

## Ask the Advocate... by Desiree Vandelac Special Education Advocate/Legal Assistant

**Question:** I have heard that there is a new court decision that parents can represent their children in special education cases without an attorney. I would also like to learn more about due process hearings. How does this new court decision affect me and what exactly are due process hearings?



**Answer:** On May 21, 2007 the U.S. Supreme Court ruled that parents may represent their children's interests in special education (IDEA) cases, although they are not licensed attorneys, and as such do not need to hire an attorney to pursue IDEA cases on behalf of their children. Parents have always been permitted to represent their children "pro se" (without an attorney) in due process hearings. However, in Winkelman v. Parma City School District the question before the Supreme Court centered around the procedures to be followed when parents, after the outcome of a due process case, seek further review in U.S. District Court. Before the Winkelman v. Parma decision the circuit courts had "split" rulings on this issue—some circuit courts had ruled that parents could represent their children in IDEA cases being heard in district court while other circuit courts had ruled that parents needed to hire an attorney to represent their children in IDEA cases being heard in district court. U.S. Supreme Court rulings are the top of the judicial hierarchy and all states must follow those decisions. Now all parents regardless of what state they live in are entitled to represent their children pro se in IDEA cases.

However, just because a parent can appear pro se at a due process hearing (and now all IDEA court proceedings) doesn't mean that they should. First and foremost parents must understand that a due process hearing is a trial. Pete Wright, noted special education attorney and founder of Wrightslaw.com states, "a due process hearing is a formal, contested, adversarial trial. Special education cases are similar to medical malpractice cases, with battles of expert witnesses, and the emotions of bitterly contested divorce cases with child custody and equitable distribution issues. Before you request a due process hearing, you should be familiar with the federal statutes and regulations and your state's special education statutes and regulations."

As with trials, due process hearings involve filing a complaint and response, and in many due process hearings motions are filed that require legal research and the citation of cases and statutes. Due process hearings also involve compiling exhibits and most require the retention of expert witnesses. Often parents do not fully understand the complexity of a due process hearing. They mistakenly believe that a due process hearing is similar to the television show "Peoples' Court" where they simply fill out a piece of paper and give their side of the story to the Independent Hearing Officer. Unfortunately a due process hearing is nothing like the "Peoples' Court." For parents considering entering into a due process hearing pro se, ask yourself these two simple questions: "If my child

were facing criminal charges, would I represent him myself or would I hire an attorney?" and "If I were going through a difficult divorce and was entering a custody hearing, would I represent myself or would I hire an attorney?" Before even considering filing a due process complaint, seek the guidance and expertise of a special education attorney. Even if you choose not to retain that attorney, it is well worth your time and money to at least consult with an attorney so you can understand the strengths and weaknesses of your case and make an informed decision prior to filing a due process complaint.

It is important for parents to understand that due process hearing decisions affect every special education child within the state of Colorado. When families prevail in cases that are strong and legally sound, it sets precedence and helps to ensure that all special needs children receive a free appropriate public education. A due process decision in your child's favor does not simply benefit your child, but benefits every child that comes after him or her.

If you are considering filing a due process complaint, with or without an attorney, you should purchase the DVD "Surviving Due Process: Stephen Jeffers v. School Board" from Wrightslaw.com. This very informative DVD takes you through the due process hearing from initial preparation to testimony by the final witness. From Emotions to Advocacy (as always) contains a wealth of information about due process hearings, as does The Everyday Guide to Special Education Law by Randy Chapman. Even if your child is experiencing a wonderful school year and you are thrilled with his or her placement and would never consider filing a due process complaint, at a minimum you should read the Rules of Adverse Assumptions in Chapter 21 of, From Emotions to Advocacy. As I tell all of my clients, the best way to avoid a due process hearing is to always be prepared for a due process hearing.

Send questions via email to [advocate@autismboulder.org](mailto:advocate@autismboulder.org) While I cannot respond directly to you, I will try to answer all of your questions in this column.

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**Ask the Advocate** is not intended to, nor does it provide, legal advice. Rather its purpose is to provide general information to help parents improve their own advocacy skills in the IEP process. It is recommended you consult with an attorney who specializes in special education law for legal advice, specific advice and guidance that is tailored to your particular circumstances, or if you want professional assurance that our information (and your interpretation of it) is appropriate for your particular situation.