

PROCEDURAL SAFEGUARDS: RESOLUTION MEETINGS AND DUE PROCESS HEARINGS

(See also Procedural Safeguards: Mediation, Procedural Safeguards: Surrogate Parents, Notice and Parental Consent, State Complaint Procedures and Discipline)

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses the final regulatory requirements regarding resolution meetings and significant changes from preexisting regulatory requirements regarding due process hearings.

IDEA Regulations

1. Specify the timeline for filing a due process complaint.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under Part 300, in the time allowed by that State law, except that the exceptions to the timeline described in 34 CFR 300.511(f) apply to the timeline in 34 CFR 300.507.

[34 CFR 300.507(a)(2)] [20 U.S.C. 1415(b)(6)(B)]

A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under Part 300, in the time allowed by that State law.

[34 CFR 300.511(e)] [20 U.S.C. 1415(f)(3)(C)]

The timeline described in 34 CFR 300.511(e) does not apply to a parent if the parent was prevented from filing a due process complaint due to:

¹ Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA* 2004; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

- Specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the due process complaint; or
- The LEA's withholding of information from the parent that was required under Part 300 to be provided to the parent.

[34 CFR 300.511(f)] [20 U.S.C. 1415(f)(3)(D)]

2. Require either party to provide notice to the other party.

The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a request for a due process complaint (which must remain confidential). The party filing a due process complaint must forward a copy of the due process complaint to the State educational agency (SEA).

The due process complaint required in 34 CFR 300.508(a)(1) must include:

- The name of the child;
- The address of the residence of the child;
- The name of the school the child is attending;
- In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time.

[34 CFR 300.508(a) and (b)] [20 U.S.C. 1415(b)(7)(A)]

Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with 34 CFR 300.507(a) and 300.508(a)-(c)...Parents, public agencies, and other parties may use the appropriate model form described in 34 CFR 300.509(a), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in 34 CFR 300.508(b) for filing a due process complaint....

[34 CFR 300.509] [20 U.S.C. 1415(b)(8)]

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of 34 CFR 300.508(b).

[34 CFR 300.508(c)] [20 U.S.C. 1415(b)(7)(B)]

The due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in 34 CFR 300.508(b).

[34 CFR 300.508(d)(1)] [20 U.S.C. 1415(c)(2)(A), 1415(c)(2)(C)]

3. Specify timelines for actions related to receipt of a due process complaint.

If the LEA has not sent a prior written notice under 34 CFR 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten days of receiving the due process request, send to the parent a response that includes:

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

[34 CFR 300.508(e)(1)] [20 U.S.C. 1415(c)(2)(B)(i)(1)]

A response by an LEA under 34 CFR 300.508(e)(1) shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

[34 CFR 300.508(e)(2)] [20 U.S.C. 1415(c)(2)(B)(i)(II)]

Except as provided in 34 CFR 300.508(e), the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

[34 CFR 300.508(f)] [20 U.S.C. 1415(b)(7), 1415(c)(2)(B)(ii)]

Within five days of receipt of notification under 34 CFR 300.508(d)(1), the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of 34 CFR 300.508(b), and must immediately notify the parties in writing of that determination.

[34 CFR 300.508(d)(2)] [20 U.S.C. 1415(c)(2)(D)]

A party may amend its due process complaint only if:

- The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to 34 CFR 300.510; or
- The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines for the resolution meeting in 34 CFR 300.510(a) and the time period to resolve in 34 CFR 300.510(b) begin again with the filing of the amended due process complaint.

[34 CFR 300.508(d)(3) and (4)] [20 U.S.C. 1415(c)(2)(E)]

4. Add requirements for a resolution process.

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 CFR 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

- Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
- May not include an attorney of the LEA unless the parent is accompanied by an attorney.

The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

The meeting described in 34 CFR 300.510(a)(1) and (2) need not be held if:

- The parent and the LEA agree in writing to waive the meeting; or
- The parent and the LEA agree to use the mediation process described in 34 CFR 300.506.

The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

[34 CFR 300.510(a)] [20 U.S.C. 1415(f)(1)(B)(i)]

5. Specify the timelines for the resolution period and that participation is required.

If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

[34 CFR 300.510(b)(1)] [20 U.S.C. 145(f)(1)(B)(ii)]

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 34 CFR 300.510(b)(1) and (2), the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

[34 CFR 300.510(b)(3)]

If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 34 CFR 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

[34 CFR 300.510(b)(4)]

If the LEA fails to hold the resolution meeting specified in 34 CFR 300.510(a) within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

[34 CFR 300.510(b)(5)]

6. Specify the timelines for the commencement of due process hearings.

Except as provided in 34 CFR 300.510(c), the timeline for issuing a final decision under 34 CFR 300.515 begins at the expiration of the 30-day resolution period.

[34 CFR 300.510(b)(2)]

Adjustments to the 30-day resolution period. The 45-day timeline for the due process hearing in 34 CFR 300.515(a) starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting;
- After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

[34 CFR 300.510(c)]

The public agency must ensure that not later than 45 days after the expiration of the 30 day period under 34 CFR 300.510(b), or the adjusted time periods described in 34 CFR 300.510(c):

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties.

[34 CFR 300.515(a)]

If the State offers a State level review of hearing officer decisions, as permitted by the regulations, the SEA must ensure that not later than 30 days after the receipt of a request for a review:

- A final decision is reached in the review; and
- A copy of the decision is mailed to each of the parties.

[34 CFR 300.515(b)]

A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in 34 CFR 300.515(a) and (b) at the request of either party.

[34 CFR 300.515(c)]

7. Specify the requirements for resolution meeting agreements and enforceability of those agreements.

If a resolution to the dispute is reached at the meeting described in 34 CFR 300.510(a)(1) and (2), the parties must execute a legally binding agreement that is:

- Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
- Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to 34 CFR 300.537.

[34 CFR 300.510(d)] [20 U.S.C. 1415(f)(1)(b)(iii)]

If the parties execute such an agreement, a party may void the agreement within three business days of the agreement's execution.

[34 CFR 300.510(e)] [20 U.S.C. 1415(f)(1)(b)(iv)]

8. Provide that attorneys' fees are not available for the resolution meetings required by 34 CFR 300.510.

A meeting conducted pursuant to 34 CFR 300.510 shall not be considered:

- A meeting convened as a result of an administrative hearing or judicial action; or
- An administrative hearing or judicial action for purposes of 34 CFR 300.517 (attorney's fees).

[34 CFR 300.517(c)(2)(iii)] [20 U.S.C. 1415(i)(3)(D)(iii)]

9. Add provisions regarding hearing officers.

At a minimum, a hearing officer:

- Must not be an employee of the SEA or the LEA that is involved in the education or care of the child;
- Must not be a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- Must possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts;
- Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

[34 CFR 300.511(c)(1)] [20 U.S.C. 1415(f)(3)(A)]

10. Set guidelines for issues raised at a due process hearing.

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under 34 CFR 300.508(b), unless the other party agrees otherwise.

[34 CFR 300.511(d)] [20 U.S.C. 1415(f)(3)(B)]

11. Specify parameters for hearing officer decisions.

Subject to paragraph 34 CFR 300.513(a)(2), a hearing officer's determination of whether a child received a free appropriate public education (FAPE) must be based on substantive grounds.

[34 CFR 300.513(a)(1)] [20 U.S.C. 1415(f)(3)(E)(i)]

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

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

[34 CFR 300.513(a)(2)] [20 U.S.C. 1415(f)(3)(E)(ii)]

Nothing in 34 CFR 300.513(a) shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under 34 CFR 300.500 through 300.536.

[34 CFR 300.513(a)(3)] [20 U.S.C. 1415(f)(3)(E)(iii)]

Nothing in 20 U.S.C. 1415(f)(3)(E) shall be construed to affect the right of a parent to file a complaint with the SEA.

[20 U.S.C. 1415(f)(3)(F)]

12. Specify a timeline for bringing a civil action.

The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

[34 CFR 300.516(b)] [20 U.S.C. 1415(i)(2)(B)]

13. Add provisions regarding the awarding of attorneys’ fees.

In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

- The prevailing party who is the parent of a child with a disability;
- A prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- A prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent’s request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

[34 CFR 300.517(a)(1)] [20 U.S.C. 1415(i)(3)(B)(i)]

14. Clarify that parents may file separate due process requests on additional issues.

Nothing in 34 CFR 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

[34 CFR 300.513(c)] [20 U.S.C. 1415(o)]

15. Specify requirements for expedited resolution meetings and due process hearings requested pursuant to 34 CFR 300.532 (appeal of discipline action).

Whenever a hearing is requested under 34 CFR 300.532(a), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR 300.507 and 300.508(a) through (c) and 34 CFR 300.510 through 300.514, except as provided in 34 CFR 300.532(c)(2) through (4).

[34 CFR 300.532(c)(1)]

The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

[34 CFR 300.532(c)(2)] [20 U.S.C. 1415(k)(4)(B)]

Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 CFR 300.532(c)(3)(i), or agree to use the mediation process described in 34 CFR 300.506:

- A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

[34 CFR 300.532(c)(3)]

A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this 34 CFR 300.532 than it has established for other due process hearings, but, except for the timelines as modified in 34 CFR 300.532(c)(3), the State must ensure that the requirements in 34 CFR 300.510 through 300.514 are met.

[34 CFR 300.532(c)(4)]

The decisions on expedited due process hearings are appealable consistent with 34 CFR 300.514.

[34 CFR 300.532(c)(5)] [20 U.S.C. 1415(k)(3)]