NEVADA DEPARTMENT OF EDUCATION

IMPLEMENTATION OF IDEA-2004[1]
DUE PROCESS HEARINGS

June 25, 2010

I. MANDATORY FILING – FILING A DUE PROCESS COMPLAINT[2]

The party filing a due process complaint, either the parent or the local educational agency (LEA), must now provide a due process complaint notice to the other party and forward a copy of the notice to the NDE. Under IDEA-2004, the party may not have a due process hearing until the required notice is filed:[3] The complaint must include:

- Name of the child, child's address (or contact information in the case of a homeless child or youth) and name of school child attends;
- A description of the nature of the problem of the child relating to a proposal or refusal to initiate or change the child's identification, evaluation, or educational placement, or the provision of a free appropriate public education to the child, including facts relating to such problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time. [4]

The LEA provides parent with a Procedural Safeguards Notice, if this is the first due process hearing complaint in a school year[5], and informs the parent of any free or low-cost legal and other relevant services available in the area.

The party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements. However, parties filing a due process

[1] The IDEA-2004 regulations were published in the Federal Register on August 14, 2006 and were in effect on October 13, 2006. The Nevada Administrative Code (NAC), Chapter 388 has been revised to comply with the IDEA –2004 statute. Supplemental regulations were issued in 2007 governing alternate assessments and in 2008 on matters including revocation of consent and representation in due process hearings by non-attorneys.

[2] "Requesting a due process hearing" could incorrectly suggest that there is no requirement to file a due process complaint prior to a due process hearing." Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46697

[3] 34 C.F.R. §300.508(c)

[4] 34 C.F.R. §300.508(b)

[5] 34 C.F.R. §300.504(a)(2); NAC, §388.300 has been revised to reflect the IDEA statute requiring the Procedural Safeguards Notice to be provided to the parents if this is the first request for a hearing.

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complaint may use some other form of notice other than the model form, so long as the notice meets the content requirements of the IDEA.[6]

Important To Know

1. The importance of meeting the content requirements of this due process complaint cannot be over emphasized:
   - If the complaint does not meet the above requirements, the complaint may be determined by a Hearing Officer to be insufficient, and the filing party would not be allowed to proceed to hearing unless an amendment is granted. That is, if the filing party still wants a due process hearing, they must re-file and begin the process all over again.
   - If the complaint is determined to be sufficient, the party filing the due process complaint will not be allowed to raise issues at the due process hearing that were not raised in the complaint, unless the other party agrees otherwise, or the Hearing Officer grants a request to amend not later than 5 days before the hearing.[7]

2. The copy of the due process hearing complaint to the NDE does not start the hearing process. The LEA's receipt of the due process hearing complaint initiates the hearing process, including the timelines.

3. "Stay-put" attaches when the due process complaint is filed.[8] If the State Review Official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of "stay-put".[9]

II. REQUIRED PROCEDURES-DAYS 1-10
From Receipt of the Due Process Hearing Complaint

A. LEA'S RESPONSE TO PARENT'S DUE PROCESS COMPLAINT

Within 10 Days of Receipt: If the LEA did not already send a prior written notice to the parent regarding the subject matter of the due process complaint, the LEA must send parent a response that includes:

[6] 34 C.F.R. §300.509; Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46699
34 C.F.R. §300.508(d)(4) If there were an amendment to the notice, then all of the timelines would begin again, including the resolution session timeline. (See Part V (C))
[8] 34 C.F.R. §300.518(a)
[9] 34 C.F.R. §300.518(d)

- Explanation of why LEA proposed or refused action raised in the due process complaint;
- Description of other options IEP team considered and why rejected;
- Description of each evaluation procedure, assessment, record or report used as basis for proposed or refused action;
- Description of the other factors relevant to the LEA's proposal or refusal.[10]

Within 10 Days of Receipt: If the LEA is the nonfiling party and **did** previously send a prior written notice to the parent regarding the subject matter of the due process complaint, the LEA must:

- Send the party filing the due process complaint a response that specifically addresses the issues raised in the complaint.[11]

B. PARENT RESPONSE TO LEA'S DUE PROCESS COMPLAINT- Within 10 Days of Receipt:

If the LEA is the party filing the due process hearing complaint, the parent must:

- Send the LEA a response that specifically addresses the issue(s) raised in the due process complaint within 10 days of receiving the complaint.[12]

What if:

- A party requests additional time to provide the response to the filing party? "The Act makes no provision for extending this time period, and we do not believe it would be appropriate to amend the regulations in this manner."[13]

- The parent fails to file the required response? "The Act does not establish consequences for parents who are the receiving parties to complaints if they fail to respond to a due process complaint notice."[14]

[10] 34 C.F.R. §300.508(e)
[11] 34 C.F.R. §300.508(f); See also clarification in OSEP Training Module 18: http://www.nichcy.org/Laws/IDEA/Documents/Training_Curriculum/18-discussion.doc
[12] 34 C.F.R. §300.508(f)
[13] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46699
[14] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46699

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III. OPTIONAL PROCEDURE – DAYS 1-15
From Receipt of the Due Process Complaint

SUFFICIENCY CHALLENGE

Within 15 days of Receipt:

The required due process complaint will be deemed sufficient unless the nonfiling party notifies the Hearing Officer and the filing party in writing that the receiving party believes the due process complaint has not met the statutory notice requirements.[15]

Within 5 days of receipt of the notification of insufficiency: The Hearing Officer will make a determination **on the face of the notice** of whether the due process complaint meets the statutory/regulatory requirements and will immediately notify the parties in writing of such determination.[16] The Hearing Office's ruling will specifically identify how the due process complaint is insufficient.[17]

The required response from a LEA if a prior written notice had not already been sent to the parent regarding the subject matter of the due process complaint, cannot be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.[18]

What if:

- A parent is unrepresented? Is the standard more lenient? No, but: "With regard to parents who file a due process complaint without the assistance of an attorney or for minor deficiencies or omissions in complaints, we would expect that hearing officers would exercise appropriate discretion in considering requests for amendments."[19]

- The party challenging the sufficiency of the notice does not give the basis for the challenge? "There is no requirement that the party who alleges that a notice is insufficient state in writing the basis for the belief… If the hearing officer determines that the notice is not sufficient, the hearing officer's decision will

[15] 34 C.F.R. §300.508(d)(1)
[16] 34 C.F.R. §300.508(d)(2)
[17] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46698; 52 IDELR 266 (OSEP 2009)
[18] 34 C.F.R. §300.508(e)(2)
[19] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46699

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identify how the notice is insufficient, so that the filing party can amend the notice, if appropriate."[20]

What happens if insufficient: Unless amended (see below), the case will be closed and the filing party must re-file. The re-filed due process complaint is treated like a new complaint. All required processes, including notices, and timelines begin again. To expedite the processing of a due process complaint that is re-filed in Nevada and to promote consistency, the same Hearing Officer who was randomly appointed for the first due process complaint will be re-appointed to a proximate re-filed request for a hearing.[21]

It is important to note that "A party may re-file a due process complaint if the complaint remains within the applicable timelines for filing under 34 CFR §§300.507(a)(2) and 300.511(f)…."[22]

What happens if sufficient? The hearing process continues.

The determination that a due process complaint meets the statutorily mandated content requirements and is, therefore, sufficient to proceed does not necessarily mean that the Hearing Officer has the jurisdiction to hear the issues and/or the issues do not need to be further clarified prior to the hearing. The Hearing Officer would address any such problems with the parties in a pre-hearing conference or earlier, if appropriate.

IV. REQUIRED PROCEDURE- DAYS 1-15, May Continue Through Day 30, From Receipt of the Due Process Complaint

RESOLUTION

Within 15 days of receiving notice of the parents' due process complaint: The LEA must convene a resolution session with:

- The parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint--
    - Which must include a representative of the LEA who has decisionmaking authority on behalf of the LEA;

[20] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46698
[21] NDE policy determination
[22] 52 IDELR 266 (OSEP 2009

- Which may not include an attorney of the LEA unless the parent is accompanied by an attorney; and

- 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 complaint, and the LEA is provided the opportunity to resolve the dispute that is the basis of the due process complaint.

The resolution process must proceed unless the parents **and** the LEA agree in writing to waive the session, or agree to use the mediation process.[23]

Note: House Rep. No. 108-77, page 114, "(If) the parent and the LEA mutually agree that the meeting does not need to occur, the resolution session does not need to take place. However, unless such an agreement is reached, the failure of the party bringing the complaint to participate in the meeting will delay the timeline for convening a due process hearing until the meeting is held."

Day 30: If the LEA has not resolved the issues in the due process complaint to the satisfaction of the parents within 30 days, the due process hearing 45-day time period may begin on day 31.[24]

Confidentiality?

"Do the regulations allow information discussed at a resolution meeting to be introduced at a due process hearing?" "In general, yes. Unlike mediation, the IDEA and the regulations do not require that discussions in resolution meetings remain confidential. Therefore, absent an agreement by the parties to the contrary, either party may, at a due process hearing, introduce information discussed during the resolution meeting when presenting evidence and confronting or cross-examining witnesses consistent with 34 CFR §300.512(a)(2). Nothing in the IDEA or the regulations would prevent the parties from voluntarily agreeing that the resolution meeting discussions will remain confidential, including prohibiting the introduction of those discussions at any subsequent due process hearing. However, neither an SEA nor an LEA can require the parties to enter into such an agreement as a condition of participation in the resolution meeting. 71 FR 46704." [25]

The common law principle of the integrity of compromise negotiations is codified in NRS Section 48.105 for proceedings in Nevada's courts. Although this statute does not

[23] 34 C.F.R. §300.510
[24] 34 C.F.R. §300.510(b)
[25] 52 IDELR 266 (OSEP 2009); Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46704

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apply to special education due process hearings and reviews, the Nevada Hearing and Review Officers will consider motions to exclude settlement discussions during a resolution meeting in light of the relevance of the proffered evidence and may consider this common law principle and statutory provision.

Note: To preserve the integrity of the mediation process, the IDEA-2004 regulations now prohibit mediation discussions to be used in **subsequent** due process hearings or civil proceedings (not just "proceedings arising from that dispute"). States may not require, but may "allow" parties to sign a confidentiality pledge.[26]

What if:

- The LEA files a due process complaint? There is no provision requiring a resolution meeting when the LEA is the filing party.[27] The 45-day timeline begins upon receipt of the due process complaint. However, the parties may always voluntarily engage in settlement discussions at any time.

  "A parent's rights and obligations … are not affected by the absence of a resolution meeting time period when an LEA files a due process complaint. In such situations the parent retains the right to challenge the sufficiency of the due process complaint within 15 days of receipt of the complaint, consistent with 34 CFR §300.508(d), and the parent remains obligated to send a response to the LEA that addresses the issues raised in the due process complaint within 10 days of receiving the complaint under 34 CFR §300.508(f)."[28]

- "Does the 30-day resolution period apply if the parties elect to use mediation under 34 CFR §300.506 rather than convene a resolution meeting?" "Yes. If the parties choose to use mediation rather than participate in a resolution meeting, the 30-day resolution period is still applicable. Under 34 CFR §300.510(c), the resolution period applies to the use of mediation after the filing of a complaint requesting a due process hearing." [29]

- The parent does not provide advance notice to the LEA that the parent will bring an attorney to the resolution meeting? "In such cases, the public agency could refuse to hold the resolution meeting until it could arrange the attendance of its

[26] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46696; 34 C.F.R. §300.506 (b)
[27] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46700
[28] 52 IDELR 266 (OSEP 2009)
[29] 52 IDELR 266 (OSEP 2009); 34 C.F.R. §300.510(a)(3)(ii)

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attorney (within the 15-day period). The parent would incur additional expenses from having to bring their attorney to two resolution meetings."[30]

- The LEA and parent meet and cannot resolve and agree to waive continued resolution and proceed to hearing? The 45-day timeline begins the day after both parties agree in writing to waive the resolution meeting.[31]

- The LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made? The LEA may, at the conclusion of the 30-day period, request that a Hearing Officer dismiss the parent's due process complaint.
    - How must the LEA document "reasonable efforts: to obtain the participation of the parent in the resolution meeting? By using the IEP parent participation documentation efforts in 34 C.F.R. Section 300.322(d).[32]
    - **"**Must the LEA continue its attempts to convince a parent to participate in a resolution meeting throughout the 30-day resolution period?" "Yes. If a parent fails to participate in a resolution meeting, an LEA must continue to make reasonable efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in a resolution meeting. The regulations permit an LEA, at the conclusion of the 30-day resolution period, to request that a hearing officer dismiss the complaint when an LEA is unable to obtain the participation of a parent in a resolution meeting despite making reasonable efforts to do so and has documented its efforts using the procedures in 34 CFR §300.322(d)."[33]

- The LEA fails to hold the resolution meeting specified 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. The NDE is also required to enforce this IDEA requirement:

  "As you know, the LEA has an affirmative obligation to convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint (and prior to the initiation of the due process hearing). 34 CFR § 300.510(a)(1). If the LEA is not meeting this obligation, the SEA, consistent with its general supervisory responsibilities under 34 CFR § 300.600(a), must enforce this requirement. The SEA may use a variety of methods to do so, including those

[30] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46701
[31] 34 C.F.R. §300.510(c)(1)
[32] 34 C.F.R. §300.510(b)(4)
[33] 52 IDELR 266 (OSEP 2009)

provided for in 34 CFR §§ 300.600(a) and 300.608. However, the SEA may not extend the resolution process period beyond 30 days and it may not grant to a hearing officer the specific authority to dismiss a due process complaint if the parent is not proceeding and the LEA has not convened the resolution hearing (sic)."[34]

- Neither party requests the intervention of the Hearing Officer and the resolution meeting is not held? "If both the LEA and the parent fail to exercise their rights as described above, regardless of the reasons for the parties' inaction, the timelines regarding due process complaints remain in effect. Unless one of the circumstances in 34 CFR § 300.510(e) applies and there is an adjustment to the 30-day resolution period, the timeline for issuing a final decision begins at the expiration of the 30-day resolution period. 34 CFR § 300.510(b)(2). Accordingly, even when both the parents and the LEA have permitted the due process complaint to linger, the SEA must ensure that a final decision is reached and mailed to the parties in compliance with the 45-day timeline provided for in 34 CFR § 300.510(b)(2). 34 CFR § 300.515(a)."[35]

- There is a resolution agreement? Must the IEP Team be reconvened to incorporate the agreement? "Unless the agreement specifically requires that the IEP Team reconvene, there is nothing in the Act or these regulations that requires the IEP Team to reconvene following a resolution agreement that includes IEP-related matters. We do not believe that it is necessary or appropriate to anticipate the elements of a particular settlement agreement, which may supersede an existing IEP. The contents of settlement agreements are left to the parties who execute a settlement agreement."[36]

V. LIMITATIONS ON HEARING

A. STATUTE OF LIMITATIONS

A parent or LEA must file a due process complaint within **2 years** of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process hearing complaint.[37]

The 2-year timeline will not apply to a parent if the parent was prevented from filing the due process complaint due to--

[34] 51 IDELR 81 (OSEP 2008); 52 IDELR 266 (OSEP 2009)
[35] 51 IDELR 81 (OSEP 2008)
[36] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46703
[37] 34 C.F.R. §300.507(a)(2)

(i) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the complaint; or
(ii) The LEA's withholding of information from the parent that was required under IDEA Part B to be provided to the parent.[38]

What if:

- The violations alleged in the due process hearing complaint are continuing, is the statute of limitations longer? No. "Section 615(f)(3)(D) of the Act provides explicit exceptions to the timeline for requesting a due process hearing. Section 300.511(f) incorporates these provisions. These exceptions do not include when a violation is continuing or where a parent is requesting compensatory services for a violation that occurred not more than three years from the date that the due process complaint was filed….."[39]

- A party feels the LEA has made misleading or false statements? "We do not believe it is appropriate to define or clarify the meaning of ``misrepresentations," as requested by the commenters. Such matters are within the purview of the hearing officer. If the complaining party believes that the timeline in Sec. 300.511(e) should not apply, the complaining party would need to ask the hearing officer to determine whether an untimely due process complaint can proceed to hearing based on misrepresentations by an LEA. The hearing officer would then determine whether the party's allegation constitutes an exception to the applicable timeline."[40]

B. SUBJECT MATTER OF THE HEARING

The party filing requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise.[41]

C. AMENDED COMPLAINT

[38] 34 C.F.R. §300.511(f)
[39] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46697
[40] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46706
[41] 34 C.F.R. §300.511(d)

A party may amend its due process hearing complaint only if--

- The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing complaint through the resolution meeting; or
- The Hearing Officer grants permission, except that the Hearing Officer may only grant permission to amend at any time **not later** than 5 days before a due process hearing begins.[42]

If a party files an amended due process complaint, the timelines for the resolution meeting and the resolution period begin again with the filing of the amended complaint.[43]

D. TIMELINES

A hearing decision must be rendered and mailed to the parties not later than 45 days after the expiration of the 30-day resolution period, or after the adjusted time periods for the resolution meeting unless specific extensions of time beyond the period is granted by the Hearing Officer at the request of either party. The commencement of the 45-day timeline for the due process hearing at the end of the resolution period would be adjusted to start the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;
(2) 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;
(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.[44]

Since an adjusted period commences after both parties agree in writing to the above-described actions, it is <u>essential</u> that the parties notify the Hearing Officer of the time adjustment immediately to ensure adherence to the 45-day timeline.

If the parties agree in writing to continue settlement discussions past the 30-day resolution period, it is also important that the parties notify the Hearing Officer of that agreement. OSEP has opined that, in general, this agreement would not require Hearing Officers' involvement or approval.[45] However, in order to ensure optimal case management and Nevada's compliance with the 45-day timeline, the Hearing Officers will treat such agreement to extend the time in accordance with the continuance

[42] 34 C.F.R. §300.508(d)(3)
[43] 34 C.F.R. §300.508(d)(4)
[44] 34 C.F.R. §§300.510 and 300.515
[45] 52 IDELR 266 (OSEP 2009)

procedures.

Consistent with previous IDEA law, a State review decision must be rendered and mailed not later than 30 days after the receipt of a request for a review, unless specific extensions of time beyond the period is granted by the State Review Officer at the request of either party.

E. HEARING DECISION

A decision made by a Hearing Officer of whether a child received a free appropriate public education must be made on substantive grounds, except that:

In matters alleging a procedural violation, a Hearing Officer **may** find that a child did not receive a free appropriate public education **only if** the procedural inadequacies--

- Impeded the child's right to a free appropriate public education;
- Significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- Caused a deprivation of educational benefits.

This provision cannot be construed to preclude a Hearing Officer from ordering a LEA to comply with the procedural safeguards provisions in the IDEA. In addition, this provision cannot be construed to affect the right of a parent to file an appeal of the due process hearing decision to a State Review Officer.[46]

Burden of Proof

The Burden of Proof is on the party seeking relief:

"Although the Act does not address allocation of the burden of proof in due process hearings brought under the Act, the U.S. Supreme Court recently addressed the issue. In Schaffer v. Weast, 546 U.S. --, 126 S. Ct. 528 (2005) (Schaffer), the Court first noted that the term ``burden of proof'' is commonly held to encompass both the burden of persuasion (i.e., which party loses if the evidence is closely balanced) and the burden of production (i.e., the party responsible for going forward at different points in the proceeding). In Schaffer, only the burden of persuasion was at issue. The Court held that the burden of persuasion in a hearing challenging the validity of an IEP is placed on the party on which this burden usually falls--on the party seeking relief--whether that is

[46] 34 C.F.R. §300.513

the parent of the child with a disability or the school district. Since Supreme Court precedent is binding legal authority, further regulation in this area is unnecessary."

"…Where the public agency has requested that a hearing officer remove a child to an interim alternative educational setting, the burden of persuasion is on the public agency…."

"If the parent disagrees with the manifestation determination, they have the right to appeal that decision by requesting a due process hearing under Sec. 300.532. At the point a due process hearing is requested, the concept of burden of proof would be applicable. As stated above, the Supreme Court determined in Schaffer that the burden of proof ultimately is allocated to the moving party. [47]

VI. CIVIL ACTION

The party bringing the action will have 90 days from the date of the receipt of the decision of the State Review Officer to initiate a civil action in a court of competent jurisdiction.[48]

VII. ATTORNEYS' FEES

The court, in its discretion, may award reasonable attorneys' fees as part of the costs--
(I) to a prevailing party who is the **parent** of a child with a disability;
(II) to a prevailing party who is a **LEA** (or SEA) 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
(III) to a prevailing LEA (or SEA) against **the attorney of a parent**, **OR against the parent**, if the parent's complaint 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.[49]

[47] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Pages 46706, 46723, 46724
[48] NAC §388.315(3); 34 C.F.R. §300.516
[49] 34 C.F.R. §300.517(a)

Attorneys' fees may not be awarded for any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action. A resolution meeting is not considered a meeting convened for these purposes.[50]

VIII. SUBSEQUENT HEARING

Nothing in the procedural safeguards provisions of the IDEA can be construed to preclude a parent from filing a separate due process hearing complaint on **an issue separate from a due process** complaint already filed.[51]

IX. EXPEDITED HEARING

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may appeal the decision by filing a due process complaint.[52]

An expedited hearing must occur within 20 school days of the date the complaint is filed and the Hearing Officer must make a determination within 10 school days after the hearing.[53]

Mandatory Filing Process? Yes.

The request for an expedited hearing must be filed consistent with 34 C.F.R. Sections 300.507 and 300.508(a) to (c). Therefore, the required content of the due process complaint, the limitation that a notice is required before a hearing on a due process complaint, and the statute of limitations for due process hearings also apply to expedited hearings.[54] (Note that the normal 5-business day disclosure period is the same for expedited hearings.)

Resolution Session? Yes.

[50] 34 C.F.R. §300.517(c)(2)(ii)
[51] 34 C.F.R. §300.513(c)
[52] 34 C.F.R. §300.532(a)
[53] 34 C.F.R. §300.532(c)
[54] 34 C.F.R. §300.532(c)

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Expedited hearings include the resolution meeting.[55] The IDEA regulations require the resolution meeting to occur within 7 days of receiving notice of the due process complaint. The due process hearing may proceed unless the matter is resolved within 15 days of the receipt of the due process complaint.[56]

It is important to note that, for expedited due process hearings, the calculation of the number of days for the resolution period runs from the filing of the due process complaint. "Because the due process hearing must occur within 20 school days from the date that the parent's due process complaint under 34 CFR § 300.532(a) requesting a due process hearing is filed, the regulations are clear that the resolution period is a part of, and not separate from, the expedited due process hearing timeline.[57]

What if:

- The parent does not participate in the resolution meeting? "Lack of parent participation in the resolution meeting would be addressed the same way it is in a regular due process hearing under §300.510(b), except that the timeframes will differ."[58]
- The parties want to extend the resolution period to resolve an expedited due process complaint? "The regulations for expedited due process hearings, in 34 CFR §300.532(c), do not specifically provide for adjustments to the 15-day resolution period. The purpose of expediting the due process hearing related to a disciplinary decision is to ensure that the matter is resolved promptly and that the child's educational program is not adversely affected by undue delays. Therefore, when the parties have participated in a resolution meeting or mediation and the dispute has not been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the due process hearing may proceed. 34 CFR §300.532(c)(3)(ii)."[59]

Sufficiency Challenge? No.

"In light of the shortened timelines for conducting an expedited due process hearing under Sec. 300.532(c), it is not practical to apply to the expedited due process hearing the sufficiency provision in Sec. 300.508(d), which requires that 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

[55] 34 C.F.R. §300.532(b)(3)
[56] 34 C.F.R. §300.532(b)(3); Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46725
[57] 51 IDELR 166 (OSEP 2008)
[58] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46725
[59] 52 IDELR 266 (OSEP 2009)

the receiving party believes the due process complaint does not include all the necessary content of a complaint as required in Sec. 300.508(b)."[60]

[60] Federal Register: August 14, 2006 (Volume 71, Number 156); Discussion of IDEA regulations, Page 46725