

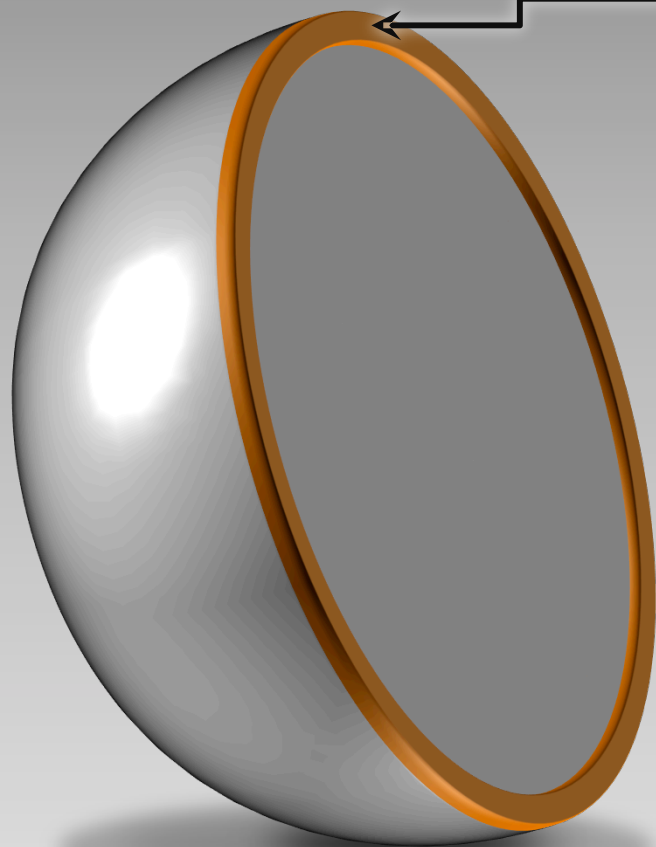
# Legal Update

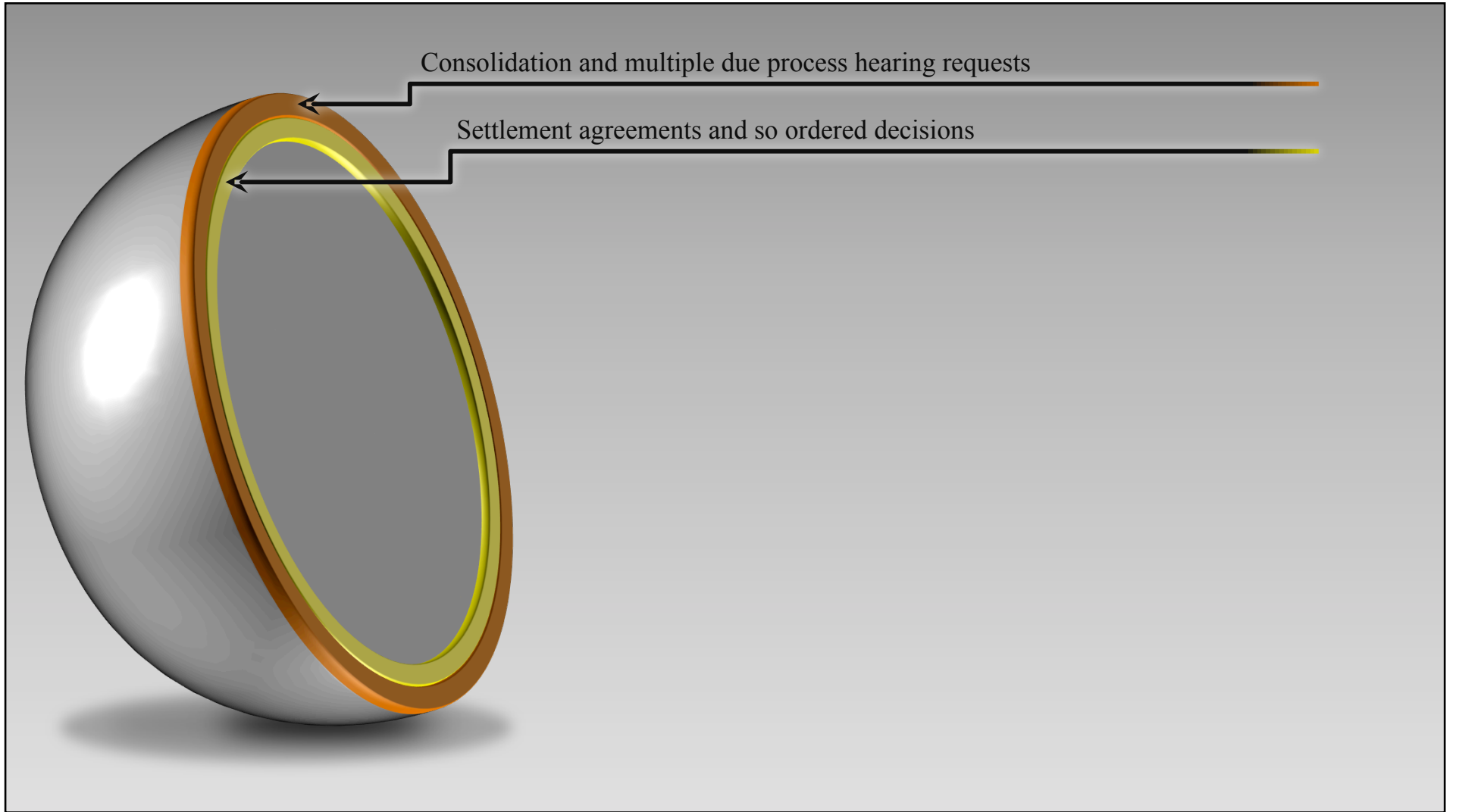
Recent Amendments to Part 200

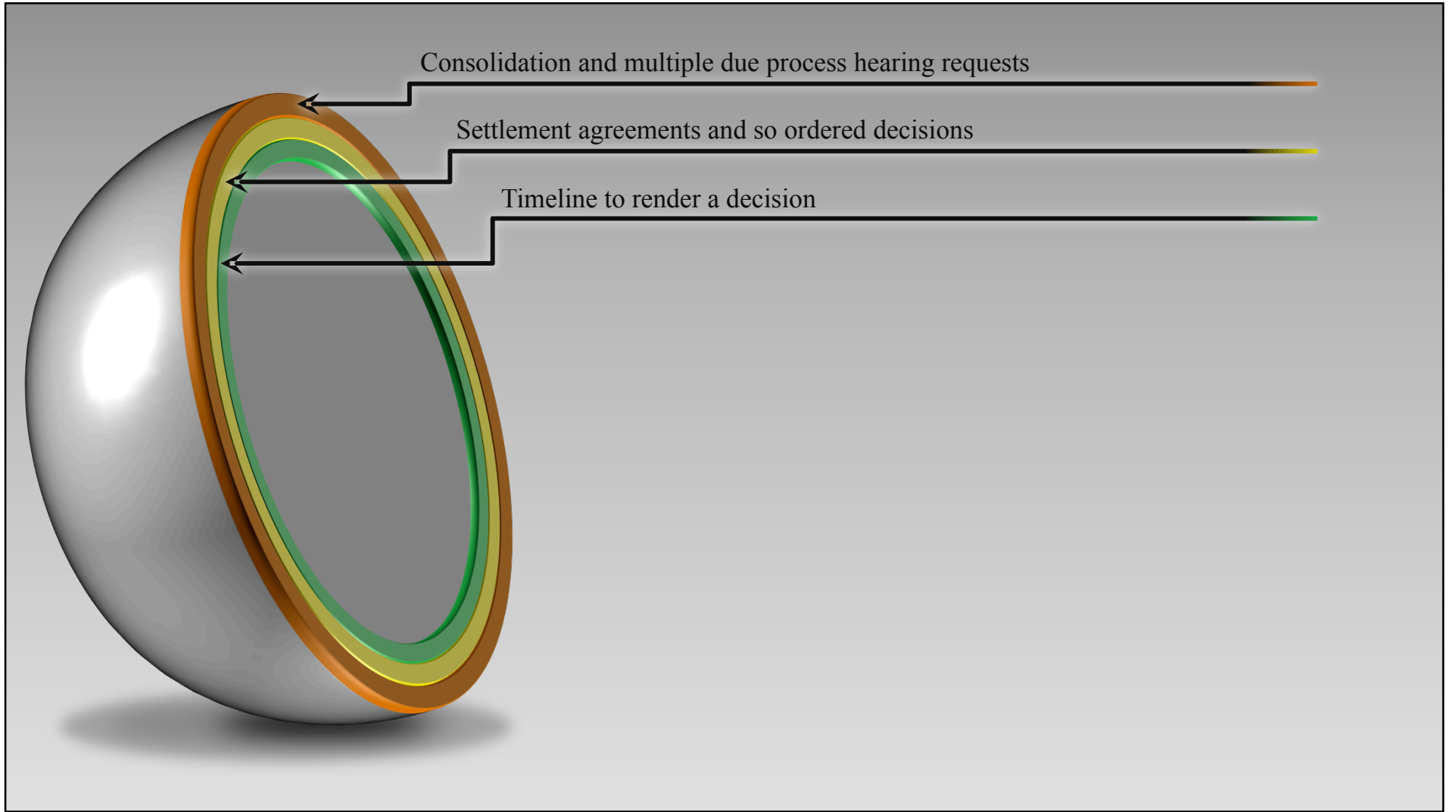


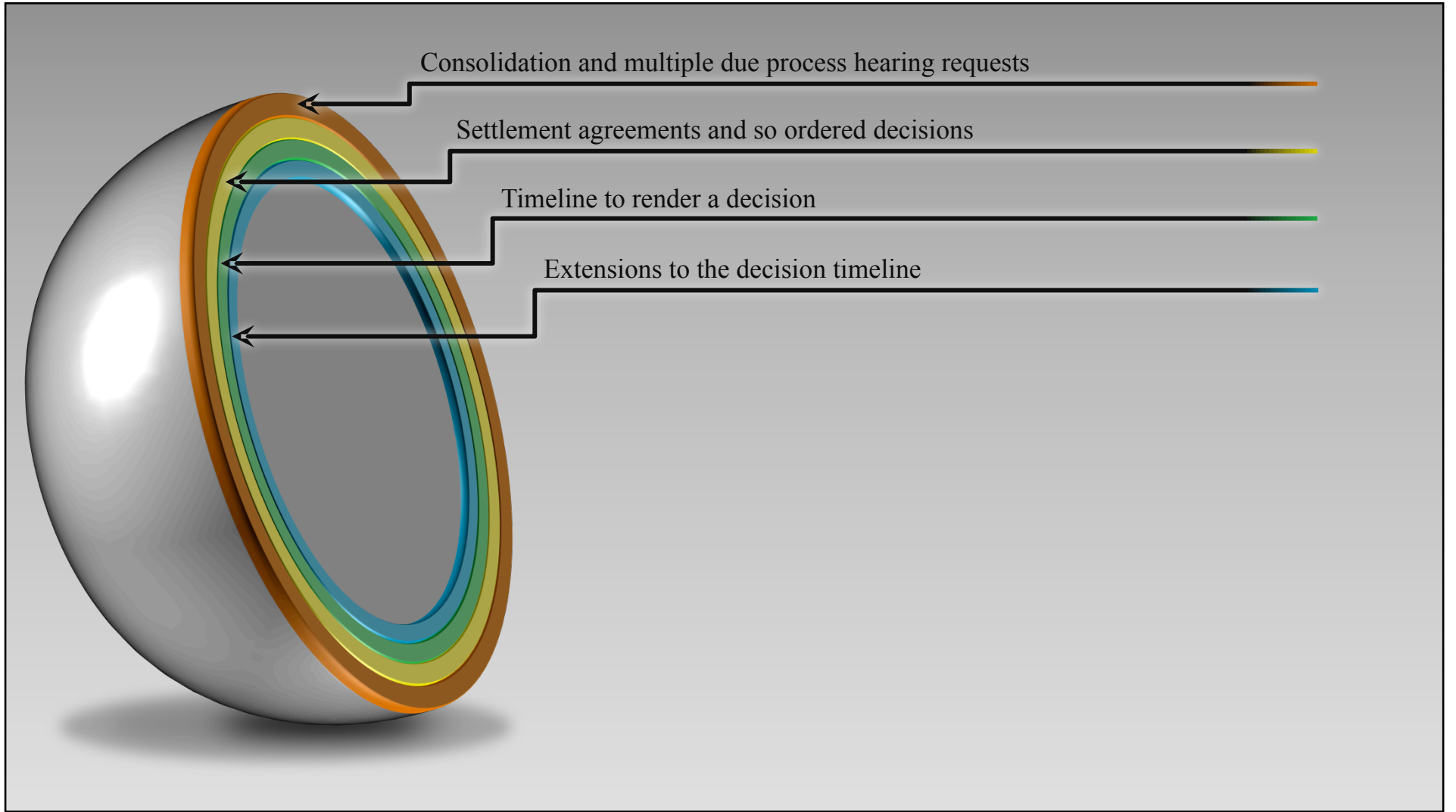
# Introductory Remarks

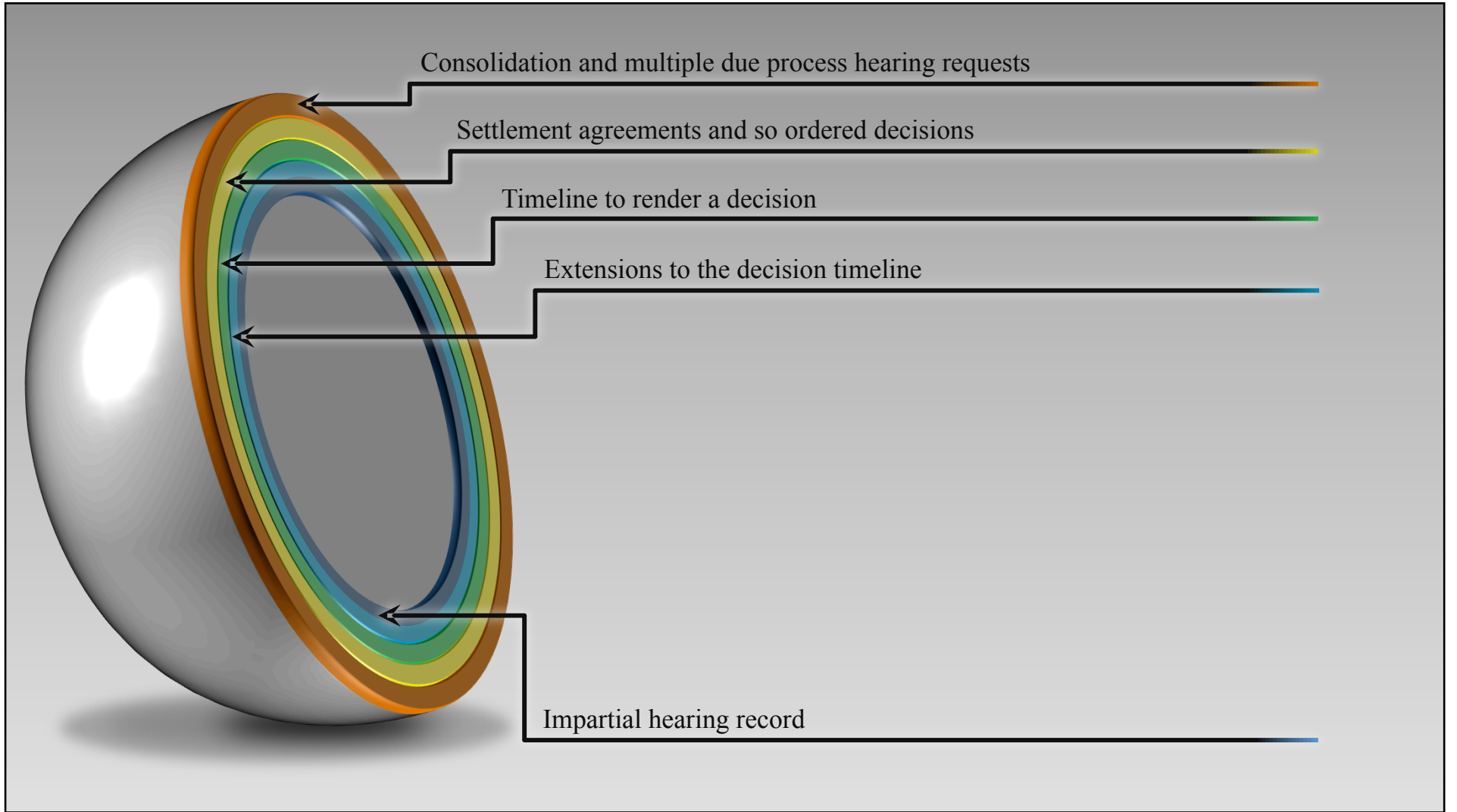
Consolidation and multiple due process hearing requests

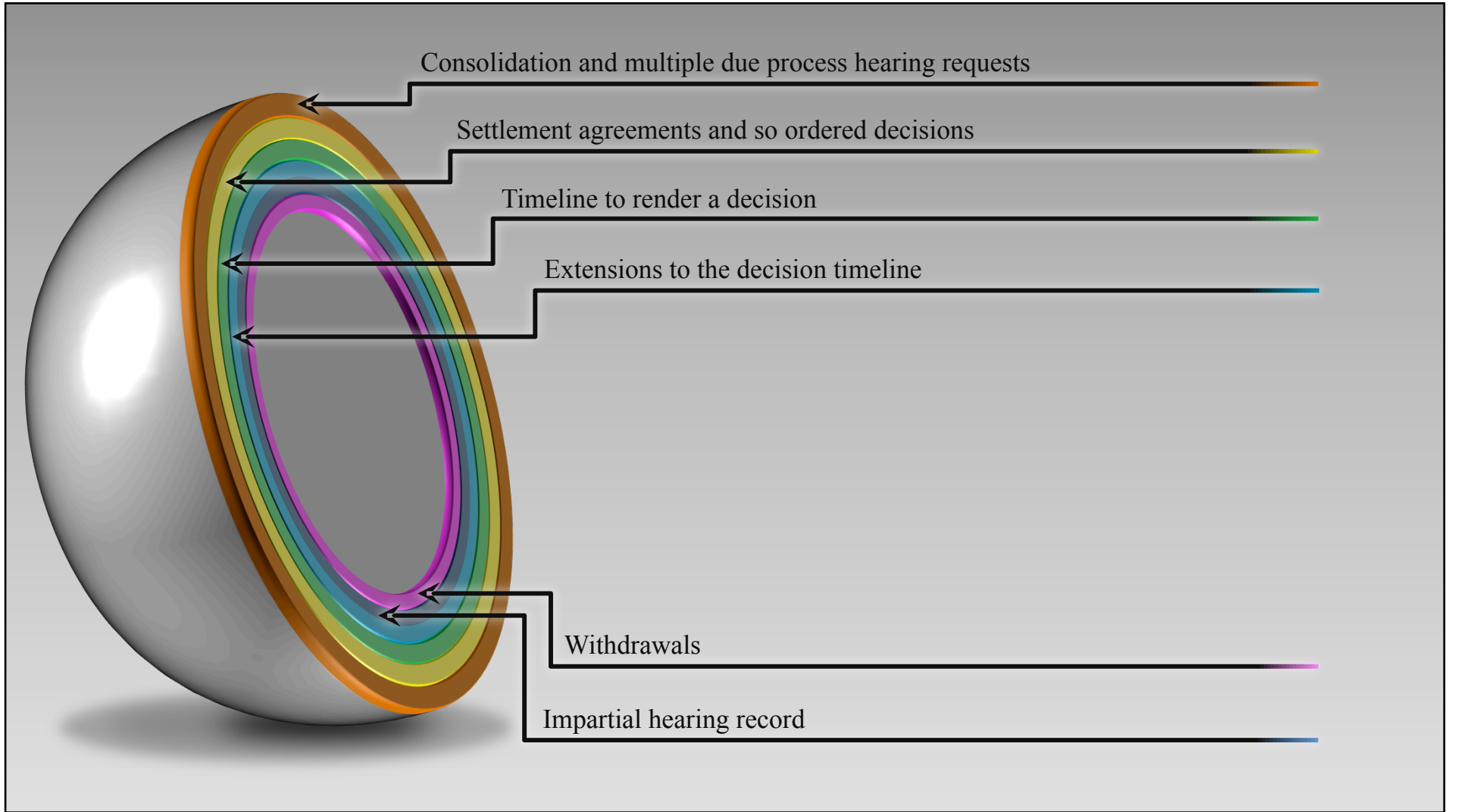




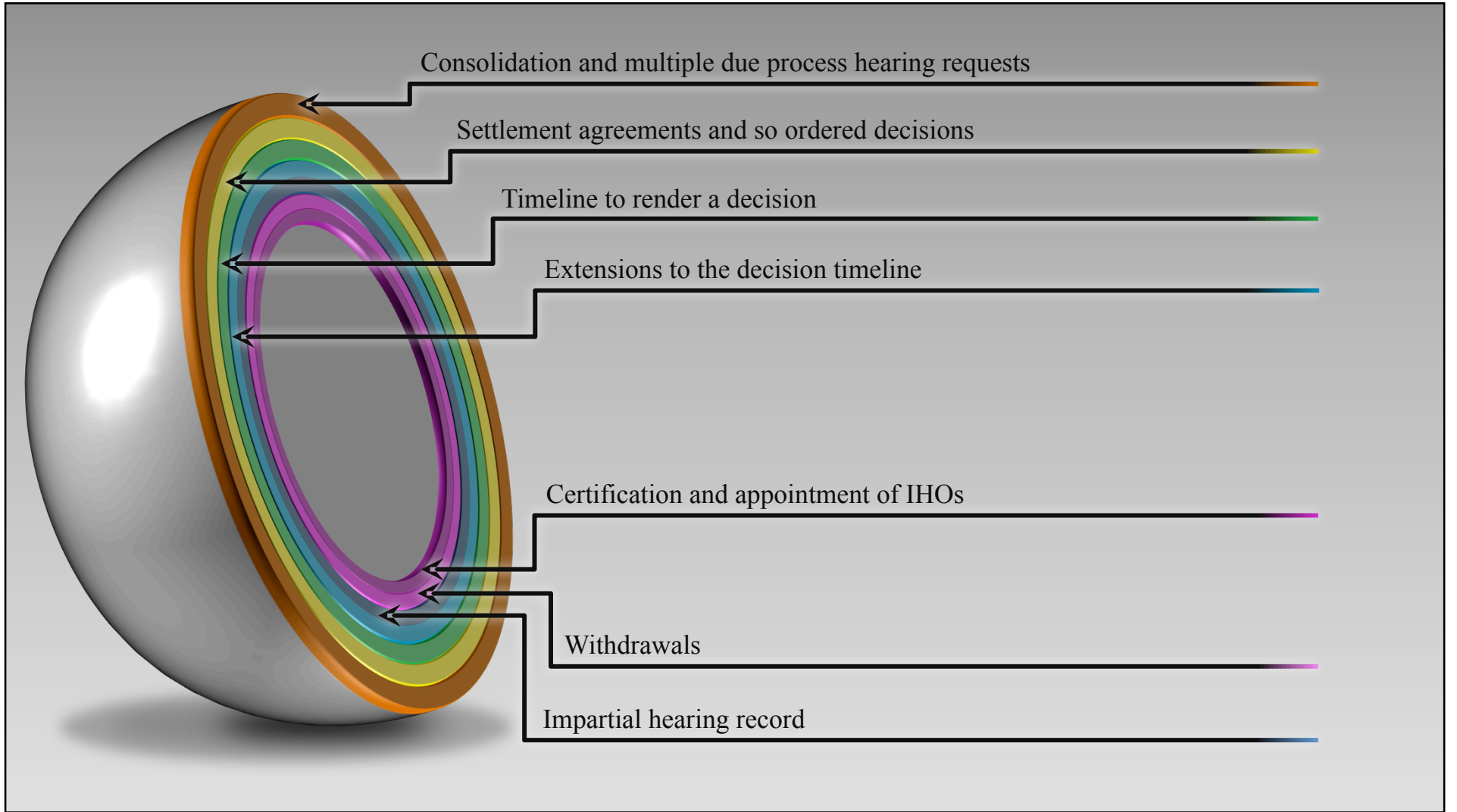




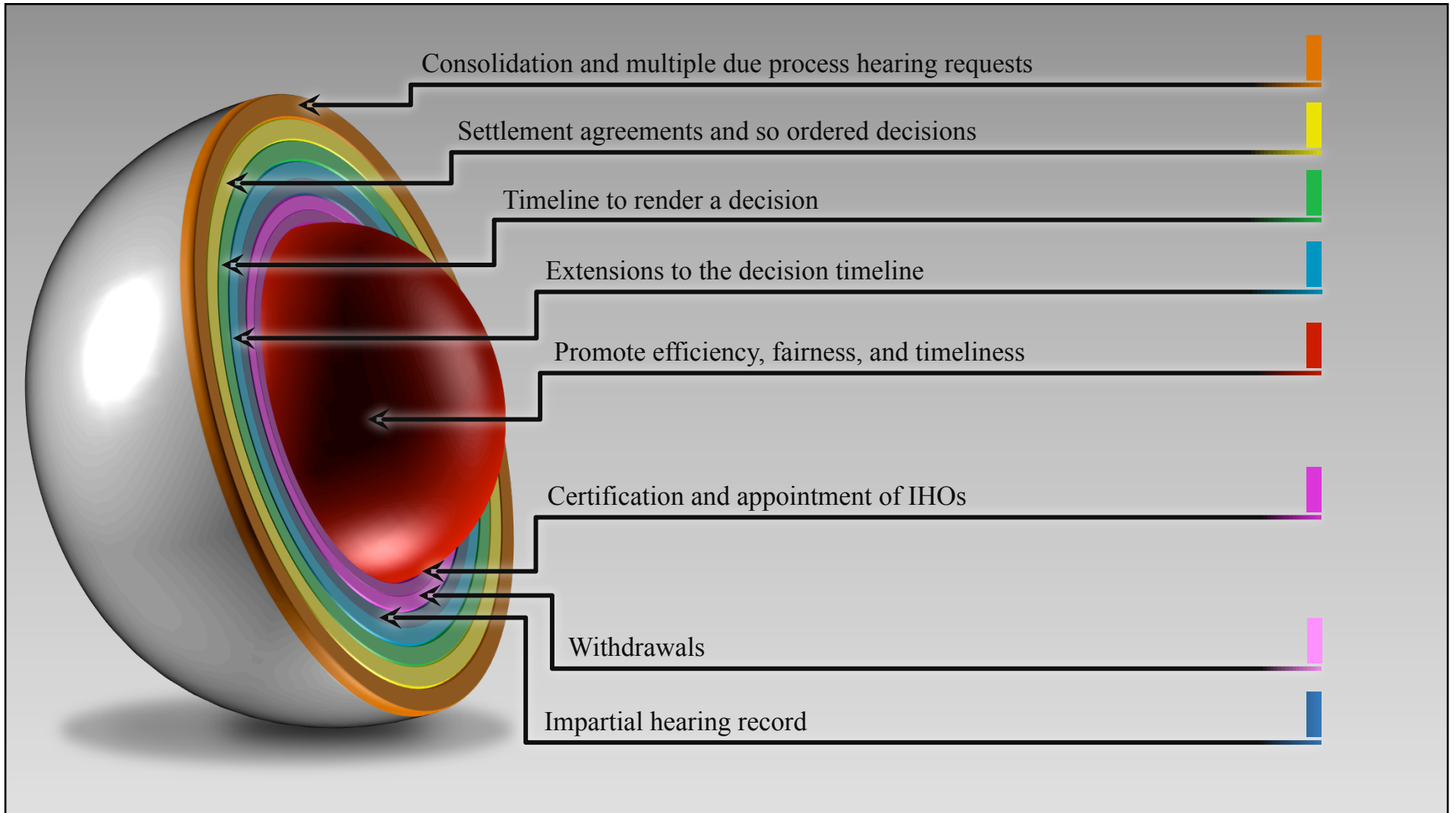








Core line descriptions



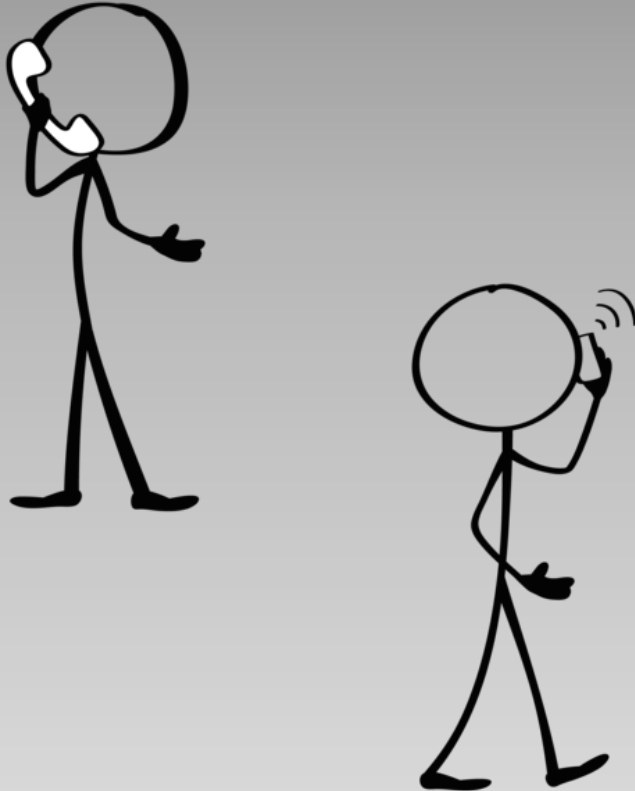
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## Consolidation

New section 200.5(j)(3)(ii) spells out a process by which multiple due process hearing requests may be consolidated.

- Discretion
- Written Order
- Case Number
- Timeline

Return

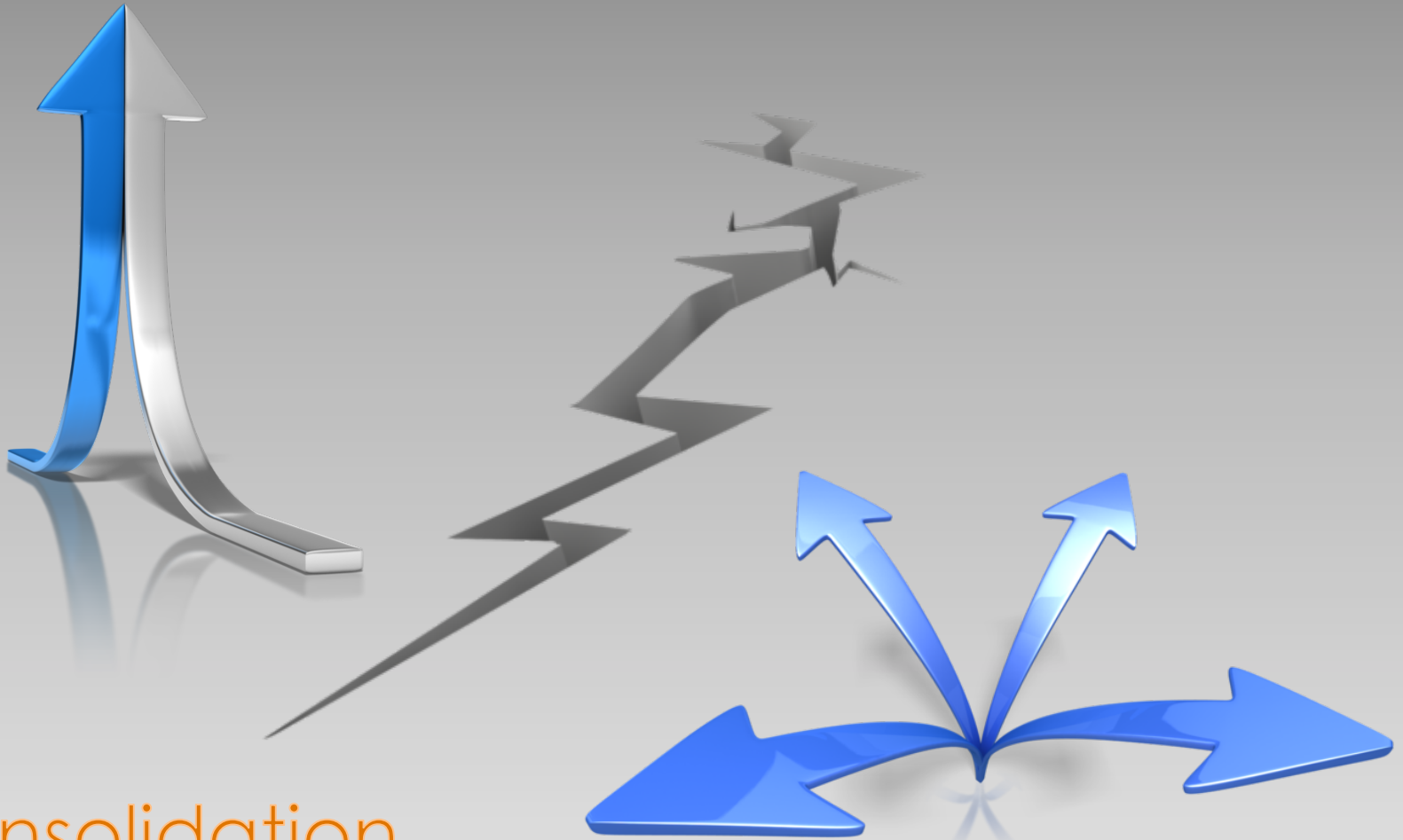


*QUESTION: Must the district first ascertain whether the IHO is available before appointing the same IHO to a subsequent due process complaint involving the same parties and student with a disability?*

*ANSWER: No.*

Consolidation

Return



Consolidation

 Return

# Consolidation



Return



Consolidation

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## So-Ordered Decisions

New section 200.5(j)(4)(iii) prohibits an IHO from issuing a so ordered decision on the terms of a settlement agreement reached by the parties in matters not before the IHO.

- Matters concerned
- Limitation explained



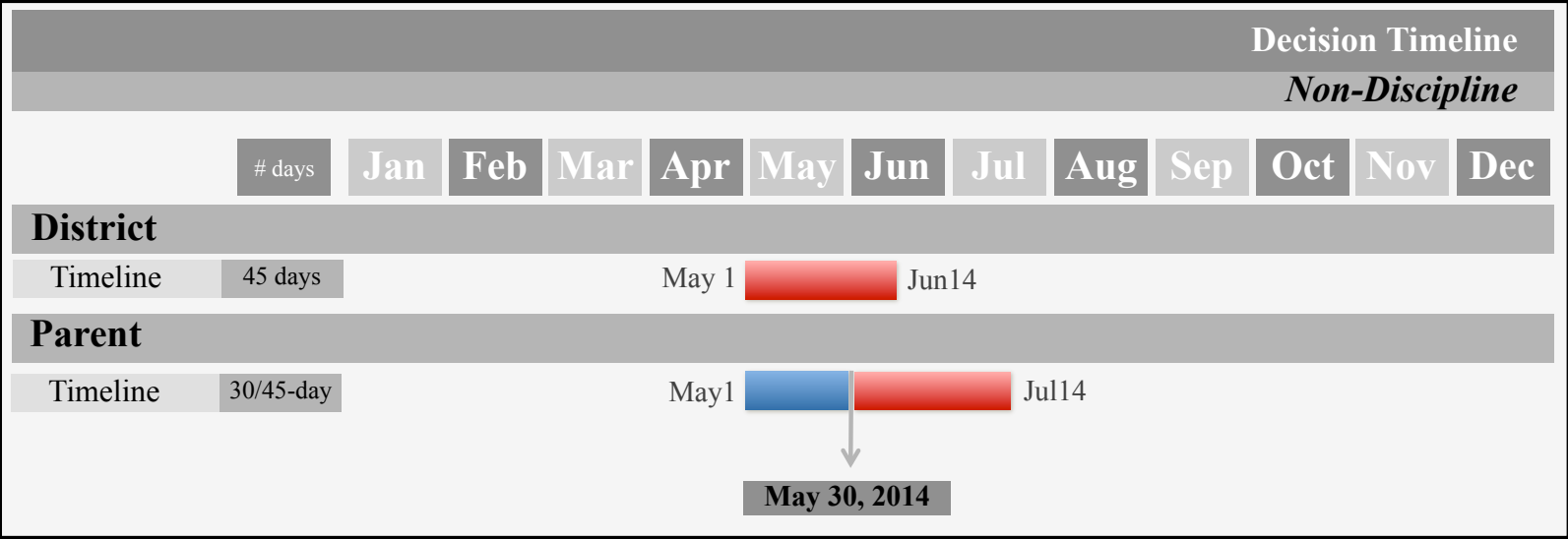
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## Decision Timeline

Section 200.5(j)(5) has been amended to conform the timeline for an IHO to render a decision to be consistent with the federal timeline.

- School district files
- Parent files
- PHC/Hearing Timeline

Monthly Breakdown



 Resolution Period  
 45-day timeline

**NOTE: The timeline for the commencement of the PHC or the hearing continues to be the same as it had been before the amendments.**

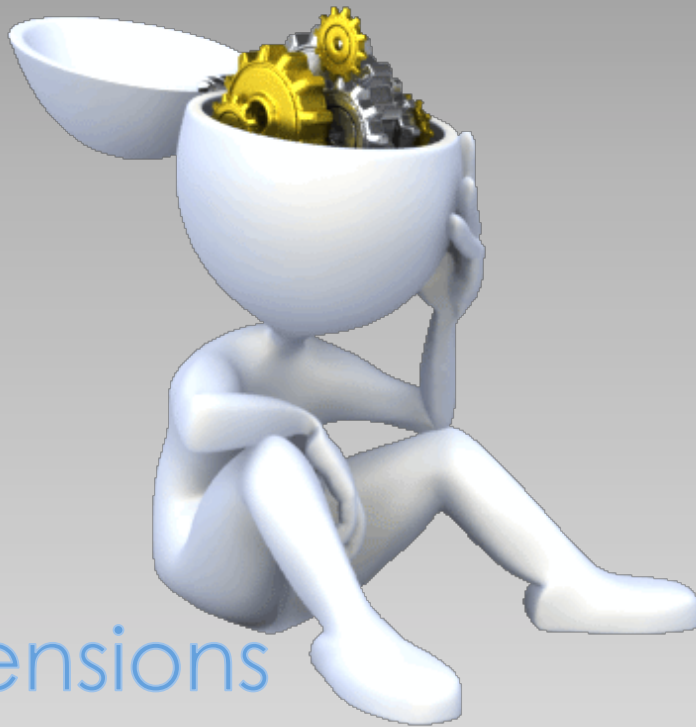
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## Extensions

An IHO may grant a request to extend the decision timeline but only at the request of either the school district or the parent.

- Authority to grant only
- Considerations
- Written Order
- Timeline
- Record close date

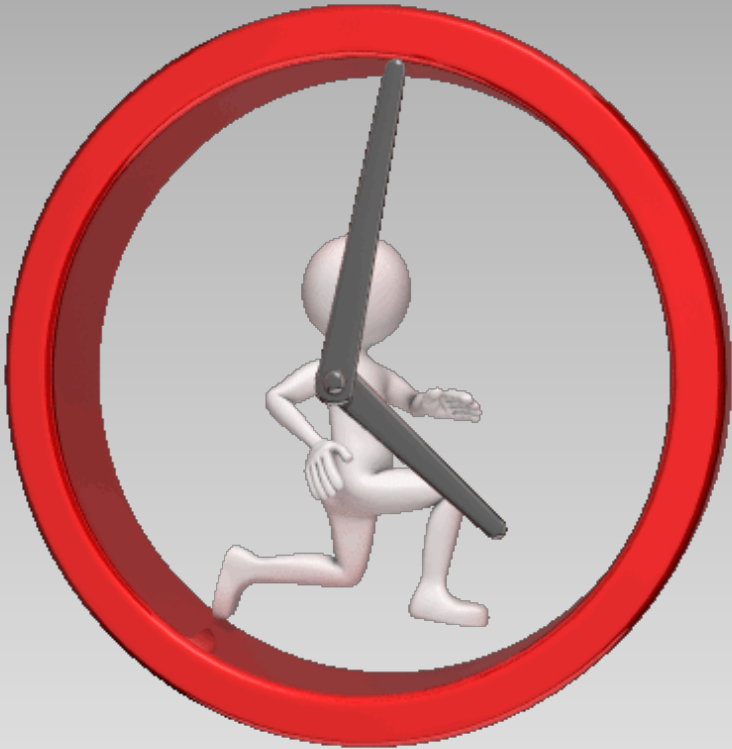
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## Extensions

- ✓ Whether the delay in the hearing will positively contribute to, or adversely affect, the child's educational interest.
- ✓ Whether a party has been afforded a fair opportunity to present its case at the hearing in accordance with the requirements of due process.
- ✓ Whether there are any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
- ✓ Whether there has already been a delay in the proceeding through the actions of one of the parties.

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Extensions

Return



Extensions

Return



# Extensions

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Extensions

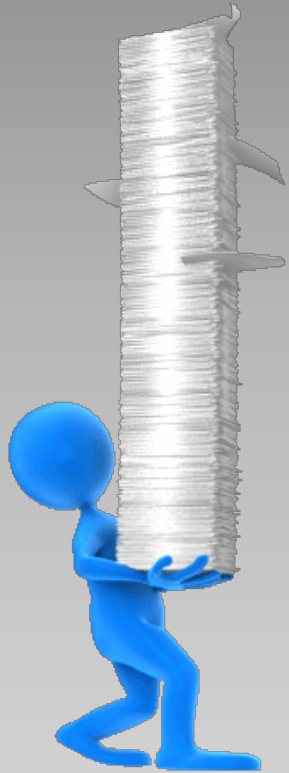


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## The Record

Establishing an accurate record is one of the IHO's most important responsibilities. The record is extremely important if the decision is appealed.

- General rules
- Certification
- Timeline



The record is extremely important.

Make sure it includes all the requisite documents.

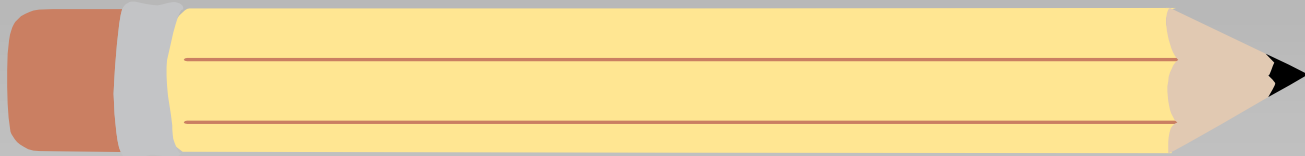
The Field Advisory memo and the training outline provide you with a comprehensive list of what should be included in the record.



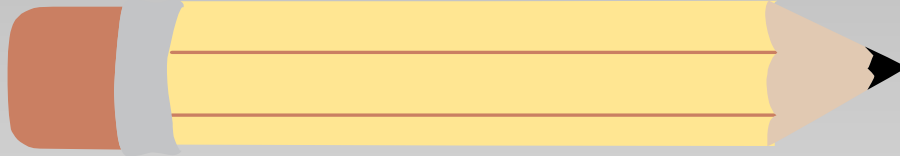
**Date stamp all documents received**



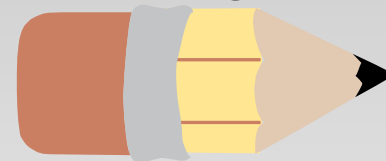
**Mark up copies, not the originals**



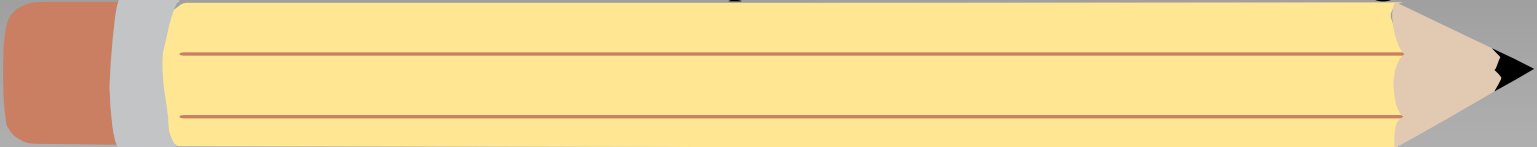
**Endeavor to mark all items as exhibits**



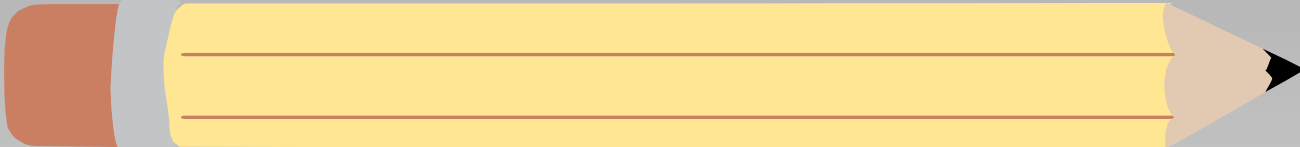
**Maintain a clear and accurate recording**



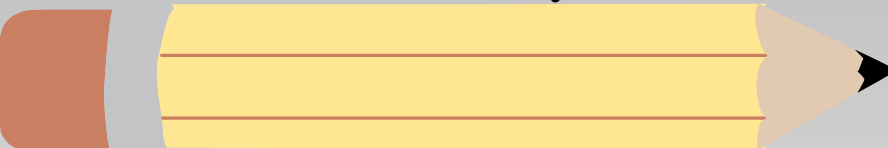
**Review IHO exhibits or index with the parties at the start of the hearing**



**Compile IHO exhibits or index for ease of use during the hearing**



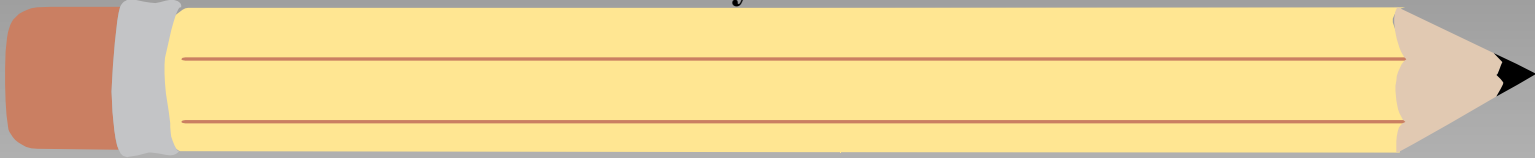
**Accurately document extensions to the 45-day timeline**



**Seek clarification when necessary**



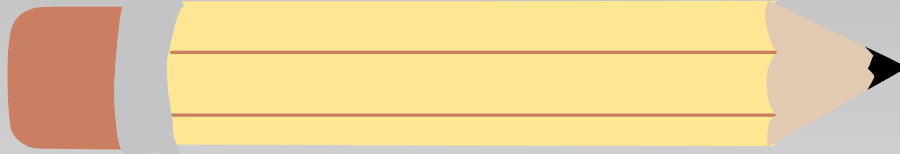
**Certify the record to the school district**



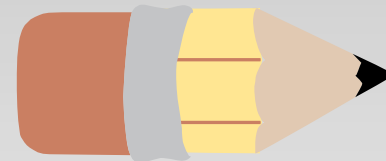
**Consider making a separate record of items not admitted**



**Include in decision a list of each exhibit admitted into evidence**



**Exclude items that were not filed directly with the IHO**



Return

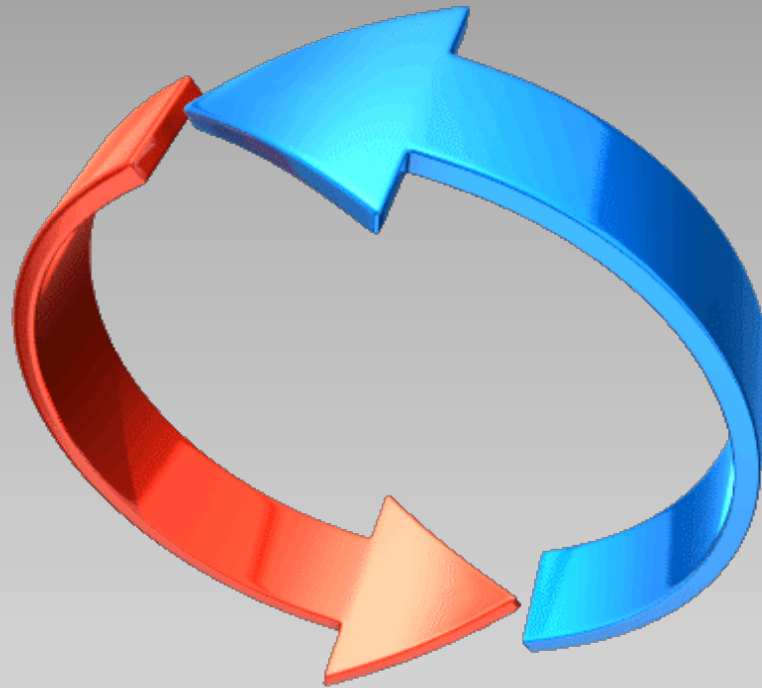
## Withdrawals

Section 200.5(j)(6) establishes the procedures for when a party wishes to withdraw his/her request for a due process hearing.

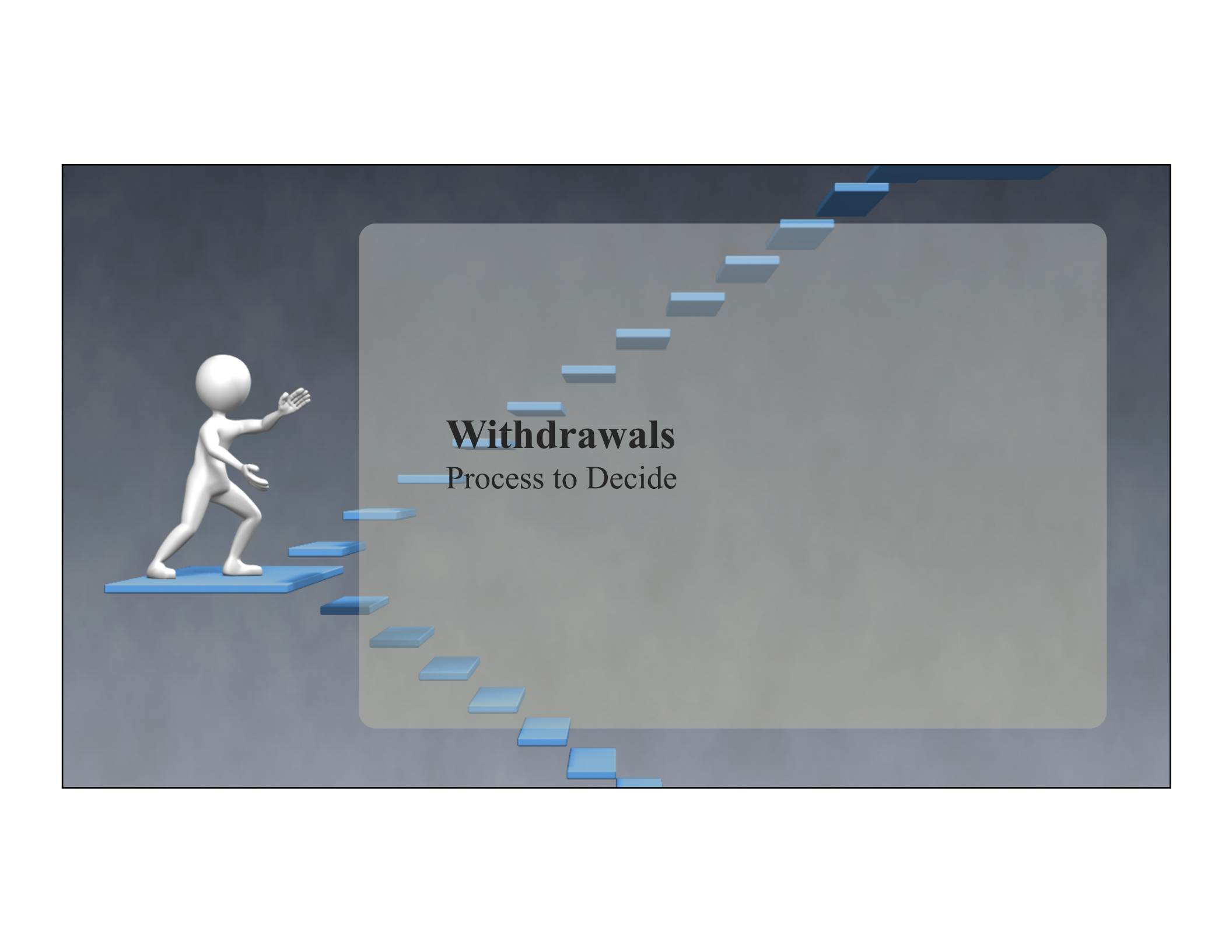
- Terminology
- Timing
- Definitions
- Written Decision
- Dismissing with prejudice



# Withdrawals



Written Order of Termination = Written Decision



# **Withdrawals**

Process to Decide





## Prior to actual hearing

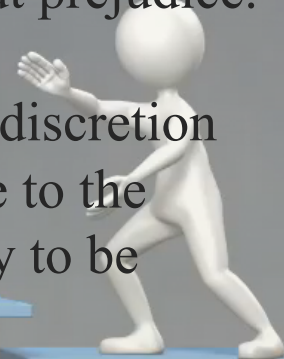
Withdrawal is without prejudice, provided the hearing has not commenced. The parties, however, can otherwise agree.

Commencement of the hearing is defined as the first date of the actual hearing.

## Hearing has commenced

Withdrawal is presumed to be without prejudice.

However, the hearing officer has the discretion to dismiss with prejudice upon notice to the complaining party and an opportunity to be heard.





## Step 1

Find out whether the parties agree on the conditions of the withdrawal.



## Step 2

In the absence of agreement, request that the non-complaining party explain in writing why the complaint should be dismissed with prejudice.



### Step 3

Allow the complainant to respond to the other party's written submission.



## Step 4

Determine whether an on-the-record discussion is necessary or a limited hearing.



## Final Step

Issue a written order of termination explaining to the parties your decision. Include a notice of appeal rights to the Office of State Review.

Return

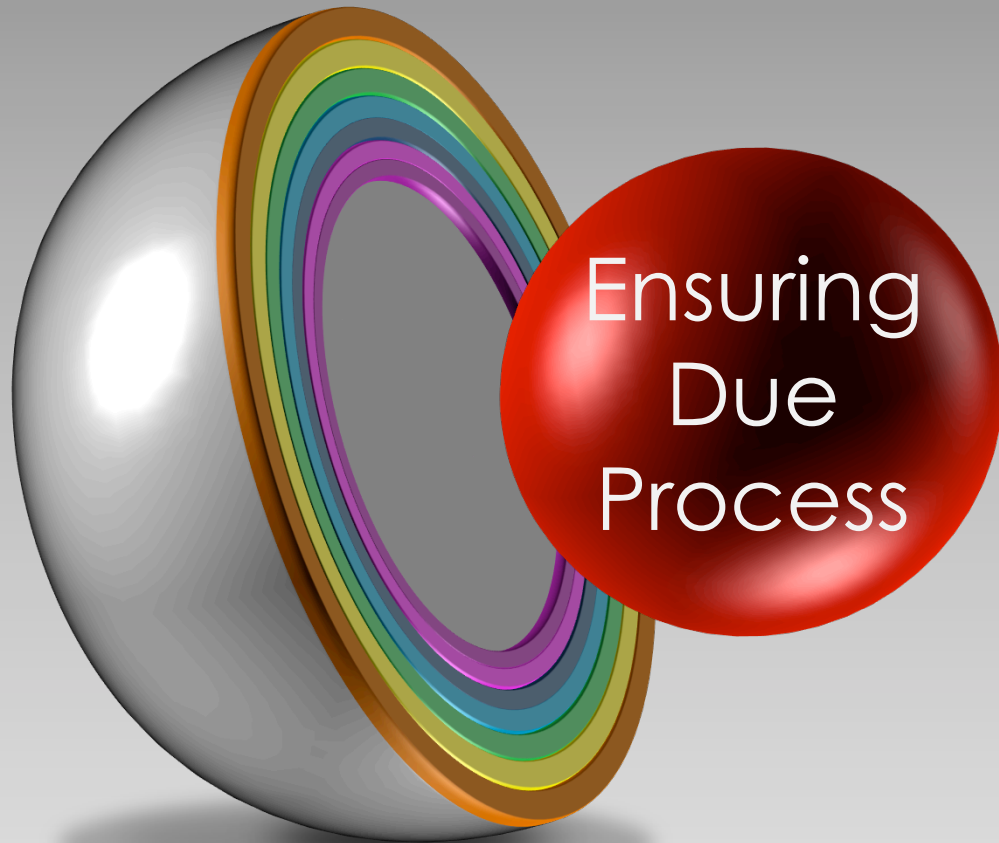
## Certification & Appointment

IHOs must willing and available to accept appointments to conduct hearings.

IHOs whose practice include representing school districts or parents of children with disabilities must be mindful of potential conflict of interests.



Return



## Purpose

The amendments promote efficiency, fairness, and timeliness in the hearing process and allow the parties to effectively exercise their due process rights.