. You have the right to object. If you need documents from the school district to respond to a summary decision motion, tell the ALJ during the pre-hearing conference and ask that the motion not be filed or decided until the school district gives you the documents you need.

The ALJ may also help identify the legal issues for the hearing. Parents often describe the case by explaining the concern. The ALJ may turn that concern into one or more legal issues.

EXAMPLES OF HOW A CONCERN MAY BECOME AN ISSUE FOR THE ALJ

Parents often explain concerns in everyday language. During the OAL process, the ALJ may identify the legal issues that need to be decided. The examples below show how a concern may be written as an issue for hearing. These are only examples. The issues in each case depend on the facts and the hearing request.

Type of Concern	Parent Concern	Possible Issue for the ALJ
Related services	The student's IEP requires speech therapy three times per week, but the student did not receive speech therapy for two months.	Did the school district fail to implement the student's IEP? If so, is the student entitled to compensatory education or compensatory services?

Type of Concern	Parent Concern	Possible Issue for the ALJ
Evaluation and Eligibility	The student receives special education but is failing in reading. The parent asked the school district in writing to evaluate the student for dyslexia, but the district neither responded nor took action.	Did the school district respond to the parent's written request within the required timeline? Did the district evaluate the student in all areas of suspected disability?
Placement	The district moved the student from the general education classroom to a special education class for most or all of the day. The parent did not agree to the change and did not receive clear notice before it happened.	Did the school district offer or implement an appropriate placement in the least restrictive environment, or LRE? Did the school district provide required written notice before changing the student's placement?
IEP not providing FAPE	The student has an IEP, but the parent believes the school district has not provided the supports and services the student needs to make appropriate progress.	Did the district offer an IEP reasonably calculated to enable the student to make appropriate progress? Did the school district know, or should it have known, that the IEP was not meeting the student's needs?

After the conference, the ALJ will issue a pre-hearing order. Read it carefully. It may list the issues, requested relief, hearing dates, witness expectations, discovery deadlines, or motion deadlines. If the order does not match your understanding of the case, write to the ALJ as soon as possible, explain what is different, and copy the school district's attorney or the school district.

SETTLEMENT AGREEMENTS AT OAL

Parents and school districts may resolve a due process case by entering into a settlement agreement. A settlement agreement is a written agreement that explains what each party has agreed to do.

A settlement agreement may be reached privately, outside of the OAL hearing process. The ALJ may help the parties discuss possible resolution, but the parties are responsible for finalizing the agreement. Remember that attorney's fees and other compensation can be negotiated through a settlement agreement even if the ALJ could not order that relief.

If the settlement agreement resolves the due process request, the parties should notify the ALJ or OAL that the case has been resolved. The case may then be closed consistent with OAL procedures. OAL does not issue a final decision approving the settlement agreement.

Read the agreement closely before you sign. Make sure it says (1) what each side will do, (2) when each thing will happen, (3), whether it settles your whole case or only part of it, and (4) what will happen if either party does not comply with the settlement agreement.

NONPUBLIC SCHOOL PLACEMENT

There is one limited exception. If the agreement includes placement in an accredited nonpublic school that is not approved for students with disabilities under N.J.A.C. 6A:14-6.5, the ALJ will issue a final decision approving that placement.

Before approving the placement, the ALJ may require the parties to show or certify that the requirements for placement under N.J.A.C. 6A:14-6.5 have been met.

That approval is considered a final OAL decision.

DISCOVERY AT OAL

Discovery is the process of sharing information before the hearing. The purpose of discovery is to help both sides understand what information may be used at the hearing and to avoid surprises.

In special education cases, each side must disclose the documents and summaries of testimony it plans to use at the hearing at least five business days before the hearing, unless the ALJ sets a different or more specific deadline. Discovery may include sharing documents, witness information, and summaries of testimony that a party plans to use at the hearing. There are no formal interrogatories, requests for admissions or depositions allowed. See N.J.A.C. 1:6A-10.1.

You may ask the school district for records related to the issues in your case, such as IEPs, evaluations, service logs, progress reports, discipline records, emails, written notices, or documents about the proposed placement.

Discovery requests should be sent to the other party or, if the other party is represented, to that person's representative. Do not send discovery requests or discovery responses to OAL or the ALJ unless the ALJ specifically asks you to.

If you receive a discovery request, you must respond. You may provide the information requested or object if you believe the request is unfair, too broad, not related to the case, or asks for information that is private or protected. See Litigation Guide for information about how to object.

If the request involves private medical, mental health, or privileged information, you may ask the ALJ for protection before the records are shared. For example, you may ask the ALJ to limit who can see the records or how the records may be used.

Discovery must be completed before the hearing. The ALJ may set specific deadlines. Read all orders carefully and follow the deadlines. If you ask for documents and do not receive a response, or if you believe the response is incomplete, notify the ALJ and the other party within the timeline set by the ALJ or the applicable rules. Waiting too long may affect your ability to use or obtain the information.

Tip: Ask for records as early as possible. This gives you time to review the information, decide what documents you may want to use at the hearing, and prepare any questions for witnesses.

SUBPOENAS

A subpoena is a legal document that requires a person to attend the hearing and testify. A subpoena may also require the person to bring specific documents to the hearing. If you want someone to testify and the person will not attend voluntarily, you may need to serve that person with a subpoena. If you want someone to produce documents at the hearing, you must issue the subpoena for the witness to come and bring the documents with them. You cannot subpoena the documents only.

The Subpoena form and instructions are available on the OAL website under the Hearings section. A subpoena may be delivered to the witness in person or by certified mail, return receipt requested. You should keep proof that the subpoena was delivered and received.

A subpoena should be delivered as early as possible so the witness has time to prepare and attend the hearing. The person requesting the witness must include the required witness fee. OAL's subpoena instructions state that the witness fee is $2.00 per day, and if the witness lives outside the county where the hearing is held, an additional $2.00 for every 30 miles of travel must be included.

If the witness is an expert, such as a doctor, psychologist, therapist, or evaluator, the expert may charge an additional fee for their time.

If you need the witness to bring documents, list the documents on the subpoena form in the correct section.

A person who receives a subpoena may object if they believe attending the hearing is unnecessary or unfair. The ALJ will decide whether the person must follow the subpoena. Other questions about the subpoena, such as the exact time the witness must appear, should be directed to the person who issued the subpoena.

MOTIONS

A motion is a request asking the ALJ to make a decision or issue an order before or during the hearing.

Examples include a motion to change a hearing date, a decision on whether a person must comply with a subpoena, a decision on a discovery dispute, a decision on an objection, a dismissal of part of a case, an order enforcing stay-put, or a decision on a case without a full hearing.

Before the hearing, motions are usually made in writing. A motion does not need to be in a special format. A letter may be enough if it clearly explains what you are asking for and why. Send a copy to the school district's attorney or the school district.

During the hearing, motions may be made out loud. The ALJ will decide how and when to address the request.

MOTION TO DISMISS

A motion to dismiss asks the ALJ to end all or part of the case before a full hearing.

If you receive a motion to dismiss, read it carefully. The ALJ may set a deadline for you to respond. Do not ignore the motion.

Your response should explain why you believe the ALJ should hear the case. It may also explain what facts are still in dispute and why those facts matter.

SUMMARY DECISION MOTION

A motion for summary decision asks the ALJ to decide all or part of the case without a full hearing. The party filing the motion is saying there is no real disagreement about the important facts and that the law supports a decision in that party's favor.

If you disagree with a summary decision motion, file a response by the deadline set by the ALJ. Your response should explain what facts are disputed and why a hearing is needed.

Do not simply state that you disagree. Be as specific as possible. For example, identify the facts, documents, witnesses, or events that you believe the ALJ still needs to consider at a hearing.

EMERGENT RELIEF AT OAL

Emergent relief is a request for a temporary order before the due process hearing is completed. It is only available for certain urgent issues. This section explains how emergent relief may come up once the case is at OAL. For a broader explanation of emergent relief and stay-put, see the earlier sections of this guide. If a school district files for emergent relief to place a student in an Interim Alternative Educational Setting (IAES), it must first file a request for an expedited due process hearing.

A request for emergent relief may involve:

- A break in the delivery of services, such as failure to provide a home instructor or extended school year services;
- Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
- Placement while the due process case is pending;
- Graduation or participation in graduation ceremonies.

The ALJ may grant emergent relief if the petitioner shows:

- The petitioner will suffer irreparable harm if relief is not granted;
- The legal right supporting the request is settled;
- The petitioner is likely to succeed on the underlying claim; and
- When the interests of both sides are balanced, the petitioner will suffer greater harm if relief is denied than the other party will suffer if relief is granted.

If you are seeking emergent relief to enforce a stay-put program or placement, you do not have to show the four factors listed in the previous section (irreparable harm, legal right is well settled, likelihood of success, and balancing of equities). You only have to show that the program or placement is the stay-put program or placement. An emergent relief decision does not decide the whole case. It only decides whether temporary relief is needed while the case is pending.

STAY PUT AT OAL

Stay-put is explained earlier in this guide.If the school district changes your child's placement or services after you file for due process and you believe the change violates stay-put, you may request emergent relief. If your case has been transmitted to the OAL, your request for emergent relief must be made to the ALJ. If your case is still with the OSE, your request must be sent to OSE. In your request, explain how the district changed your child's placement or services and ask the ALJ to order the district to maintain or restore the student's stay-put placement while the dispute is pending.

EXPEDITED DISCIPLINE MATTERS AND SAFETY-BASED REQUESTS

Some discipline-related cases move faster than regular due process cases. A parent may request an expedited hearing if the parent disagrees with a manifestation determination or a disciplinary placement decision.

A school district may also request an expedited hearing if it believes it is dangerous for the student to remain in the current placement and the parent and school district cannot agree on an appropriate temporary placement.

If the school district files this type of request, review the papers carefully. Ask:

- What temporary placement is the school district requesting?
- What facts does the school district rely on?
- Are the facts recent?
- Are the statements based on first-hand knowledge?
- Did the school district explain why the proposed temporary placement is appropriate?
- Did the school district explain what supports it tried before asking to remove the student?

The question the ALJ is reviewing is not simply whether the student had behavioral difficulty. The question is whether maintaining the current placement is substantially likely to result in injury to the student or others and whether the proposed temporary placement is appropriate.

WITHDRAWAL OF HEARING REQUEST

If you filed the due process request and no longer want to continue, you may withdraw your request. Notify the ALJ or OAL in writing and copy the school district or school district attorney.

If you want to withdraw "without prejudice," say that clearly. "Without prejudice" generally means you are not asking the ALJ to decide the issues and you may be able to file again later if the law allows it.

Before withdrawing, understand the possible impact. If you withdraw your hearing request, the school district may be able to move forward with the proposed action, unless another agreement or order prevents it.

FAILURE TO APPEAR

Failure to appear means that a party does not attend a scheduled conference, oral argument, emergent relief date, or hearing date.

If you filed a due process petition or expedited petition and later decide you do not want to move forward, do not simply miss scheduled dates. It is better to ask to withdraw your petition in writing. Missing dates without explanation can have serious consequences.

If you miss a scheduled conference, emergent relief date, or hearing date, contact the ALJ's office right away. You should call the ALJ's assistant no later than one day after the missed date and explain why you were not there. The assistant may ask you to send a written explanation. If you send a letter or email, send a copy to the school district's attorney or the school district.

If you do not act quickly, the ALJ may take action without your participation. If you filed the petition, the ALJ may dismiss your case. If the school district filed the request, the ALJ may allow the school district to present witnesses and evidence without you.

If the ALJ grants the school district's emergent relief request when you were not present, you have 2 days to ask that the order be dissolved. The ALJ must first give you notice of both the order and your right to ask to set aside or modify the order.

Quick Tip: If there is an emergency and you cannot attend, call the ALJ's office immediately. Then send an email explaining what happened. Copy the school district's attorney. Keep a copy of everything you send.

PREPARING FOR THE HEARING

Before the hearing, organize your documents and decide what you want the ALJ to consider. Documents used at the hearing are often called exhibits.

You should:

- Make a list of the information you want to present;
- Organize your documents;
- Prepare a witness list;
- Ask people with first-hand knowledge of the case to attend the hearing and testify;
- Request a subpoena if a witness will not attend voluntarily;
- Prepare questions for your witnesses; and
- Prepare questions for the school district's witnesses.

Examples of possible exhibits include IEPs, evaluations, progress reports, service logs, attendance records, discipline records, written notices, emails, medical or therapy letters, work samples, private evaluations, and records showing expenses if reimbursement is requested.

Parent tip: Do not wait until the hearing date to organize your documents or contact witnesses. Preparing early gives you time to decide what information is most important and whether subpoenas are needed.

There are three sets of exhibits at a hearing. Your exhibits are the papers you chose. The district's exhibits are the papers the school district chose. Joint exhibits are papers both sides agreed to use.

Many ALJs require exhibit binders and some require that the binders be provided to the ALJ ahead of the hearing. You can agree on joint exhibits with the school district attorney and that attorney should be able to include all joint exhibits in one binder and provide copies for the ALJ and the witnesses.

You will need to put your own exhibits in binders if required by the ALJ. Bring four binders of your own exhibits:

- One for the judge
- One for the witnesses to look at when they testify
- One for the school district's lawyer
- One for you

Parent Tip: Did you already give the judge a binder before the hearing day? Then bring three binders instead of four.

The witnesses need a binder to look at when they testify. Each witness has to see the paper you are asking about. The same binder is used for every witness.

Note: You can choose to bring exhibits that you think are important to your case even if you know the school district's lawyer will object to their use. You or another witness will need to identify the exhibits at the hearing and explain their relevance. You will then have the right to ask the ALJ to admit your exhibits into evidence.

ON THE HEARING DAY

Arrive on time. Bring your hearing notice, documents, witness list, and notes. Your hearing notice includes important case information, such as your OAL docket number, hearing date, time, and location or access instructions.

If the hearing is virtual, make sure you have the link, phone number, or access instructions before the hearing begins. Try to log in or call in a few minutes early.

If the hearing is in person:

- Turn off your cell phone before entering the hearing room;
- Do not bring food or beverages into the hearing room;
- Remove your hat when entering the hearing room, unless worn for religious, medical, or disability-related reasons; and
- Follow the ALJ's instructions for courtroom procedures

When the ALJ enters the hearing room, stop talking and stand, unless you are unable to do so.

The ALJ will explain the process. If you do not understand something, ask the ALJ to explain it.

Be respectful and speak clearly. When speaking to the ALJ, use respectful language and address the ALJ as "Your Honor." Speak directly to the ALJ, not to the other party.

Do not interrupt the questioning of the school district's attorney unless you are making an objection to a question the school's attorney is asking. You must make the objection when the question is asked. Do not interrupt while the school's attorney is talking (other than objecting to a question) and never interrupt the ALJ. Wait until they finish. Then ask the ALJ if you may respond.

THE DUE PROCESS HEARING

At the hearing, the Administrative Law Judge, or ALJ, decides how the hearing will proceed. In New Jersey, the school district has the burden of proof and the burden of production. That means the school district is responsible for showing that it has provided a FAPE and presents its case first.

Before things start, the ALJ may ask if the case can settle. If both sides talk about settling, that talk may be off the record. Off the record means it is not written down. If the case does not settle, the hearing goes on. You can request that all settlement discussions can be conducted by an ALJ who is not hearing the case.

The ALJ will explain the hearing procedures before the case begins. If you do not understand something, let the ALJ know and ask for an explanation.

During the hearing, each side may present witnesses, documents, and other evidence. Each side may also question the other side's witnesses. This is called cross-examination.

Witnesses testify under oath or affirmation. The ALJ may limit evidence if it is repetitive, takes too much time, is unfair, or is not related to the issues in the case.

The party with the burden of proof is responsible for proving its case. In New Jersey, that is the school district.

You should arrange to have the witnesses and documents you need available for the hearing. Prepare your questions in advance. If the hearing is in person, bring the original and three copies of your documents unless the ALJ gives different instructions.

If reimbursement is part of your request, bring records that show the expenses. Examples may include receipts, invoices, bills, contracts, estimates, canceled checks, money orders, or other proof of payment.

A record is made of the hearing. Everyone should speak clearly so the record is accurate.

The ALJ's role is to understand the facts and law, consider the evidence, listen to both sides, and issue a decision. The ALJ may ask questions of any party or witness to better understand the information presented.

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AT THE END OF TESTIMONY

There may be oral closing statements or written submissions at end of testimony. Usually, the case will conclude with oral closing statements. If one or both of the parties requests to submit a written closing, and that request is granted by the ALJ, the ALJ must inform the parties of the due date for the written closing. The due date for the decision will be two weeks from the date the written closing was submitted.

If the ALJ sets a due date for post-hearing submissions, submit your documents or written argument on time. The ALJ may not consider late documents.

THE ALJ'S DECISION

For a regular due process hearing, the decision is due within 45 days after the resolution period ends, unless the ALJ grants a specific extension requested by either party. For an expedited due process hearing, the hearing must be held within 20 school days of the request, and the ALJ must issue a decision within 10 school days after the hearing ends. The ALJ will identify the decision due date. If you are unsure when the decision is due, ask the ALJ during the hearing. The ALJ's decision is the final administrative decision. The decision may grant all, some, or none of the requested relief and will explain any orders the parties must follow.

Both sides must carry out the decision without delay. There are two exceptions. If the student is in a stay-put program and the decision orders a change in placement and the parent appeals, the school district cannot change the placement. The other is if one party appeals and asks the court to put the decision on hold and the court does so. Note: If the parent prevails and the ALJ orders a change in placement then that becomes the new stay-put, and a court cannot stop that from going into effect.

APPEALS

In special education due process cases, the ALJ's decision is the final administrative decision. If you disagree with the ALJ's final decision, you may seek review of that decision in federal court, the United States District Court for the District of New Jersey. Instructions on filing an action pro se in federal court are available here. Or you may choose to seek review of the decision New Jersey state court instead. In that case, you would file in Superior Court for the county in which the school district is located. Information about filing an action pro se in state court is available here.

ENFORCEMENT OF AN ALJ DECISION OR MEDIATION AGREEMENT

ENFORCEMENT OF AN ALJ DECISION

If a school district does not implement a final OAL decision about a student's program or services, the parent or the parent's attorney may request enforcement through the NJDOE Office of Special Education.

The request must be made in writing and must include a copy of the OAL decision. The request must be filed no later than the 90th calendar day from the date the required action was supposed to occur. If the decision includes more than one requirement, the 90-day timeline applies separately to each requirement, based on the date that specific action was required.

NJDOE Request for Enforcement of a Decision Issued by the Office of Administrative Law

ENFORCEMENT OF A MEDIATION AGREEMENT

A parent may also request enforcement if a school district does not implement a mediation agreement. The Office of Special Education must have a copy of the mediation agreement before it can take action on the enforcement request.

A request to enforce a mediation agreement must also be submitted no later than the 90th calendar day from the date the required action in the agreement was supposed to occur. If the request is filed late, the Office of Special Education cannot enforce it.

If any part of the mediation agreement was later changed by the parties, enforcement may not be requested for that changed part of the agreement.

A party may also seek enforcement in court.

NJDOE Request for Enforcement of a Mediation Agreement

Requests may be submitted to: osepdisputeresolution@doe.nj.gov.

A copy of the entire request must also be sent to the school district responsible for the student.

FINAL REMINDER

The OAL process can feel formal, but you do not need to memorize every rule. Read each notice and order carefully, keep track of deadlines, organize your documents, and ask questions if you do not understand the process.

The checklist on the next pages can help you stay organized as your case moves through OAL.

PARENT CHECKLIST FOR THE OAL STAGE

Once your case is sent to the Office of Administrative Law, keep track of important notices, deadlines, and documents.

WHEN YOU RECEIVE NOTICE FROM OAL

☐ Save all notices and orders from OAL or the ALJ.
☐ Write down your OAL docket number.
☐ Confirm the date, time, and format of any conference, argument, or hearing.
☐ Tell OAL and the school district right away if your address, phone number, or email changes.
☐ Request an interpreter or accommodation as soon as possible, if needed.

BEFORE A CONFERENCE OR HEARING

☐ Review your due process petition and the issues you raised.
☐ Write down what you are asking the ALJ to order.
☐ Have your calendar ready for scheduling.
☐ Ask for any records you need from the district as early as possible.
☐ Organize important documents, such as IEPs, evaluations, progress reports, written notices, emails, service logs, and discipline records.
☐ Make a list of witnesses and what each witness can explain.
☐ Request a subpoena early if a witness will not attend voluntarily.

IF YOU RECEIVE AN ORDER FROM THE ALJ

☐ Read the order carefully.
☐ Check all hearing dates and deadlines.
☐ Make sure the listed issues match your understanding of the case.
☐ If something seems incorrect or missing, write to the ALJ as soon as possible and copy the district or district attorney.

PARENT CHECKLIST FOR THE OAL STAGE (CONTINUED)

IF YOU CANNOT ATTEND

☐ Ask for an adjournment right away.
☐ Explain why you cannot attend and provide other dates when you are available.
☐ Copy the district or district attorney.
☐ Do not skip a conference, argument, or hearing unless the ALJ grants the adjournment.

ON THE HEARING DAY

☐ Arrive or log in on time.
☐ Have your notice, documents, witness list, and notes with you.
☐ Speak clearly because a record is being made.
☐ Ask the ALJ to explain anything you do not understand.
☐ Do not interrupt the ALJ, witnesses, or the other party, unless you are objecting to a question asked by the attorney for the school district.

AFTER THE HEARING

☐ Submit any post-hearing documents by the deadline.
☐ Review the ALJ's written decision carefully.
☐ Write down any dates by which the district must take action.
☐ Review the appeals or enforcement sections right away if needed.

APPENDIX A: KEY TERMS

Adjournment
A request to change the date of a scheduled conference, oral argument, or hearing.

Administrative Law Judge, or ALJ
The judge assigned by the Office of Administrative Law to manage the case, hear evidence, and issue a written decision.

Appeal
A request for a court to review the ALJ's final decision.

Burden of Proof
The responsibility to prove a claim or request at the hearing.

Compensatory Education or Compensatory Services
Services that may be ordered to make up for special education or related services that were not provided.

Cross-Examination
The opportunity for one party to ask questions of the other party's witness.

Discovery
The process of sharing information before the hearing, such as documents, witness information, and summaries of testimony.

Docket Number
The number OAL uses to identify a case.

Due Process Hearing
A formal hearing before an ALJ where the parent and school district may present witnesses, documents, and other evidence.

Emergent Relief
A request for a temporary order before the due process hearing is completed. Emergent relief is only available for certain urgent issues.

APPENDIX A: KEY TERMS (CONTINUED)

Evidence
Information presented at the hearing to support a party's position. Evidence may include documents, testimony, and records.

Exhibit
A document or item submitted for the ALJ to consider during the hearing.

Final Administrative Decision
The ALJ's written decision in a special education due process case. In special education cases, the ALJ's decision is the final administrative decision.

Hearing Record
The official record of what happened during the due process hearing.

IEP
Individualized Education Program. The written plan that describes the special education, related services, supports, and placement for an eligible student.

Mediation
A voluntary process where a neutral person helps the parent and school district try to reach an agreement.

Motion
A request asking the ALJ to make a decision or issue an order before or during the hearing.

Motion to Dismiss
A request asking the ALJ to end all or part of the case before a full hearing.

Office of Administrative Law, or OAL
The independent State agency that conducts hearings in certain disputes, including special education due process cases.

APPENDIX A: KEY TERMS

(CONTINUED)

Petition

The written request for a due process hearing.

Pre-Hearing Conference

A conference before the hearing where the ALJ may discuss the issues, schedule, discovery, motions, witnesses, settlement, and hearing dates.

Pro Se

A person who represents themselves without an attorney.

Settlement Agreement

A written agreement between the parent and school district that explains how some or all of the case will be resolved.

Stay-Put

The student's right to remain in the last agreed upon educational placement while due process is pending, unless the parent and school district agree otherwise or an exception applies.

Subpoena

A legal document requiring a person to attend the hearing, testify, or bring specific documents.

Summary Decision

A decision made by the ALJ on all or part of the case without a full hearing when there is no real disagreement about the important facts.

Testimony

Statements made by a witness under oath or affirmation.

Withdrawal

A written request to stop moving forward with the due process petition.

With Prejudice

A phrase that means the case is being withdrawn or dismissed and the party will not be able to file again later on the same issues.

Without Prejudice

A phrase that generally means the case is being withdrawn or dismissed without the ALJ deciding the issues, and the party may be able to file again later if the law allows it.

REFERENCES

The following sources were used to develop this guide:

- Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., including 20 U.S.C. § 1415.
- Individuals with Disabilities Act regulations, 34 C.F.R. Part 300, including procedural safeguards, due process, mediation, stay-put, hearing rights, expedited hearings, and appeals.
- New Jersey special education regulations, N.J.A.C. 6A:14.
- New Jersey Office of Administrative Law rules, N.J.A.C. 1:1 and N.J.A.C. 1:6A.
- New Jersey Department of Education, Parental Rights in Special Education (PRISE).
- New Jersey Department of Education, Office of Special Education, Dispute Resolution Forms and Guidance.
- New Jersey Department of Education, Summary of Mediation and Due Process Requirements.
- New Jersey Department of Education, Special Education Due Process Hearing Decisions.
- New Jersey Office of Administrative Law, Guide to Representing Yourself at an Administrative Hearing.
- New Jersey Office of Administrative Law, Subpoena Form and Instructions.

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