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## Exploring the “10 Day ARD Recess” and “Stay Put”

Parents have many important rights under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup> Included in those rights are meaningful parent participation, and prior written notice of meetings and/or proposed changes to their child’s educational program.<sup>2</sup>

If parents disagree with a school Admission Review and Dismissal (ARD) Committee’s proposed changes to their child’s services or educational program in the Individualized Education Program (IEP), they may request an ARD meeting recess of up to 10 days.<sup>3</sup> During the meeting recess, the parents and the school are to consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons to assist the entire ARD Committee to reach a mutual agreement.<sup>4</sup>

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### ***DID YOU KNOW?***

*A parent may request an independent facilitator from the Texas Education Agency (TEA) to facilitate an ARD meeting that is currently in a disagreement recess.*

*Submit a request form to TEA within 5 days of the ARD meeting which ended in disagreement.*

***19 T.A.C. 89.1197***

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<sup>1</sup> 20 U.S.C. 1400 et. seq.

<sup>2</sup> 20 U.S.C. 1415

<sup>3</sup> 19 T.A.C. 89.1050(g)

<sup>4</sup> Id.

Within ten days, the ARD Committee meets again to further discuss other options and alternatives to the proposed IEP changes. If the parents and school ARD committee members still cannot reach an agreement about the child's IEP, the school district must implement the IEP that it determined to be appropriate.<sup>5</sup> However, parents should know there may remain a brief opportunity to stop the proposed IEP changes from taking effect, if they know their rights and follow the procedures to enact "Stay Put".<sup>6 7</sup>

Stay Put, also known as a pendency proceeding, describes the status of the child's IEP while a legal dispute is pending between the parents and the school.

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*If parents wish to prevent the school's proposed IEP changes from taking effect, they must act quickly by following a process and requesting "stay put".*

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In Texas, if a **Request for Due Process Hearing**<sup>8</sup> is filed with the Texas Education Agency (TEA), asking for "stay put" before the IEP changes become final (5 days after final disagreement ARD, unless the parent waives the 5 day waiting period), then, the last IEP in effect before the proposed IEP changes, will remain in effect while the dispute is being decided by an Independent Hearing Officer (IHO).

**NOTE:** *Although parents have a right to represent themselves and their children in a due process proceeding, parents should consider seeking advice and counsel of an attorney who practices special education law to assist them with the process. Special education law can be complex, and due process hearings are administrative legal proceedings where the rules of procedure, discovery, and evidence apply.*

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<sup>5</sup> 19 T.A.C. 89.1050(g)

<sup>6</sup> 34 C.F.R., 300.518

<sup>7</sup> 19 T.A.C. 89.1151 (c). Parents may file a Request for Due Process Hearing up to 12 mos. after any disagreement, however, in the mean-time, the school's changes to the IEP will go into effect after the 5<sup>th</sup> school day.

<sup>8</sup> 19 T.A.C. 89.1165 and 34 C.F.R. 300.508

Once the Request for Due Process Hearing is filed with the TEA, an Administrative Law Judge, known as an “Impartial Hearing Officer (IHO),” is assigned to the case through the State Office of Administrative Hearings. The IHO is a neutral third party with knowledge about special education laws, and has authority to determine what is educationally appropriate for the child.

### **How does “enacting stay put” work as a practical matter?**

If parents disagree with a school’s proposed change to their child’s program or services, and they wish to preserve their right to keep their child’s current IEP, until an IHO determines what is educationally appropriate, they should:

- 1) Have the ARD committee clearly **document the** areas of **disagreement** in the deliberations page of the student’s IEP.
- 2) **DO NOT** check the box **waiving the 5 school days** to begin/implement the proposed IEP.<sup>9</sup>
- 3) Draft a **Request for Due Process Hearing** detailing the disagreement, and **request** that your child’s **last IEP remain in effect** while the case is pending.
- 4) **FILE** the Request for Due Process Hearing with the **TEA**, and send a copy to the School District **Superintendent within the 5 day period**.

*The Texas Education Agency designed a model Due Process Hearing Request Form, which is available on their website.*

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*Additional information about special education services and resources  
can be found in the [IDEA Manual 2016](#), a joint project of  
[The Arc of Texas](#), and [Disability Rights Texas](#).*

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**\* This article is for general information purposes only. If you need legal advice, you should seek the assistance of an attorney who practices special education law.**

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<sup>9</sup> 19 T.A.C. 89.1050 (h)