



EDUCATION PRACTICE

ALERT

NEW DUE PROCESS HEARING RULES REQUIRE PLANNING BEFORE DUE PROCESS IS IN VIEW

By Timothy E. Gilsbach

In January 2011, the Pennsylvania Special Education Hearing Officers issued new rules related to the manner in which due process hearings under the Individuals with Disabilities Education Act (IDEA) are to be conducted. These new rules have a significant impact on the manner in which information from the evaluation process is presented at hearings. School entities need to conduct evaluations with these new rules in mind and should require evaluators to think now about the possible due process complaint to come perhaps weeks, months or even years from now.

Under the new rules, a witness who has written a report, which would appear to include an evaluation report or re-evaluation report, is essentially prohibited from testifying on direct examination about the report or what they did as part of the evaluation process. According to the process, the witness is called, explains his or her qualifications, is then presented the report and asked if they wrote it and would agree with it if they would testify about it, and is then passed on to opposing counsel for cross-examination. As a result, any one who has done an evaluation report, or any other written report for that matter, is basically limited to what is in the report and then subjected to cross-examination by someone intending to point out

all of the flaws and possible issues with the report.

As a result, those who draft such reports need to draft it with an eye toward potentially having this report presented at a due process hearing with little or no time to explain what is in the report or why the evaluator or report writer did or did not do certain things. Thus, it has become critical that report writers, including school psychologists and other professionals, explain these things in the report itself. Such an explanation should include what tests were done and why, what was not done and why, what the results mean and what that tells the reader about the student's needs. While such an approach may seem like a lot to put into the report, the failure to address these issues now combined with the new hearing procedures may lead to a scenario that keeps the school district or charter school from ever being able to address these issues or to defend itself at a later due process hearing. Careful planning now can make defending a claim at due process hearing down the road much easier.

If you have any questions about this alert or need guidance regarding the content of this alert, please contact Timothy Gilsbach at 610.397.6511 or tgilsbach@foxrothschild.com or any member of Fox Rothschild's [Education Practice Group](#).

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