

Module 18

Options for Dispute Resolution



Written by:

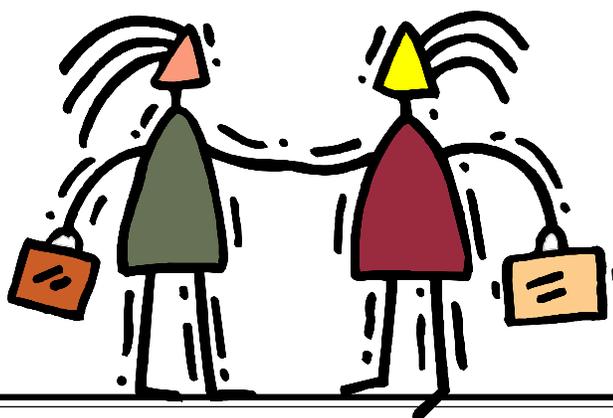
Lisa Pagano

Office of Special Education Programs
U.S. Department of Education

with special thanks to...

*Marshall Peter, Dick Zeller, Philip Moses,
and John Reiman*

CADRE, the Consortium for Appropriate
Dispute Resolution In Special Education



A Product of...

NICHCY, the National Dissemination Center for Children with Disabilities

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NICHCY is here for you.

This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

Background and Discussion

This module is part of a training package on the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), developed by NICHCY for the Office of Special Education Programs (OSEP) at the U.S. Department of Education (hereinafter called the Department). The training curriculum is entitled *Building the Legacy*; this module is entitled *Options for Dispute Resolution*.

The 2004 Amendments to the IDEA and the final Part B regulations¹ include—as did their predecessors—an entire section entitled “Procedural Safeguards.” These safeguards are designed to protect the rights of children with disabilities and their parents, while giving parents and schools mechanisms for resolving disputes. In this module, we will look in some detail at several approaches to addressing how families and school staff can resolve disagreements that arise in determining what is an appropriate educational program for an individual child with a disability.

Finding of Congress

In drafting the provisions of IDEA, Congress clearly contemplated that, at times, there would be disagreements between parents of children with disabilities and the school districts providing special education and related services to their children. While it is expected that parents and school personnel will work in partnership to ensure children with disabilities are provided appropriate services, there are times when an

How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what’s on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



You’ll note the “*New in IDEA*” icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations resulting from the 2004 Amendments to IDEA.

individualized education program (IEP) Team, which includes the child’s parents and school officials, cannot reach consensus on what constitutes a free appropriate public education (FAPE) for an individual child. When such disagreements occur, parents and school districts can turn to IDEA’s procedural safeguards and dispute resolution options, which protect the rights of parents and children with disabilities and include, among other things, procedures for resolving disputes that arise over the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.



Trainer’s Note

Throughout this training module, all references in the discussion section for a slide are provided at the *end* of that slide’s discussion.

How Many, How Often, To What End?

Statistics and studies can help establish a context for talking about IDEA’s dispute resolution options. For example, think about this:

In the 1999-2000 school year, school districts spent approximately \$146.5 million on special education mediation, due process, and litigation activities.²

That sounds like a significant amount of money, but, according to the Special Education Expenditure Project (SEEP) conducted at the request of the OSEP at the Department:

This represents less than one-half of one percent (i.e., 0.3 percent, to be exact) of total special education expenditures.³

By the way, that quote appears in italics because that's the way the SEEP Project stated those words. In italics. Talk about establishing a context!

In 2003, the General Accounting Office [now the Government Accountability Office] (GAO) conducted an investigation of IDEA's dispute resolution options and issued a report to the ranking minority member of the U.S. Senate Committee on Health, Education, Labor and Pensions. The report was entitled *Special Education: Numbers of Formal Disputes are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts*.⁴ While data were limited and inexact, according to GAO:

[F]our national studies indicate that the use of the three formal dispute resolution mechanisms has been generally low relative to the number of children with disabilities. Due process hearings, the most resource-intensive dispute mechanism, were the least used nationwide.⁵

Using data from the National Association of State Directors of Special Education (NASDSE), GAO calculated that, in 2002:

- Approximately 5 due process hearings were held per 10,000 students with disabilities.
- Nearly 80% of all these hearings were held in five States (California, Maryland, New Jersey, New York, and Pennsylvania) and the District of Columbia.⁴



GAO made the following calculations based on findings from other studies:

- In school year 1999-2000, more formal disputes between parents and schools were resolved through mediation than due process hearings.
- Median number of mediations: 4 for every 10,000 students with disabilities in school year 1999-2000.
- The cost of a mediator is about one-tenth that of a hearing officer.
- Number of State complaints filed: 10 for every 10,000 students with disabilities in the 1998-1999 school year.⁴

The GAO report included many other observations and findings of interest, including:

- State officials told GAO they found that mediation was successful in resolving disputes, strengthening relationships between families and educators, saving financial resources, and reaching resolution more quickly than State complaints or due process hearings.

- The Texas State educational agency (SEA) estimated that over the past decade it had saved about \$50 million in attorney fees and related due process hearing expenses by using mediation rather than due process hearings.
- In January 2003, the average cost for mediation in California was \$1,800, while the average cost of a due process hearing was \$18,600.

In the end, GAO reached this conclusion:

Overall, the numbers of formal disputes between parents and school districts were generally low compared to the 6.5 million students between 3 and 21 years old served during the 2001-02 school year, but the thousands of disputes that occur threaten relationships and can result in great expense.⁶

It is within that context that we will now take a detailed look at the dispute resolution options currently in IDEA, those carried over from the predecessor statutes, and those added by the 2004 Amendments to the IDEA.



Dispute Resolution Options in IDEA

The IDEA statute states, as a finding of Congress, that:

[P]arents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.⁷

That finding has resulted in new approaches and rules for the dispute resolution methods available under IDEA. In this module we will review:

- **Mediation:** A process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and a public agency regarding any matter arising under Part B of IDEA, including matters arising prior to the filing of a due process complaint.
- **Due process complaint:** A complaint filed by a parent or a public agency to initiate an impartial due process hearing on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child.
- **Resolution process:** An opportunity for the parents and the local educational agency (LEA) to attempt to resolve the issues in a parent's due process complaint prior to the initiation of a due process hearing.

The LEA is obligated to convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and within 7 days of receiving notice of

the parent's due process complaint regarding a discipline matter. The resolution meeting need not be held if the parties agree in writing to waive the resolution meeting or agree to use the mediation process under Part B of IDEA.

- **Resolution period:** Thirty (30) days from the date the LEA receives a parent's due process complaint notice. (This timeline changes to 15 days from the date the LEA receives a due process complaint involving a discipline matter.)
- **Resolution meeting:** A meeting convened by the LEA within 15 days of receiving notice of a parent's due process complaint (7 days in the disciplinary context) and prior to the initiation of a due process hearing. Includes the parent(s) and the relevant member(s) of the IEP Team, who have specific knowledge of the facts in the parent's due process complaint.

The purpose of the meeting is for the parent 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 forms the basis for the due process complaint.

- **State complaints:** A written and signed complaint alleging that a public agency has violated a requirement of Part B of IDEA or the Part B regulations in 34 CFR Part 300; submitted to an SEA (or, at the SEA's discretion, to the public agency, with review by the SEA).

Key Term: Day

A key term that will be used when discussing the requirements related to the dispute resolution processes is "day." While we use this word in our every day language, it's important to know that, when the word "day" is used by itself in the regulations, it means a *calendar* day. If a meaning other than calendar day is intended, the term "business day" or "school day" is used. IDEA's provisions giving the meaning of each of these terms are presented in the box below.



§300.11 Day; business day; school day.

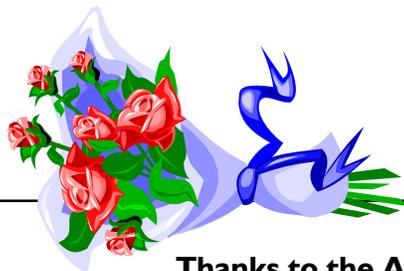
(a) *Day* means calendar day unless otherwise indicated as business day or school day.

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).

(c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) *School day* has the same meaning for all children in school, including children with and without disabilities.

These key terms will be reviewed again as we discuss each dispute resolution process. Also, we will review the specific requirements related to which method or methods can be used to resolve specific issues and who is eligible to use a particular dispute resolution process. There are important rules governing the time limit for initiating the dispute resolution processes and how long it may take for the dispute to be resolved; these will be discussed as well.



Thanks to the Author of This Module

NICHCY would like to express its appreciation for the hard work and expertise of:

Lisa Pagano, Office of Special Education Programs, U.S. Department of Education, who is the primary author of this module.

And then to CADRE...

NICHCY would also like to send many thanks to **Marshall Peter, Dick Zeller, Philip Moses, and John Reiman** of CADRE, the Consortium for Appropriate Dispute Resolution in Special Education, who rallied to the cause in the height of their own work extremity, sharing both their expertise and their materials on dispute resolution. Thanks, friends, for the unforgettable reminder that people really *can* make the world a better place for each other.

And Finally to the Office of General Counsel

NICHCY would also like to thank **Rhonda Weiss**, Office of General Counsel, U.S. Department of Education, for her painstaking and thorough review of this module for its legal sufficiency with the statute and final Part B regulations of IDEA.

Files You'll Need for This Module

Module 18 includes the following components provided in separate files. If you need or want the entire module, be sure to download each of the components in either Word® or PDF format.

- **Trainer's Guide Discussion.** The discussion text (what you're reading right now) describes how the slides operate and explains the content of each slide, including relevant requirements of the statute signed into law by President George W. Bush in

December 2004 and the final regulations for Part B published in August 2006, which became effective on October 13, 2006.

The discussion is provided via two PDF files, with the equivalent content also available in one accessible Word® file. Here are the files' full names and where to find them on NICHCY's Web site:

PDF of discussion for Slides 1-10
www.nichcy.org/training/18-discussionSlides1-10.pdf

PDF of discussion for Slides 11-end
www.nichcy.org/training/18-discussionSlides11-end.pdf

The entire discussion in an accessible Word® file
www.nichcy.org/training/18-discussion.doc

- **Handouts in English.** The handouts for this module are provided within an integrated package of handouts for the entire umbrella topic of **Theme E, Procedural Safeguards**, which includes three different modules (described above). These handouts are available in both PDF and Word® files as follows:

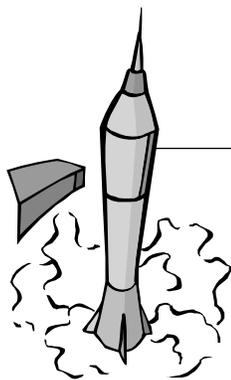
PDF version of the Handouts.
www.nichcy.org/training/E-handouts.pdf

Word® version of the Handouts, for participants who need an accessible version of the handouts or if you'd like to create large-print or Braille versions:

www.nichcy.org/training/E-handouts.doc

- **PowerPoint slide show.** NICHCY is pleased to provide a slide show (produced in PowerPoint®) around which trainers can frame their presentations on options for dispute resolution under IDEA. Find this presentation at:

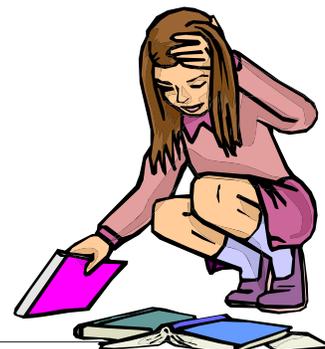
www.nichcy.org/training/18slideshow.zip



To launch the slide presentation, double-click the **PLAY.bat** file

Important note: You do NOT need the PowerPoint® software to use these slide shows. It's set to display, regardless, because the PowerPoint Viewer® is included. You may be asked to agree to Viewer's licensing terms when you first open the slideshow.

References



¹ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (at 34 CFR pt. 300). Available online at:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- <http://idea.ed.gov>

² Chambers, J.G., Harr, J.J., & Dhanani, A. (2003). *What are we spending on procedural safeguards in special education, 1999–2000?* Washington, DC: Center for Special Education Finance, Special Education Expenditure Project (SEEP). (Available online at: http://www.csef-air.org/about_csef.php)

³ *Id.*, p. 5.

⁴ General Accounting Office (GAO). (2003, September). *Special education: Numbers of formal disputes are generally low and states are using mediation and other strategies to resolve conflicts* (GAO-03-897). Washington, DC: Author. (Available online at: www.gao.gov/cgi-bin/getrpt?GAO-03-897)

⁵ *Id.*, p. 3.

⁶ *Id.*, p. 2.

⁷ 20 U.S.C. 1400(c)(8) (2005).

Looking for IDEA 2004?

The Statute:

- www.nichcy.org/reauth/PL108-446.pdf
- <http://idea.ed.gov>

Final Part B Regulations:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
 - <http://idea.ed.gov>
-

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final Part B regulations, you will find references to specific sections, such as §300.507. (The symbol § means “Section.”) These references can be used to locate the precise sections in the Part B regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of IDEA’s regulations so that you don’t have to go looking for them.

The final Part B regulations have been codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. Proper legal citations include this—such as 34 CFR §300.507. We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. 46738.

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

www.nichcy.org/reauth/IDEA2004regulations.pdf



How to Operate the Slide:

Slide loads fully. No clicks needed except to advance to the next slide.

CLICK to advance to next slide.

This title slide introduces the focus of the module and allows you to begin the training session and draw everyone's attention.

The topics that *will* be covered in this module are listed on Slide 4, the agenda slide.

Theme E Considered

You can also use this slide to give the audience the Big Picture of the modules comprising **Theme E** of *Building the Legacy*. This includes making participants aware that:

- there are other themes around which important IDEA-related issues can be (and are!) meaningfully grouped (see the list of themes in this training curriculum in the box above); and
- there's more to know about procedural safeguards than what's covered in this specific module.

Themes in
Building the Legacy

Theme A
Welcome to IDEA

Theme B
IDEA
and General Education

Theme C
Evaluating Children
for Disability

Theme D
Individualized Education
Programs (IEPs)

Theme E
Procedural Safeguards

Available online at:
www.nichcy.org/training/contents.asp

The complex block contains a list of five themes under the heading "Themes in Building the Legacy". Each theme is listed with its title and a brief description. To the right of the list is a URL: "Available online at: www.nichcy.org/training/contents.asp". Below the list is a photograph of a diverse group of children smiling and huddled together. The entire content is enclosed in a white border with a black inner border.

Familiar Approaches to Resolving Conflicts



A.

B.



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Slide 2 looks at some possibly familiar, definitely whimsical ways of resolving disputes.

A—the thumb war

B—a shoot-off at marbles

Ask questions to prompt both the audience's contemplation of the absurd and their sharing with you and each other what they know already about IDEA's dispute resolution processes. Suggestions:

- When was the last time any of you used such a method for resolving a conflict?
- Have you ever used either method?
- How would either method work in special education to settle disagreements?
- Would the outcome be fair? Why or why not?

- Would anyone in the room prefer these methods over what you know about IDEA's dispute resolution processes?
- What does mediation (due process, state complaint) have to offer that other familiar approaches to resolving conflict don't offer??

The Purpose of Activity I

Dispute resolution is a complicated subject; it may well raise personal recollections in the audience for some participants that might disrupt the flow of the training curriculum. Therefore, this module begins with an activity designed to have participants consider how human nature plays into any conflict situation. Humanity has a long history of disagreeing over most everything, a wide spectrum of

ways in which we express disagreement, and many constructive and destructive ways of resolving our conflicts. The activity sheet—**Handout E-8**—is designed to introduce an element of laughter into a difficult subject. In combination with the opening slides, which are purposefully wry, we hope that a positive mood can be established to take on the discussion of conflict. Considering the nonconstructive options for dispute resolution that people have pursued over the years, the positive mechanisms available under IDEA stand in contrast.



Opening Activity

Purposes

1. To have participants reflect on ways of expressing disagreement and resolving conflicts.
2. To create a positive atmosphere within which to discuss the resolution of conflict.

Total Time Activity Takes

10 minutes.

Group Size

Pairs, to complete activity sheet. Large group, to discuss.

Materials

Handout E-8
Flip chart (optional)

Instructions

1. Frame the activity by talking for a minute or two about mankind's long history of getting into—and out of—disagreements. Refer participants to **Handout E-8**, the activity sheet opening this training session.
2. Tell participants their task is to work with a partner to brainstorm answers to the activity sheet. Give them 5 minutes.

3. Call the room back to large group and have people tell you some of their brainstorming for #1, "Expressing Disagreement." What are some of the funny ways we have of letting others know we don't agree? Not so funny ways? Ask for audience input on what they feel are constructive ways of expressing disagreement and what ways are no-no's in their experience.

4. Now ask for their brainstormed lists for #2, "Finding Resolution." Has anyone in the room ever flipped a coin to resolve a disagreement? What other methods work—or don't work? How do they pick an approach when they have a conflict? What factors might be involved in choosing one approach over another? (Whether money is involved, anger, who the other person is)

5. Working from the list you generated whole-group, take a room vote, show of hands. What's the silliest way to resolve a conflict? The least productive? The one most people seem to go for? The most likely to succeed?

How About These?



A.



B.

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Slide 3 continues the quest for the ultimate dispute resolution approach: the most fair to both parties, minimizing cost and acrimony or ill will, and most timely and responsive to the circumstances. On this slide, our choices are...

A — a race between stakeholders

B — a chess game, winner takes all!

And what do participants think of these two alternatives? Were either mentioned in their brainstorming with the opening activity? Briefly explore how these alternatives would work to resolve a conflict between parents and the public agency.

Suggestions:

- Would you select your fastest runner and send that runner to win or lose a disagreement over whether your child is making adequate progress under his or her current IEP?
- How good are you at chess? How well would that work out for you, do you think? If you had to play chess, winner take all—would you win, or lose? Would either result have anything to do with whether or not your child was making adequate progress under the current IEP and what should be done about that?
- What alternatives does IDEA now offer?

Take a minute or two to contrast the fairness and cost involved in using an IDEA process to resolve a dispute between parents and the public agency versus using a contest like a track race.

None of this whimsy is intended to diminish the critical nature of dispute resolution. Quite the contrary. Hopefully, no one in the audience would argue with the premise that it is unacceptable to resolve conflicts on any basis other than the merits of each party's position and evidence.

And that's what we're going to look at today: IDEA's options for resolving disputes that allow the parties to continue their work together afterwards—namely, ensuring that a child with a disability has available to him or her a free appropriate public education in the least restrictive environment.

As a segue into seriousness, the box below offers a small reflection on ancient dispute resolution approaches.



Have you heard of the “Spartan way” of arbitrating disputes?

The Greek biographer and philosopher Plutarch once told the story of two men who wanted to avoid the rigors of a trial, but who made the mistake of submitting their dispute to the Spartan king, Archidamus II (469-427 BC), for arbitration. The king took the disputants to the temple of Athene of the Brazen House and asked them to swear to abide by his award. They agreed.

Then the arbitrator said: “You both stay here till you have made up your quarrel.”



Fazzi, C. (2000, August-October). Tales of arbitration from ancient literature. *Dispute Resolution Journal*. Retrieved June 6, 2007 at http://findarticles.com/p/articles/mi_qa3923/is_200008/ai_n8905522

This module looks at...

IDEA's options for dispute resolution

- Informal approaches
- State complaints
- Mediation
- Due process complaints
- Resolution process
- Due process hearings
- Expedited due process hearings in disciplinary situations
- Other hearings



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Slide 4 is an advance organizer for the audience as to what content they're going to hear and discuss in this module. The slide loads the header "This module will look at..." and a list of IDEA's dispute resolution options.

Using the Slide to Activate Knowledge

Each of the bulleted items allows you to solicit remarks from your audience, as time permits. The interaction you have with the audience—or more precisely, *their* participation in the interaction—activates their knowledge base and attention,

and allows other participants to absorb that knowledge and interest.

Some suggestions:

Bullet 1: Informal approaches. Ask for a show of hands—how many in the audience are administrators of schools? Administrators of school systems? Parents? Teachers? Something else entirely? When they read the first bullet, informal approaches to dispute resolution, what comes to mind? (Friendly phone call, an IEP meeting)

Bullet 2: State complaints. Has anyone in the audience filed a State complaint? Does anyone

know how to file one? What type of information needs to be included in one? How many in the audience are administrators or public agency staff who have been involved in a State complaint investigation?

Bullet 3: Mediation. Ask similar questions—have they ever participated in a mediation? What have they heard about mediation?

Remaining bullets. Same drill. What does the audience know about due process complaints and due process hearings? How about the resolution sessions—

added to IDEA by the 2004 Amendments? How about expedited due process hearings in disciplinary situations? And what might that last item ("other hearings") be referring to? (Insider scoop: It's referring to hearings when a child with a

disability is unilaterally placed at a private school when tuition reimbursement is at issue. But we'll get to that, we promise.)

These are the elements that will be examined in some detail in this module. When done, no one in the audience will have to

play tic-tac-toe or engage in a footrace to resolve a dispute in special education. They will have other, much fairer tools to use.

Slide 5

Procedural Safeguards Notice

Procedural Safeguards Notice

- Is a comprehensive written explanation of procedural safeguards available to parents of a child with a disability.
- Must be provided to parents once per school year.
- Must also be given to parents under specific conditions.



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To help parents better understand their rights under IDEA, including their options for resolving disagreements, public agencies must provide parents with a copy of the procedural safeguards notice. As the slide indicates, this is a comprehensive written explanation of the procedural safeguards available to the parents of a child with a disability.

The procedural safeguards notice, by the way, was examined in some detail in Module 17, *Introduction to Procedural Safeguards*, some of which is being reiterated here.

As the slide also indicates, the public agency must provide parents with this notice only one time a school year, except under certain specific circumstances, namely:



- when the child is initially referred for evaluation or the child’s parent requests that the child be evaluated;
- upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year;
- in accordance with the discipline procedures in §300.530(h) [i.e., disciplinary removal that constitutes a change of placement for the child]; and
- when the parent requests a copy of the procedural safeguards notice.

The box below provides the provision from the final Part B regulations at §300.504(a). Refer participants to **Handout E-4**.

The final Part B regulations require that the procedural safeguards notice contain a full explanation of the procedural safeguards relating to, among other matters, the availability of mediation and an opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including:

- (1) the time period in which to file a complaint;
- (2) the opportunity for the agency to resolve the complaint; and
- (3) the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures. [§300.504(c)(5)]

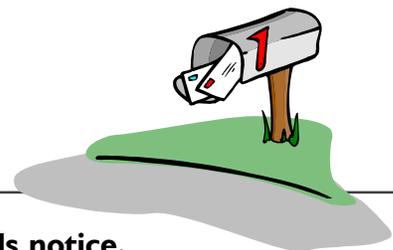
While the requirement to ensure that parents are provided notice of their procedural safeguards is not new, the 2004 Amendments to IDEA and the final Part B regulations expand the required content of the procedural safeguards notice regarding the State complaint and due process complaint procedures. This represents a key change from previous regulations. It may be helpful to take a look at your public agency’s procedural safeguards notice and the Model Procedural Safeguards Notice developed by the Department in accordance with section 617(e) of the IDEA. The Department’s Model Notice may be found at the Department’s Web site at:



<http://idea.ed.gov/static/modelForms>

Also, in keeping with §300.507(b), public agencies must provide parents information about free or low-cost legal and other relevant services in the area if the parent requests the information, or if the parent or the public agency files a due process complaint. Examples of such resources include the State’s Protection and Advocacy (P&A) agency and Legal Aid Bureau. If you have questions about the dispute resolution options, you may want to contact your local Parent Training and Information (PTI) Center. To locate your State’s P&A and PTI, visit NICHCY and find your *State Resource Sheet*. Both of these groups are listed on the sheet. All *State Resource Sheets* are available at:

www.nichcy.org/states.htm



§300.504 Procedural safeguards notice.

(a) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

- (1) Upon initial referral or parent request for evaluation;
- (2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
- (3) In accordance with the discipline procedures in §300.530(h); and
- (4) Upon request by a parent.

Examples of Informal Approaches

- IEP Review



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Let's start by examining less formal ways in which parents and school staff might attempt to work out disagreements regarding a child's special education program. The first of these is to *review the child's IEP*.

Under IDEA, the public agency is responsible for determining when it is necessary to conduct an IEP meeting, and the child's IEP Team is responsible for reviewing the child's IEP periodically, but not less than annually, and revising the child's IEP, if appropriate [§300.324(b)(1)]. In addition, the parents of a child with a disability have the right to request an IEP meeting at any time.

There is a new provision in the 2004 Amendments to IDEA that allows changes to be made to the child's IEP, following the annual IEP Team review, without convening the full IEP Team. You'll find this provision at §300.324(a)(4).



Simply stated, the parent and the public agency may agree *not* to convene an IEP Team meeting for the purpose of making changes to the child's IEP. More detailed information about this new provision is addressed in Module 14, *Meetings of the IEP Team*.

We bring this up because, in some cases, the parties may be able to resolve a disagreement about the child's program by conducting a review of the child's IEP, and amending it as

appropriate, without convening the entire IEP Team.

What kinds of disputes might be resolved through an IEP review meeting?

After the annual IEP review has taken place, if a parent has concerns about his or her child's rate of progress, the appropriateness of the services provided to the child, or the child's educational placement, it would be appropriate for the parents to request that the IEP Team reconvene. At that meeting, the parent and public agency can discuss the parent's concerns and, hopefully, as collaborative members of the IEP Team, work toward a solution that is agreeable to all. The solution doesn't have to be permanent. It's not uncommon for IEP Teams to

agree on a temporary compromise—for example, to try out a particular plan of instruction or classroom placement for a certain period of time that the child’s IEP is in effect. During (or at the end of) that period, the school can check the child’s progress. Team members can then meet again and discuss how the child is doing, how well the temporary compromise addressed the original concern, and what to do next. The trial period may help parents and the school come to a comfortable agreement on how to help the child.

Because parents and the public agency are partners in ensuring the child is provided an appropriate education, and sometimes will be working together for many years—in some cases, the child’s entire school career—it is in everyone’s best interest, especially the child’s, that the IEP Team members communicate with one another, respectfully and honestly.

Space for Notes

Examples of Informal Approaches

- IEP Facilitation



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CLICK to advance to next slide.

This slide addresses another informal approach to dispute resolution that is not specifically required or addressed in IDEA: IEP facilitation.¹

We are mentioning IEP facilitation because it is being used to help IEP Teams reach agreements in the special education decision-making process. There may also be other dispute resolution mechanisms not required or addressed in IDEA that have been successful.

Some SEAs provide parents and school districts with the option of facilitated IEP meetings. When relationships between parents and schools are strained, facilitated meetings may be beneficial. It's important to remember, though, that this approach is not required or addressed under IDEA and may

not be available in your school district.

What is a facilitated IEP Team meeting?

A facilitated IEP Team meeting is one that includes an impartial facilitator. The facilitator is not a member of the IEP Team but, rather, is there to keep the IEP Team focused on developing the child's program while addressing conflicts as they arise. The facilitator can help promote communication among IEP Team members and work toward resolving differences of opinion that may occur concerning the provision of FAPE to a child. The facilitator helps keep the IEP Team on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

What are the benefits of having a facilitator for an IEP Team meeting?

The IEP facilitator can help support the full participation of all parties. The facilitator does not impose a decision on the group; the facilitator clarifies points of agreement and disagreement and can model effective communication and listening for the IEP Team members. When disagreements arise, the facilitator can help encourage the members to identify new options. Most importantly, the impartial facilitator ensures that the meeting remains *focused on the child*.

Do all school districts have to offer facilitated IEP Team meetings?

No. IDEA does not address IEP facilitation. This means that there is no requirement in IDEA for public agencies to provide an impartial facilitator for IEP Team meetings. While the use of IEP facilitation has become more prevalent, facilitators may not be available in all school districts and are not required.

For More Information: CADRE

For more information about IEP facilitation, take a trip on the Web to CADRE, the Consortium for Appropriate Dispute Resolution in Special Education.

www.directionservice.org/cadre



p.s.

This won't be the only time we mention CADRE,
so remember that address...



¹ Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and the Technical Assistance ALLIANCE for Parent Centers. (2004, November). *Facilitated IEP meetings: An emerging practice*. Retrieved June 6, 2007, from <http://www.directionservice.org/cadre/facilitatediep.cfm>

Starting View

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State Complaints

- What is a State complaint?



Clicks 1-4

Clicks 1-4: Each time you click, another bullet appears and the picture changes.

State Complaints

- What is a State complaint?
- Who may file one?
- What information must be included?
- What are the SEA's procedures for handling the complaint?
- Are there time limits?



CLICK AGAIN to advance to next slide.

(discussion on next page) 



And now: A look at requirements in the final Part B regulations related to State complaints. These are found at §§300.151 through 300.153, are presented on **Handout E-9**, and will be excerpted in boxes at relevant points in this discussion.

The slide is designed to let you walk through the content, bringing up a question (e.g., “What information must be included?”) and then answering it, using the information provided below and in the Part B regulations.

The 2004 Amendments to the IDEA and prior versions of the IDEA statute do not include State complaint procedures. Rather, it is the final Part B regulations and their predecessors that have required each State to adopt written procedures for resolving any complaint that meets the definition of a “State complaint” under the Part B regulations [§300.151(a)(1), see box at right].

The Department explained the importance of each State having effective complaint procedures in the Analysis of Comments and Changes accompanying publication of the final Part B regulations in the Federal Register:

We believe that the broad scope of the State complaint procedures, as permitted by the regulations, is critical to each State’s exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other

individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA with a powerful tool to correct noncompliance with Part B of the Act or Part 300 [of the regulations]. (71 Fed. Reg. 46601)



In response to a public comment, the Department explained further:

We believe the State complaint procedures, which are directly under the control of the SEA, provide the parent and the school district with mechanisms that allow them to resolve differences without having to resort to a more costly and cumbersome due process

§300.151 Adoption of State complaint procedures.

(a) *General.* Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA’s discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency’s decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

complaint, which by its nature, is litigious. (71 Fed. Reg. 46606)

The final Part B regulations provide that the SEA must widely disseminate its State complaint procedures under §§300.151 through 300.153 to parents and other interested individuals, including PTI centers, protection and advocacy agencies, independent living centers, and other appropriate entities. You'll find this requirement at §300.151(a)(2), cited in the box on the previous page and on Handout E-9.

Many of the provisions regarding State complaint procedures that were a part of the previous regulations are retained. But there are some significant changes that you should know about. We'll highlight these with the "New in IDEA!" icon as we review requirements for State complaints.

What is a State complaint?

A State complaint, which can be filed by an organization or individual, including an organization or individual from another State, must be *signed* and *written*. The complaint must meet applicable procedures in §§300.151 through 300.152 and the content requirements in §300.153 (see the box at the right).

Who can file a State complaint?

Not only may a child's parent file a State complaint but so may any organization or individual (including those from another State)—see §300.151(a)(1) and §300.153(a). This is an important difference between State

complaints and due process complaints and mediation. Those two dispute resolution options—due process complaints and mediation—require either the child's parent or the public agency to initiate the process.

The person who files a State complaint is referred to as the "complainant." This term is used in the regulations at §300.152(a)(2) and (a)(5) and is also used in this module.

What information must be included in a State complaint?

This is an important question, because the final Part B regulations expand the specific content

to be included in a "State complaint." This represents a key change from the previous regulations; relevant provisions are found at §300.153(b) (see provisions in the box on this page and on Handout E-9).

With the audience, go over the elements that the final Part B regulations require be included in a State complaint, so they appreciate the methodical and reasoned nature of the process.



§300.153(b): What a State Complaint Must Include

(b) The complaint must include—

- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child—
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) 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;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

KEY CHANGE—A new provision in the final Part B regulations, found at §300.509(a), requires each SEA to develop a model form to assist parents and other parties in filing a State complaint. However, the SEA or LEA may not *require* the use of its model forms. Another form or document may be used so long as the form or document includes the content required for filing a State complaint. [§300.509(b)]



KEY CHANGE—It is important to note that the party filing the State complaint must also send a copy of the State complaint to the LEA or public agency serving the child at the same time the State complaint is filed with the SEA. This new provision is found at §300.153(d).



In response to a public comment, the Department explained the reasoning behind the new provision:

The purpose of requiring the party filing the complaint to forward a copy to the LEA or public agency serving the child, at the same time the complaint is filed with the SEA, is to ensure that the public agency involved has knowledge of the issues and an opportunity to resolve them directly with the complaining party at the earliest possible time. The sooner the LEA knows that a complaint is filed and the nature of the issue(s), the quicker the LEA can work directly with the complainant to resolve the complaint. (71 Fed. Reg. 46606)

What happens if the complainant does not include all required information?

This question arises because IDEA's due process procedures specify what must occur if the SEA receives a due process complaint that is insufficient [see §300.508(d), "Sufficiency of complaint"]. Unlike due process, however, the Part B regulations governing the State complaint process do not even *mention* "sufficiency of complaint."

The Department has addressed this issue directly in its *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*. We've provided both the question and the Department's answer in the box on this page.

What is the SEA's obligation when it receives a State complaint?

The SEA must have procedures that comply with the requirements in §300.152. The first part of §300.152—(a)—is presented in the box on the next page; participants will find all of §300.152 on **Handout E-9**.

As you can see, the SEA's obligations include ensuring that State complaints are resolved within the required timeline—60 days from the date the complaint is filed unless an extension of the timeline is permitted for reasons that are outlined in the regulations [§300.152(a) and (b)(1)]. We'll review the timeline



When the Complaint Doesn't Include All Required Information in a State Complaint

From the Department's *Q&A on Procedural Safeguards and Due Process Procedures*¹

Question A-2: What is an SEA's responsibility to conduct a complaint investigation if the written complaint submitted to the SEA does not include the content required in 34 CFR §300.153?

Answer: The regulations do not specifically address an SEA's responsibility when it receives a complaint that does not include the content required in 34 CFR §300.153. However, in the *Analysis of Comments* accompanying the regulations, the Department indicates that when an SEA receives a complaint that is not signed or does not include contact information, the SEA may choose to dismiss the complaint. In general, an SEA should adopt proper notice procedures for such situations. For example, an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be investigated and timelines not commence until the missing content is provided.

requirements in more detail later. First, here's a rundown of the basic steps involved in resolving a State complaint, with discussion to follow.

- The SEA must carry out an independent on-site investigation, if the SEA determines that an investigation is necessary [§300.152(a)(1)].
- The SEA must give the complainant the opportunity to submit additional information about the complaint, either orally or in writing [§300.152(a)(2)].
- The SEA must provide the public agency with the opportunity to respond to the State complaint [§300.152(a)(3)].
- The SEA must review all relevant information, make an independent determination on the complaint, and issue a written decision to the complainant [§300.152(a)(4)-(5)].
- The SEA must have procedures to ensure effective implementation of the SEA's final decision [§300.152(b)(2)].

Now for some discussion!

Opportunity to submit additional information. The SEA must give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. This provision was carried over from prior regulations and gives the complainant the opportunity to clarify the allegations in a complaint that meets the requirements of §300.153(b), either orally or in writing.

The Beginning of...

§300.152 Minimum State complaint procedures.

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

[§300.152(a)]

Opportunity to respond. Under a new provision in the final Part B regulations, the SEA must provide the public agency with the opportunity to respond to the State complaint, including, at a minimum:

- at the discretion of the public agency, a proposal to resolve the complaint; and
- an opportunity for a parent who has filed a complaint with the public agency to voluntarily engage in mediation consistent with §300.506. [§300.152(a)(3)]

KEY CHANGE—This is a key change from the previous regulations. The Department provided the following explanation of the reasons for this important change in the Analysis of Comments and Changes:



Section 300.152(a)(3) was proposed to encourage meaningful, informal resolution of disputes between the public agency and parents, organizations, or other individuals by providing an opportunity

for parties to resolve disputes at the local level without the need for the SEA to resolve the matter. We believe that, at a minimum, the State's complaint procedures should allow the public agency that is the subject of the complaint the opportunity to respond to a complaint by proposing a resolution and provide an opportunity for a parent who has filed a complaint and the public agency to resolve a dispute by voluntarily engaging in mediation...Resolving disputes between parties at the local level through the use of mediation, or other alternative means of dispute resolution, if available in the State, will be less adversarial and less time consuming and expensive than a State complaint investigation, if necessary, or a due process hearing and, ultimately, children with disabilities will be the beneficiaries of a local level resolution. (71 Fed. Reg. 46603)

Opportunity to engage in mediation or other method of dispute resolution. The regulations also require that the SEA offer the parent and the public agency the opportunity to voluntarily engage in mediation or other alternative methods of dispute resolution, if available in the State, to resolve the issues in a State complaint. However, the regulations do *not* require the State to offer the opportunity to voluntarily engage in mediation when an individual other than the child's parent files a State complaint.



Regarding this provision, the Department provided the following explanation in the Analysis of Comments and Changes:

Although we do not believe we should regulate to require that mediation be offered to non-parents, there is nothing in the Act or these regulations that would preclude an SEA from permitting the use of mediation, or other alternative dispute resolution mechanisms, if available in the State, to resolve a State complaint filed by an organization or individual other than a parent...In fact, we encourage SEAs and their public agencies to consider alternative means of resolving disputes between the public agency and organizations or other individuals, at the local level, consistent with State law and administrative procedures. It is up to each State, however, to determine whether non-parents can use mediation or other alternative means of dispute resolution. (71 Fed. Reg. 46604)

SEA review, determination, and decision. Let's get back to the procedures each SEA must have in place for State complaints. The SEA must review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B

of the IDEA (the statute) or the Part B regulations (34 CFR Pt. 300). This requirement is found at §300.152(a)(4)—which is cited in the box on the previous page and on **Handout E-9**.

The SEA must then issue a written decision to the complainant that addresses each of the allegations in the State complaint. The written decision must include findings of fact and conclusions and the reasons for the SEA's final decision. [§300.152(a)(5)]

Remedies for denial of appropriate services. If the SEA found, through its complaint resolution, that there has been a failure to provide appropriate services, the SEA must, pursuant to its general supervisory authority, address the failure, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement). The SEA must also address the appropriate future provision of services for all children with disabilities [see §300.151(b)(1)-(2), cited in the box on the next page]. The final Part B regulations give the SEA broad flexibility and discretion in determining the appropriate remedy or corrective action when resolving a State complaint (71 Fed. Reg. 46602).

The SEA must also have procedures in place to ensure effective implementation of the SEA's final decision, if needed. This includes technical assistance activities, negotiations, and corrective actions to achieve compliance. The provision governing this requirement is found at §300.152(b)(2), cited on the next page and on **Handout E-9**.

What is the time limit for filing a State complaint?

KEY CHANGE—The final Part B regulations include a very important change concerning the time limit for filing State complaints. The new requirement, found at §300.153(c), states:



The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

The Department received many comments about changing the time limit for filing a complaint available under the previous regulations. The 1999 Part B regulations allowed complaints to be filed under certain circumstances for alleged violations that occurred up to three years prior to the date the complaint was received. The Department explained the reasons for changing the time limit for filing a State complaint in the Analysis of Comments and Changes, as follows:

We believe a one-year timeline is reasonable and will assist in smooth implementation of the State complaint procedures. The references to longer periods for continuing violations and for compensatory services claims [included in the 1999 Part B regulations] were removed to ensure expedited resolution for public agencies and children with disabilities. Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will

help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State complaint become so stale that they are unlikely to be resolved. However, States may choose to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline, just as they are free to add additional protections in



other areas that are not inconsistent with the requirements of the Act and its implementing regulations. (71 Fed. Reg. 46606)

How long does the SEA have to resolve a State complaint and issue a final decision?

The SEA's procedures must include a time limit of 60 days after the complaint is filed for specified activities to take place in the complaint resolution process. These include:

- conducting an independent on-site investigation, if the

The Middle of...

§300.152 Minimum State complaint procedures.

(a) ...

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

[§300.152(b)]

SEA determines that an investigation is necessary;

- giving the complainant the opportunity to submit additional information, either orally or in writing, providing the public agency with the opportunity to respond to the complaint;
- having the SEA or the public agency responsible for resolving the complaint review all relevant information and make an independent determination; and
- issuing a final decision on the allegations in the State complaint. [See §300.152(a)(1)-(5), cited in the box on page 18-25.]

The SEA's complaint procedures must permit extension of the 60-day timeline for issuing the complaint decision, only if exceptional circumstances exist with respect to a particular complaint. See §300.152(b), cited in the box on the previous page and on **Handout E-9**.

KEY CHANGE—Also, under a new provision added to the final Part B



regulations in 2006, the timeline may be extended if the parent and the public agency involved agree to extend the time to engage in mediation (or other alternative means of dispute resolution, if available in the State). If the complaint is filed by an individual or organization other than the parent, the timeline may also be extended through agreement between the public agency and the other individual or organization filing a complaint if mediation or other alternative means of

dispute resolution is available to the individual or organization under State procedures [§300.152(b)(1)(ii)]. This means that the fact that the parties agree to use mediation is not sufficient by itself to warrant an extension of the 60-day timeline. The complainant organization or individual and the public agency must also agree to extend the timeline as a result of the decision to use mediation.



What is the SEA's obligation to investigate a State complaint if the party filing the complaint and the public agency resolve the dispute through mediation?

An agreement reached through mediation consistent with §300.506(b)(6) of IDEA is legally binding. Such an agreement is enforceable in an appropriate State or federal court [§300.506(b)(7)]. Therefore, as the Department explained in the Analysis of Comments and Changes:

... an agreement reached through mediation is not subject to the SEA's approval. Parties are encouraged to resolve a State complaint at the local level without the need for the SEA to intervene. If a complaint is resolved at the local level or is withdrawn, no further action is required by the SEA to resolve the complaint. (71 Fed. Reg. 46605)

So, if the agreement results in a complaint resolution and is implemented, the SEA would have no further obligation to investigate or otherwise resolve the complaint.

What happens if a State complaint and a due process complaint are filed to resolve the same issue?

The final Part B regulations address this very situation. Section 300.152(c)(1) provides that, if a State complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the SEA must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing. But any issue in the State complaint that is *not* a part of the due process hearing action must be resolved using the time limit and State complaint procedures described above. These requirements are stated at §300.152(c)(1)—which appears on **Handout E-9** and in the box on the next page.

It is important to note that, the final Part B regulations implementing the 2004 Amendments to IDEA retain the provision from the 1999 Part B regulations regarding the relationship between a State complaint and a due process hearing. Under §300.152(c)(2)—also in the box on the next page—if an issue that is included in a State complaint has previously been decided in a due process hearing that involved the same parties, the due process decision is binding on that issue,

and the SEA must inform the complainant to that effect.

If that decision is not appealed, under its general supervisory responsibilities the SEA has an obligation to ensure a final hearing decision is implemented [§300.149 and 300.514(a)]. Therefore, the Part B regulations at §300.152(c)(3) also provide that State complaints alleging that a public agency has failed to implement a due process hearing must be resolved by the SEA.

Is there a process to appeal an SEA decision on a State complaint?

There is no provision in the Part B regulations for an appeal of the SEA's decision on a State complaint. In responding to a public comment, the Department provided the following explanation regarding this matter in the Analysis of Comments and Changes:

The regulations neither prohibit nor require the establishment of procedures to permit an LEA or other party to request reconsideration of a State complaint decision. We have chosen to be silent in the regulations about whether a State complaint decision may be appealed because we believe States are in the best position to determine what, if any, appeals process is necessary to meet each State's needs, consistent with State law.

If a State chooses, however, to adopt a process for appealing a State complaint decision, such process may not

The End of...

§300.152 Minimum State complaint procedures.

(a) ...

(b) ...

(c) *Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

[§300.152(c)]

waive any of the requirements in §§300.151 through 300.153. Section 300.152 requires that the SEA issue a final decision on each complaint within 60 calendar days after the complaint is filed, unless the SEA extends the timeline as provided in §300.152(b). This means that, absent an appropriate extension of the timeline for a particular complaint, the State must issue a final decision within 60 calendar days.

However, if after the SEA's final decision is issued, a party who has the right to request a due process

hearing (that is, the parent or LEA) and who disagrees with the SEA's decision may initiate a due process hearing, provided that the subject of the State complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings (or other time limit imposed by State law) has not expired. (71 Fed. Reg. 46607)



Summary

The final Part B regulations include important changes in the procedures States must adopt for resolving written complaints filed under the State complaint procedures. As discussed in the Department's Q&A on procedural safeguards and due process,² this includes:



- a new requirement to forward a copy of the State complaint to the public agency serving the child;
- new content requirements for complaints; and
- a revised time limit for filing complaints.

These changes are all noteworthy and, together, will hopefully provide public agencies, parents, and others with streamlined and effective State complaint processes for resolving disputes.

Time for Review?

A volume of information has been presented on this slide, even with its focus narrowed to State complaint procedures. Clearly, there's a lot to know—and a lot for participants to absorb and remember.

Consider taking a moment to review what's been said, either at length or in brief. You can also invite questions from the audience.

Organizing the Review

How you shape a review here will likely depend on whether or not audience members came to this training session already well-versed in IDEA's provisions and you've focused primarily on what's changed, or whether participants have just heard about State complaint procedures for the first time (or nearly so) and the foundation of knowledge had to be built from the ground up. For a mixed group, you might consider dividing the audience into those two categories, asking folks to self-report themselves into either group (e.g., "All the know-it-alls" on the left, all the "what-was-that-again's?" on the right). Then you can handle each group separately, via some of the suggestions below or an approach of your own devising.

Some Suggestions

There are numerous ways to shape a review; you may already have one in mind. What's listed below are only suggestions to consider.

- *True/false.* Ever popular! You make the statement, the audience tells you whether it's true or false—and, most importantly, *why* it's true or false. If false, what's the correct information?

True/false is more fun when the audience is formed into teams, with questions alternated between them. You might even form the teams and have them prepare true/false questions for each other.



- *Fill in the blank.* Either conducted orally or in writing via a worksheet you prepare, fill in the blank (also known as *cloze*) is a standard in many a classroom. You can emphasize specific content over other content by what words or phrases you leave blank in a passage or list that participants then have to fill in.

A perfect example is what IDEA requires be included in a State complaint. You can provide several items in that list but leave two or more to be filled in.

- *Trainer questions.* A quicker review can take the form of you asking review questions and the audience giving you the answers.
- *Audience questions.* Consider simply opening the floor up for participants' questions. Answers can be provided either by you or the audience. Tying the answers back to the regulations is always a good idea. Have the audience find the answer in the regulations, just to be sure.

Space for Notes



¹ Quote from page 2 of: U.S. Department of Education. (2007, January). *Questions and answers on procedural safeguards and due process procedures for parents and children with disabilities*. Washington, DC: Author. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C6%2C>

² *Id.*

View 1

Mediation

- Description



Slide loads with this view.

Clicks 1-5

Mediation

- Description
- Benefits
- Procedures
- SEA's obligations
- Confidentiality of discussions
- Enforcement of written agreement



Clicks 1-5: Each time you click, another bullet appears and the picture changes.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



New topic, different approach to resolving disputes: Mediation.

Again, the slide is designed to allow you to walk through the key points and content of IDEA's provisions regarding mediation. Mediation has already come up as part of the discussion of State complaints. Remember? The SEA's complaint procedures must allow the parent and public agency, if they choose, to engage in mediation in order to resolve the allegations in a State complaint. But there's more.

The provisions in the final Part B regulations regarding mediation are provided on **Handout E-10** and are found at §300.506. They will be referenced through the following discussion.

What is mediation?

Mediation refers to a process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and public agency. The Committee on Education and the Workforce, U.S. House of Representatives, described mediation as follows:

Mediation is defined as an attempt to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and school officials to sit down with an independent mediator and discuss a problem, issue, concern, or complaint in

order to resolve the problem amicably without going to due process.¹

What are the benefits of using mediation to resolve a dispute under IDEA?

While mediation cannot guarantee specific results, it can be an efficient and effective method of dispute resolution between the parents and the school district or, as appropriate, the SEA or other public agency. Here are some of the benefits that can come from using mediation.

- Mediation often results in lowered financial and emotional costs, especially when compared to a due process hearing.
- Given its voluntary nature and the ability of the parties to devise their own remedies, mediation often results in written agreements because parties have an increased commitment to, and ownership of, the agreement.
- Some parties report mediation as enabling them to have more control over the process and decision making, thus serving as an important tool of self-empowerment.
- Remedies are often individually tailored and contain workable solutions that are easier for the parties to implement since they have both been involved in developing the specific details of the implementation plan. Because the parties reach their own agreement, as opposed to

having a third party decide the solution, they generally are more likely to follow through and comply with the terms of that agreement.²

As part of its technical assistance and dissemination (TA&D) network, OSEP has funded a center that specializes in dispute resolution, including mediation. It's called CADRE, the Consortium for Appropriate Dispute Resolution in Special Education, also known as the National Center On Dispute Resolution. We've already mentioned CADRE in this module—see our *Thank You's* on page 18-6 and CADRE's contact information on page 18-20 (where IEP facilitation is discussed). CADRE is an excellent resource for the field.

Through its work in this area, CADRE has identified a range of benefits of mediation for parents, educators, and services providers, including:

- Families can maintain an ongoing and positive relationship with the school and benefit from partnering with educators or service providers in developing their child's program.
- Conflicts that arise out of misunderstandings or lack of shared information can be resolved through mediators helping parents, educators, and services providers to

communicate directly with one another.

- Special education issues are complex and can best be solved by working together.
- Mediation tends to be faster and less costly than adversarial approaches such as due process hearings and court proceedings.
- Mediation results in agreements that participants find satisfactory and research shows that people tend to follow the terms of their mediated agreements.²

CADRE reported the following statistics on use of mediation in the 50 States (DC and outlying areas not included). In the 2004-2005 school year:

- All Mediations Held: 6,577
- All Mediation Agreements: 4,997 (76%)³

When is mediation an option to resolve a dispute under IDEA?

IDEA requires States to ensure that mediation is available, whether or not a party files a due process complaint. Participants can find the relevant regulation on **Handout E-10** at §300.506(a), which is also provided in the box on this page.

The availability of mediation has been expanded under the 2004 Amendments to IDEA [see section 615(e)(1) of the Act and §300.506(a) of the final Part B regulations]. Now, *any* dispute, including matters that arise prior



The Beginning of...

§300.506 Mediation.

(a) *General.* Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

[§300.506(a)]

to the filing of a due process complaint, can be the subject of mediation. (71 Fed. Reg. 46696)

When is mediation not available to resolve a dispute under IDEA?

The final Part B regulations make clear where mediation *cannot* be used.

First, a bit of context regarding what's known as IDEA's "consent override procedures"—which are the procedural safeguards in Subpart E, including mediation under §300.506.

Public agencies have the option of using their consent override procedures (including mediation) to pursue the initial evaluation or reevaluation if parents of children who are enrolled in public school or seeking to enroll their child in public school:

- refuse consent to the initial evaluation or reevaluation; or
- fail to respond to a request to provide consent. [§300.300(a)(3) and (c)(1)(ii)]

Since IDEA makes use of these procedures optional, the decision whether to use these procedures is left to the discretion of the public agency.

However, the regulations now make clear that public agencies *may not* use their consent override procedures if parents of parentally-placed private school children or home-schooled children:

- refuse consent to the initial evaluation or reevaluation; or
- fail to respond to a request to provide consent. [§300.300(d)(4)]

Further, the final Part B regulations make clear that public agencies *may not* use their consent override procedures (again, this refers to the procedural safeguards in Subpart E, which include mediation), if the parent:

- fails to respond to a request for consent; or
- refuses consent to the initial provision of special education and related services under Part B of IDEA. [§300.300(b)(3)]

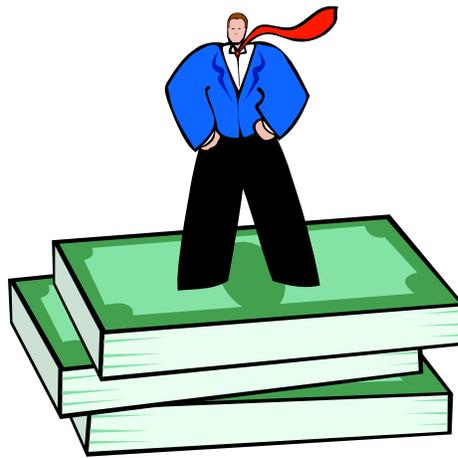


What are the SEA's obligations for the mediation process?

There were no provisions regarding mediation in the law or the Department's regulations prior to 1997. The Department advised States that mediation could be used so long as it was not mandatory and it did not operate to deny or delay a parent's right to a due process hearing.

The 1997 Amendments to IDEA included, for the first time, provisions for public agencies to establish and implement procedures allowing for the use of mediation as a means of resolving disputes between a public agency and the parents of a child with a disability. In that version of the law, Congress explicitly outlined the States' obligations to establish and implement procedures to allow parties to disputes to resolve their differences through mediation and, at a minimum, to make mediation available whenever a due process hearing was requested.

A State's obligations for ensuring that the mediation process meets the following requirements are essentially the same as they were under the 1997 Amendments, except that opportunities to allow parties to resolve disputes through mediation have been expanded. As noted previously, the 2004 Amendments provide for the expanded availability of mediation, and require public agencies to establish and implement procedures to make mediation available to parents and public agencies to resolve a dispute involving any matter arising under Part B, including matters



arising prior to the filing of a due process complaint.

The public agency's procedures for the mediation process must ensure that mediation:

- is voluntary on the part of the parties [§300.506(b)(1)(i)];
- may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of IDEA [§300.506(b)(1)(ii)]; and
- is conducted by a qualified and impartial mediator who is trained in effective mediation techniques [§300.506(b)(1)(iii)].

The State must make sure that each mediation session is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute [§300.506(b)(5)]. As the provisions in the box on the next page indicate (refer participants to **Handout E-10**), the SEA:

- is responsible for paying for the mediation process;
- is responsible for maintaining a list of qualified mediators

who are knowledgeable about the laws and regulations relating to the provision of special education and related services; and

- must select mediators on a random, rotational, or other impartial basis.

Selecting mediators on an impartial basis would include permitting the parties involved in the dispute to agree on a mediator. (71 Fed. Reg. 46695)

The individual serving as the mediator must not be an employee of the SEA or the school district that is involved in the education or care of the child and cannot have a personal or professional interest that conflicts with his or her objectivity [§300.506(c)]. This is very important because it preserves the impartiality of the mediator's role. The Part B regulations are very clear that the mediator is not an employee of the LEA or State agency described in §300.228 solely because he or she is paid by the agency to serve as a mediator [§300.506(c)(2)]. This is so, even though the State is responsible for paying for costs associated with mediation, including the services of the mediator [§300.506(b)(4)].

IDEA permits a public agency to establish procedures to offer parents and schools choosing not to use mediation an opportunity to meet with a disinterested party who would encourage the use of mediation and explain its benefits [§300.506(b)(2)]. In other words, the regulations *allow* States to establish such procedures, but *do not require* them to do so (71 Fed. Reg. 46695).

In any case, neither the parent nor the school district can be required to participate in mediation.

What happens during the mediation process?

While each mediation situation is unique, generally both parties to the mediation will come to the mediation session prepared to explain their own position and listen and respond to the other party's position. The



mediator will facilitate a discussion but does not “take sides” or give an opinion on the issues being disputed. The mediator works with the parties to help them express their views and positions and to understand each other's perspectives. The mediator helps the parties generate potential solutions and facilitates the parties' communication and negotiation.

If an agreement is reached to resolve the dispute, the mediator assists the parties in recording their agreement in a written, signed document.

The public agency must make sure that its representative participating in mediation has

the authority to enter into a binding agreement on its behalf [§300.506(b)(6)(ii)]. A parent may choose to have a friend or advocate attend the mediation session. And, while there is nothing in the statute or the regulations that prohibits a parent or public agency from having an attorney attend, the presence of an attorney could contribute to a potentially adversarial atmosphere that may not necessarily be in the best interests of the child.

CADRE makes available a number of useful resources on participating in mediation, including:

- suggestions on how to prepare for a mediation session www.directionservice.org/cadre/preparing.cfm
- sample “ground rules” for mediation www.directionservice.org/cadre/grs.cfm

Selected Mediation Provisions: §300.506(b)(2), (3), and (4)

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party-

(i) Who is under contract with an appropriate dispute resolution entity, or a parent training and information center or a community resource center in the State established under section 671 or 672 of the Act; and

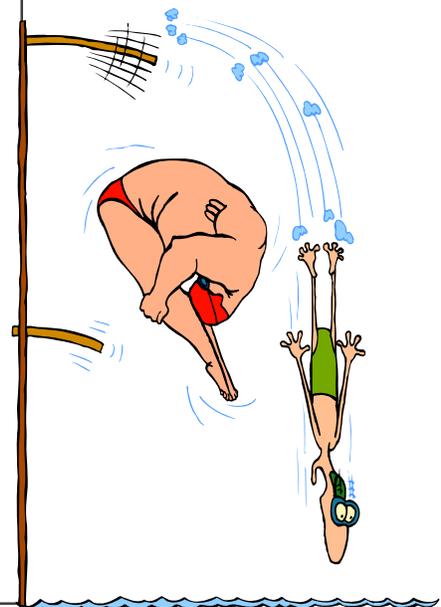
(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

[§300.506(b)(2)—(4)]



Can information shared during the mediation process be used in subsequent due process hearings or civil proceedings?

No. IDEA requires discussions occurring during the mediation process to remain confidential. Refer participants to **Handout E-10** to have a look at IDEA’s provisions in §300.506(b)(6) and (7), cited in the box below.

Because discussions that occurred during mediation must remain confidential, they may



**More Mediation Provisions:
§300.506(b)(6) and (7)**

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

[§300.506(b)(6) and (7)]

not be used in subsequent due process hearings or civil proceedings in States receiving assistance under Part B of IDEA.

How is a mediation agreement enforced?

If the parties resolve the dispute through the mediation process, they must execute a legally binding agreement that states the resolution and is signed by both the parent and a representative of the agency who has authority to bind the agency. This is clearly stated at §300.506(b)(6) and supported by a key change in the IDEA statute and final Part B regulations as to how mediation agreements are enforced.



A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

The final Part B regulations also provide that a State may, but is not required to, develop other mechanisms, such as the State complaint procedures, to enforce mediation agreements. However, a State may not require a party to use such mechanisms or delay or deny a party from seeking enforcement of the written agreement through an appropriate court. See IDEA’s regulations at §300.537.

Summarizing Mediation

Mediation provides a positive, less adversarial approach to resolving disputes between parents and school systems. With the assistance of a skilled and impartial facilitator (the mediator), the parties involved in the dispute are encouraged to communicate openly and respectfully about their differences and to come to an agreement. The decision-making power always resides with the participants in mediation.

You may wish to wind up discussion of mediation by either:

- reviewing what was said here;
- asking participants to work in small groups to summarize its benefits, key points, required procedures, and agency responsibilities;

- returning to the slide and asking participants to answer the questions, either in the large group, or via smaller group work that's done independently, then reported back to the full group; or
- opening the floor up to questions from the audience, letting other participants answer (with you correcting or elaborating on those answers as necessary).

Space for Notes



¹ Quote from page 13 of: Committee on Education and the Workforce, U.S. House of Representatives. (2005, February). *Individuals with Disabilities Education Act (IDEA): Guide to "frequently asked questions."* Washington, DC: Author. (Available online at: http://www.doe.state.in.us/exceptional/speced/pdf/idea_faq.pdf)

² Consortium for Appropriate Dispute Resolution in Special Education (CADRE). (1999). *Considering special education mediation: Helping parents and educators create solutions that improve results for students with disabilities.* Eugene, OR: Author. (Available online in English and Spanish at: www.directionservice.org/cadre/medinfo.cfm)

See also: www.directionservice.org/cadre/med_benefits.cfm)

³ Consortium for Appropriate Dispute Resolution in Special Education (CADRE). (2007). *From regulation to resolution: Emerging practices in special education dispute resolution.* A presentation at the OSEP Regional Implementation Meetings in Washington, DC; Los Angeles, CA: and Kansas City, MO. (Available online at: www.directionservice.org/pdf/OSEP%20Regional%20Implementation%20Meeting%20as%20PDF.pdf)

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1—Brain on overload?



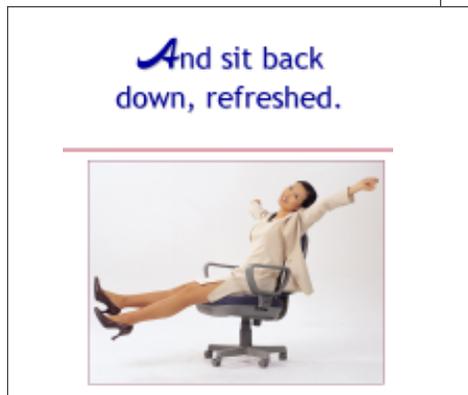
2—How 'bout we all stand up?

3—And stretch a bit.

4. Reach for the sky.



5—And sit back down, refreshed.



CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 10: Background and Discussion

Auto Play



Slide 10 is all about taking a *meaningful* break, a break that stimulates the mind and muscles, stirs the blood, and reactivates attention.

Tell your audience that, in a moment, the topic will shift to the top-priority topic of “due process,” which has been a critical procedural safeguard across the life of this law and very important for participants to know and understand. To get ready for the next onslaught of information (brain on overload? as the opening image of this slide says), it’s time to down-

load, stretch gently, unkink the body, and clear the mind.

Invite the audience to get to their feet. Are they up? Good, good... Now guide participants through a few simple stretches and other relaxation techniques.

Devote at least 1 minute to this break. Nothing potentially vigorous enough to strain muscles or cause accidents, but movement nonetheless, accompanied by deep breaths. Interest-

ing research exists to suggest the benefits that physical movement can bring to learning—in particular, a break that involves physical movement refreshes the brain, gets the blood flowing, loosens the kinks that develop from sitting in class or training, and releases stress even as it reactivates attention.



Starting View

Slide loads with this view.

Due Process Complaints

- What is a due process complaint?



Clicks 1-5

Clicks 1-5: Each time you click, another bullet appears and the picture changes.

Due Process Complaints

- What is a due process complaint?
- Who may file one?
- Are there time limits?
- What information must be included?
- What if it's **not** included?
- How does an LEA respond?



CLICK AGAIN to advance to next slide.

(discussion on next page) 



Due process is a longstanding approach within IDEA to resolving disputes and the subject of this slide. Again, the slide is designed to allow you to walk through the key points and content of IDEA's provisions regarding due process complaints.

Although many in the audience may be familiar with this subject already, given its longevity in the law, it's important for them to realize that the 2004 Amendments to IDEA have made significant changes in the provisions related to due process complaints and due process hearings. The statutory changes reflect a heightened emphasis on resolving disputes as early as possible, rather than leaving problems to fester. This includes procedures to make sure that individuals have the information they need to try to resolve disagreements early on and to provide opportunities that encourage parents and school staff to communicate with one another to reach a solution. This approach is reflected through changes in the statute and regulations concerning the following:



- time limit for filing a due process complaint;
- information that must be provided to the other party when a due process complaint is filed; and
- a requirement that the LEA provide the parties the opportunity to resolve the dispute through a resolution meeting

convened by the LEA prior to going before a hearing officer to have the matter decided when the parent files a due process complaint.

Filing a due process complaint is the first step in the process that may lead to a due process hearing. A due process hearing, like many legal proceedings, involves multiple steps that must be followed in order for a party to have his or her case heard before a hearing officer. As mentioned above, the 2004 Amendments and the final Part B regulations have made several key changes in the steps that must be followed. The information presented in this module is not intended to provide legal advice and is not a substitute for the requirements found in §§300.507 through 300.518. Those provisions are presented in the handouts for **Theme E, Procedural Safeguards**.

What is a due process complaint?

A due process complaint is a filing by a parent or a public agency on matters related to the identification, evaluation, or educational placement of a child, or the provision of FAPE to the

child. Such a complaint must meet the content requirements in §300.508(b), which are provided in the box on the next page. Whenever a due process complaint is received, the parents and LEA involved in the dispute must have an opportunity for an impartial due process hearing [§300.511(a)].

As mentioned above, the due process hearing is a legal proceeding. Specific content must be included in a due process complaint, as described at §300.508(b), which is similar to the information that now must be included in a State complaint. The fourth bullet on the slide ("What information must be included?") gives you an opportunity to point out this similarity to participants and ask if they can recount what that information is—content of a State complaint was discussed under Slide 8, is found §300.153(b), and appears on **Handout E-9**.

Trainer Note

For the upcoming discussion, refer participants to **Handout E-11**.



These additional points need to be made:

- A party may not have a hearing until the party (or the attorney representing the party) files a due process complaint that meets the content requirements for a due process complaint [300.508(c)].
- The information contained in the due process complaint must be kept confidential [§300.508(a)].
- The party filing a due process complaint must provide a copy to the other party and forward a copy to the SEA [§300.508(a)(2)].

Who has the right to file a due process complaint?

A parent or a public agency may file a due process complaint on issues relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child [§300.507(a)].

There are some important exceptions, though, to the issues that are subject to IDEA's due process procedures. Here's one of those exceptions.

Remember that, in the mediation section in this module, we talked about consent override procedures (the procedural safeguards in Subpart E, which include mediation and due process procedures)—which are optional on the part of the LEA—if a parent refuses consent or fails to respond to the initial evaluation or reevaluation. Two points about consent override and due process complaints need to be made here:

- The public agency proposing to conduct an initial evaluation or any reevaluation may not file a due process complaint or use mediation to override a parent's refusal to consent or failure to respond to the request for consent to the initial evaluation or reevaluation of a parentally-placed private school child or home-schooled child [§300.300(c)(4)(i)].
- The public agency responsible for making FAPE available to a child with a disability may not file a due process complaint to override a parent's refusal to consent or failure to respond to the request for consent to the initial provision of special education and related services [§300.300(b)(3)].



And here are two other exceptions to mention:

- Parents of parentally-placed private school children may file a due process complaint *only* regarding the failure of the LEA where the private school is located to meet the child find requirement [§300.140)].
- A parent may not file a due process complaint regarding the SEA's or LEA's failure to provide a highly qualified teacher, although an organization or individual could file a State complaint about staff qualifications with the SEA under the State complaint procedures in the Part B regulations [§300.156(e)].

§300.508(b): Content of a Due Process Complaint

(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include—

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;

(4) 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;

(5) 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

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

What is the time limit for filing a due process complaint?

The IDEA statute and final Part B regulations establish a time limit for filing a due process complaint—a key change, as the previous version of the statute and the final Part B regulations did not include any time limitation. Under the final Part B regulations:

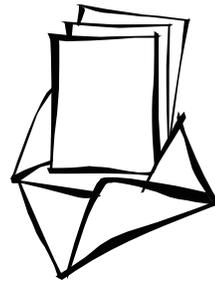


A due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under Part B, in the time allowed by that State law. [§300.507(a)(2)]

The 2004 Amendments to the IDEA and the final Part B regulations provide specific exceptions to the timeline for filing a due process complaint and requesting a hearing on the complaint:

- if the parent was prevented from filing a due process complaint due to misrepresentations by the school district that it had resolved the issues in the due process complaint; or
- the school district withheld information from the parent that it was required to provide under Part B of the IDEA. [§300.511(f)]

A State may choose to have a time limit for filing a due process complaint that is different from the two-year timeline, and the State timeline may be shorter, or longer, than two years. In any case, the applicable time limit for filing a due process complaint must be explained in the procedural safeguards notice that provides parents with the full explanation of procedural safeguards so that parents will be informed of the time limitation in their State.



- a proposed resolution of the problem to the extent known and available to the person filing the complaint.

If the child is homeless, as defined in the McKinney-Vento Homeless Assistance Act, the complaint must include available contact information for the child—instead of the address of the child’s residence—and the name of the school the child is attending [§300.508(b)(4)].

As also mentioned earlier, 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 these requirements [§300.508(c)]. Each SEA must develop a model form to help parents and public agencies file a due process complaint [§300.509(a)]. However, neither the State nor the school district may require the use of these forms. A party may use the model form or another appropriate form, as long as it contains the required information for filing a due process complaint [§300.509(b)].

What information must be included in a due process complaint?

As mentioned earlier (and shown in the box on the previous page), IDEA sets forth the specific information that must be included in a due process complaint [§300.508(b)]. Including each of the required elements can help ensure that the parties have the information necessary to understand the other’s perspective on the issue(s) under dispute. In accordance with §300.508(b), the due process complaint must include:

- the name of the child;
- the address of the residence of the child;
- the name of the school the child is attending;
- a description of the nature of the child’s problem relating to the proposed action or refused initiation or change, and

Who decides whether the information in the due process complaint is sufficient?

A due process complaint is deemed sufficient *unless* the party receiving the due process complaint notifies the hearing officer and the other party *in writing*, within 15 days of receiving the due process complaint, that the notice does not meet

the requirements [§300.508(d)(1)]. Relevant regulations are found on **Hand-out E-11** and in the box below. The hearing officer must then make a decision based on the face of the due process complaint whether it is legally sufficient. This means, at this stage, that the hearing officer may only look at what is written in the due process complaint and may not take additional evidence or testimony in order to make his or her decision about the sufficiency of the complaint [§300.508(d)(2)].

Within five days of receiving the notice that the party believes the complaint is insufficient, the hearing officer must reach a decision about the complaint's sufficiency and immediately notify the parties in writing of the determination. If the hearing officer rules that the due process complaint is not sufficient, the decision will identify how the notice is insufficient so that the filing party can amend the notice, if appropriate. If the due process complaint is determined to be insufficient and is not amended, the due process complaint could be dismissed (71 Fed. Reg. 46698).

Are there other circumstances under which a due process complaint can be amended?

Section 300.508(d)(3) of IDEA specifies the circumstances under which the party filing the due process complaint will have an opportunity to amend the complaint to ensure that it accurately sets out their dispute with the other party. (See regulations in the box.) The due process complaint can be

amended only if the parties mutually agree in writing to the amendment and are given the opportunity for a resolution meeting, or the hearing officer grants permission to amend the complaint at any time not later than five days before the due process hearing begins. This provision ensures that the parties understand and agree on the nature of the due process



complaint before the hearing begins.

When a complaint is amended, the timeline for convening the resolution meeting (within 15 days of receiving the due process complaint) and time period for resolving the due process complaint (within 30 days of receiving the due process complaint) start again on the date the amended complaint is filed. You can see this below, at §300.508(d)(4).

It's interesting how timelines can shift around and affect other aspects of due process. Here's one example that the Department specifically addressed in its

§300.508(d): Sufficiency of Complaint

(d) *Sufficiency of complaint.* (1) The due process complaint required by this section 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 paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, 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 paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

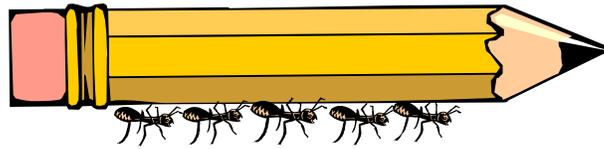
(3) A party may amend its due process complaint only if—

(i) 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 §300.510; or

(ii) 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.

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

Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities.¹ Question C-4 asks:



If a due process complaint is amended and the 15-day timeline to conduct a resolution meeting starts over, must the LEA conduct another resolution meeting?

The Department responded: Yes. The 15-day timeline has started over with the filing of the amended due process complaint. Given that a “complaint can only be amended if the parties mutually agree in writing to the amendment and are *given the opportunity for a resolution meeting*”—the Department emphasized these last words in its answer²— or a hearing officer grants permission to amend the complaint, the LEA again has the responsibility to convene a resolution meeting.

What steps must the LEA take when it receives a parent’s due process complaint?

The LEA has specific, time-sensitive responsibilities to carry out when it receives a parent’s due process complaint. Remember, the intent is to resolve disputes as early as possible so



that a child’s education program is not adversely affected by unnecessary delays in the dispute resolution process.

Providing the procedural safeguards notice and other information. Upon receipt of the first due process complaint filed in a school year, the public agency must provide parents with notice of their procedural safeguards [see §300.504(a)(2), presented on **Handout E-4**]. Additionally, upon receipt of a parent’s complaint, the LEA must inform parents about the availability of free or low-cost legal and other relevant services available in the area. This is required by §300.507(a)(2), provided on **Handout E-11**.

Responding to the complaint. If the public agency has not sent the parent a prior written notice regarding the subject matter contained in the due process complaint, the public agency must, within 10 days of receiving the due process complaint, send the parent a response that includes:

- an explanation of why the school district proposed or refused to take the action raised in the due process complaint;
- a description of other options that the child’s IEP Team considered and the reasons why those options were rejected;

- a description of each evaluation procedure, assessment, record, or report the public agency used as the basis for the proposed or refused action; and

- a description of the other factors that are relevant to the public agency’s proposed or refused action. [§300.508(e)(1)]

The provisions above apply to an LEA that has not provided the parent with written prior notice regarding the matter that is the subject of the parent’s due process complaint. That is why they essentially duplicate IDEA’s provisions regarding prior written notice and why there’s a reference to prior written notice here. Recall that a public agency must provide parents with prior written notice a reasonable time before the agency proposes (or refuses) to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child [§300.503(a)], as extensively discussed in the separate module, *Introduction to Procedural Safeguards*. That notice must contain the information specified at §300.503(b) (see **Handout E-2**), which bears a striking resemblance to the information that must be contained in the LEA’s response described above. Clearly, the intent of both sets of provisions is to ensure that parents are informed about the LEA’s decisions and actions (or refusals) and the reasoning behind them. If the LEA has not already informed the parents through prior written notice, then it must do so now.

If the LEA previously has provided the parent prior written notice, then what's called the other-party-response provision in paragraph (f) applies to that LEA. Invite participants to have a look at §300.508(f) on **Handout E-11**, where the other-party-response provision is found. It requires the other party to provide the complaining party with a response that specifically addresses the issues raised in the due process complaint.

The LEA must also, within 15 days of receiving the parent's due process complaint, convene a resolution meeting (unless the parties agree to use mediation or to waive the resolution meeting). Even if the LEA has challenged the sufficiency of a parent's due process complaint and is awaiting a hearing officer's decision on this matter, the LEA must still move forward with convening a resolution meeting under §300.510, unless the parties agree in writing to waive the resolution meeting or agree to use the mediation process.

The purpose of the resolution meeting is to give the public agency the opportunity to resolve the issues in the parent's due process complaint. This is a new requirement and represents a key change from the previous regulations.



New in
IDEA!

Because this is a new requirement and new step in the due process procedures, we'll address the resolution meeting in a separate slide (the next one, in fact!).

What steps must a parent take when the LEA is the party filing a due process complaint?

IDEA states that the "receiving party must provide the party that filed the complaint a response to the complaint within 10 days of receiving the complaint" [§300.508(f)]. We've already discussed the LEA's obligation to respond when the parent files the due process complaint. Similarly, if the *LEA* is the party filing the due process complaint, the parent is required to provide a written response to the LEA within 10 days of receiving the LEA's due process complaint that specifically addresses the issues raised in the LEA's due process complaint [§300.508(f)].

While the regulations do not address what happens if either party fails to provide the other with the required notices, the Department explained, in the Analysis of Comments and Changes accompanying publication of the final Part B regulations in the Federal Register, that:

...either party's failure to respond to or to file the requisite notices could increase the likelihood that the resolution meeting will not be successful in resolving the dispute and that a more costly and time-consuming due process hearing will occur. (71 Fed. Reg. 46699)

Summary

Filing a due process complaint sets in motion a series of required timelines, notices, and actions. These are important to highlight for participants, including the fact that, at certain points along the way, those timelines may "re-set" or start over.



¹ U.S. Department of Education. (2007, January). *Questions and answers on procedural safeguards and due process procedures for parents and children with disabilities*. Washington, DC: Author. (Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C6%2C>)

²*Id.*, p. 8.

View

Resolution Process



- Description

Slide loads with Bullet 1.

Resolution Process



- Description
- Benefits

Click 1

Click 1:
Bullet 2 appears,
and the picture
changes.

Resolution Process

Clicks 2-4

- Description
- Benefits
- Procedures
- LEA's obligations
- Timelines
- Enforcement of written agreement



Click 2:
Bullet 3 and Bullet 4 appear, and the picture changes again.

Clicks 3-4:
Each time you click, another bullet appears and the picture changes.

CLICK to advance to next slide.

Slide 12: Background and Discussion

4 Clicks

As discussed earlier in this training module, many approaches exist for resolving disputes, including the formal one to be discussed now—the resolution meeting.

The resolution process is a key change in—and a new and important part of—the 2004 Amendments to the IDEA statute and the final Part B regulations. **Handout E-12** presents §300.510, the beginning of which is shown in the box on the next page. Refer participants to specific sections as you move through the discussion on this slide. But there's no substitute for reading the exact words of this regulation!



When a parent files a due process complaint, §300.510 is set in motion to give both parties the opportunity to meet and attempt to resolve the issues prior to initiating a due process hearing. Although mediation has been an option available to the parties when a due process complaint was filed, mediation is voluntary; there is no requirement for parties to use mediation. In contrast, when a parent files a due process complaint, within 15 days of receiving notice of the parents' due process complaint and prior to the initiation of a due process hearing, the LEA must convene



Trainer Note

For the upcoming discussion, refer participants to **Handout E-12**.

the resolution meeting unless both parties agree in writing to waive the meeting or both agree to use the mediation process.

When is a resolution meeting required, and what is its purpose?

The LEA must convene the resolution meeting within 15 days of receiving notice of the parent's due process complaint and prior to initiating the hearing. The purpose of this meeting is clear from the language of the regulation:

(2) The purpose of the meeting is for the parent of the child to discuss their 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. [§300.510(a)(2)]

The IDEA statute does not require that a resolution meeting be held if the *public agency* files the due process complaint. As the Department explained in response to public comments in the Analysis of Comments and Changes:

There is no provision requiring a resolution meeting when an LEA is the complaining party. The Department's experience has shown that LEAs rarely initiate due process proceedings. (71 Fed. Reg. 46700)

Although the resolution meeting isn't required when the public agency files a due process complaint, the public agency and parent might choose to resolve

The Beginning of...

§300.510 Resolution process.

(a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §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—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

[§300.510(a)(1)]

the issue through voluntary mediation. As the Department explained in its *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*:

It is expected that LEAs will attempt to resolve disputes with parents prior to filing a due process request. This includes communicating with a parent about the disagreement and convening an IEP Team meeting, as appropriate, to discuss the matter and attempt to reach a solution.¹

Are there any circumstances in which the resolution meeting does not take place when the parents file a due process complaint?

It's important to note that, when a parent files a due process complaint, there are two circumstances under which the resolution meeting may be waived:

- When the parent and LEA agree in writing to waive the meeting, and
- When the parent and LEA agree to use the mediation process in §300.506. [§300.510(a)(3)]

The manner in which the two parties come to an agreement to waive the resolution meeting is left to the discretion of States and LEAs. However, "[t]here are no provisions that allow a parent or an LEA to unilaterally waive the resolution meeting" (71 Fed. Reg. 46702). Except in the two circumstances noted above, the resolution meeting is "a required vehicle for the parent and the LEA to attempt to resolve their differences prior to initiating a due process hearing" (*Id.*).

Who comes to the resolution meeting?

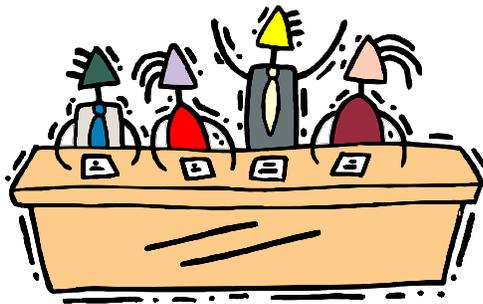
The opening paragraph of §300.510 (provided in the box above) states who must be involved in the resolution meeting: the parents and

relevant member or members of the IEP Team who have specific knowledge of the facts identified in the parent's due process complaint.

Who decides which IEP Team member(s) are "relevant?" This is an important point to emphasize. IDEA is very clear that the parent and the LEA *together* determine the relevant member or members of the IEP Team that will attend the resolution meeting. Refer participants to §300.510(a)(4) on **Handout E-12**, which reads: "The parent and the LEA determine the relevant members of the IEP Team to attend the meeting." Furthermore, "relevant" members will be those with "specific knowledge of the facts identified in the parent's due process complaint" [§300.510(a)(1)].

If the LEA agrees, a parent may bring "other participants" to the resolution meeting, such as:

...an advocate or family friend because §300.321(a)(6) [is] clear that the IEP Team may include, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child. Therefore, such individuals could attend the resolution meeting if the LEA or parent determined that such individuals are relevant members of the IEP Team. (71 Fed. Reg. 46701)



Are there any special criteria that apply to the public agency representative who attends the resolution meeting?

The public agency representative who must be present at the meeting must also have decision-making authority on behalf of the agency. This requirement is found at §300.510(a)(1)(i) (see box on previous page).

What about the participation of attorneys in the resolution meeting?

The Part B regulations make explicit that the LEA's attorney may not be included in the meeting unless an attorney accompanies the parent. Participants will find this provision at §300.510(a)(1)(ii), which is also provided in the box on the previous page.

The Department elaborated on some of the finer points of these requirements in the Analysis of Comments and Changes. In particular, the Department addressed the requirement that the LEA and the parent determine the relevant members of the IEP Team who will attend the resolution meeting. As follows:

We urge LEAs and parents to act cooperatively in determining who will

attend the resolution meeting, as a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot even agree on who should attend. The parties should keep in mind that the resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings. (71 Fed. Reg. 46701)

In the Analysis of Comments and Changes, the Department also responded to a public comment asking whether the parent is required to give advanced notice to the LEA of their intent to bring their attorney to the resolution meeting as follows:

We do not believe it is necessary to regulate on whether a parent must provide advance notice to the LEA that the parent intends to bring an attorney to the resolution meeting because we expect that it would not be in the interest of the parent to withhold such information prior to a resolution meeting so as to appear at the resolution meeting with an attorney without advance notice to the public agency. In such cases, the public agency could refuse to hold the resolution meeting until it could arrange the attendance of its attorney (within the 15-day period). The parent would incur additional expenses from having to bring their attorney to two resolution meetings. (*Id.*)

What happens if the parties do not follow through on the requirement to participate in the resolution meeting?

To ensure that the resolution process is used effectively and does not delay or deny the right to a hearing, the final Part B regulations address potential problems—in this case, either the parent or the public agency not participating in the resolution meeting.

Let's first look at what happens *when the nonparticipant is the parent*.

As we will see, the LEA must make reasonable efforts to obtain the parent's participation and must document those efforts according to the procedures at §300.322(d). Those include:

- detailed records of calls attempted and conducts and the results of those calls;
- copies of correspondence to the parents and any responses;
- detailed records of visits to the parent's home or place of employment and results of those visits.

But despite those efforts, let's say that the LEA convenes the meeting as required and the parent fails to participate. This was the subject of a public comment, and the Department provided the following response in the Analysis of Comments and Changes:

In situations where an LEA convenes 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, and the parent fails to participate in the resolution meeting, the LEA would need to continue to make diligent efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in the resolution meeting. If, however, at the end of the 30-day resolution period, the LEA is still unable to convince the parent to participate in the resolution meeting, we believe that an LEA should be able to seek intervention by a hearing officer to dismiss the complaint. (71 Fed. Reg. 46702)

This clarification is reflected at §300.510(b)(4), which reads as follows:

(4) 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 §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.

An additional provision needs to be mentioned here as well, because it speaks to the impor-

tance of parents participating in the resolution meeting and what could happen if they do not attend. As §300.510(b)(3) states:

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, 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.

In other words: The parent's failure to participate in the resolution meeting will delay the timelines associated with the resolution period and the due process hearing. A due process hearing cannot be convened until the resolution meeting is held.

Of course, sometimes circumstances beyond a parent's control (e.g., military service or hospitalization) may prevent a parent from attending a resolution meeting in person. In the Analysis of Comments and Changes, the Department acknowledged the reality of circumstances such as these and indicated that it would be appropriate for LEAs to offer to use alternative means to ensure parent participation in the resolution meeting:

If the LEA notifies the parent of its intent to schedule a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and the parent informs the LEA in advance

of the meeting that circumstances prevent the parent from attending the meeting in person, it would be appropriate for an LEA to offer to use alternative means to ensure parent participation, such as those described in §300.328, including videoconferences or conference telephone calls, subject to the parent's agreement. (71 Fed. Reg. 46701)

Now, let's turn to what happens *when the nonparticipant is the public agency*. The regulations also address what happens if the LEA does not follow through on its responsibility for the resolution meeting, either by failing to hold the meeting within 15 days of receiving notice of the parent's due process complaint or by failing to participate in the resolution meeting. If this occurs, §300.510(b)(5) states that ". . . the parent may seek the intervention of a hearing officer to begin the due process hearing timeline."

The thinking behind this provision is explained in the Analysis of Comments and Changes:

We expect that only in very rare situations will an LEA fail to meet its obligation to convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, delay the due process hearing by scheduling meetings at times or places that are inconvenient for the parent, or otherwise not participate in good faith in the resolution process. However, in instances of

noncompliance, we believe parents should be able to request a hearing officer to allow the due process hearing to proceed. (71 Fed. Reg. 46702)

As the Department explained further in the *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*, in either case, "[t]he hearing officer's intervention will be necessary to either dismiss the complaint or to commence the hearing, depending on the circumstances."²

Must the discussions during the resolution meeting be kept confidential?

IDEA is silent on the issue of keeping matters discussed during resolution meetings confidential. (You may recall when we discussed mediation, the statute and regulations require that mediation discussions be kept confidential.)

The Department responded to public comments on this issue in the Analysis of Comments and Changes and explained as follows:

We decline to regulate on this matter because the Act is silent regarding the confidentiality of resolution discussions. However, there is nothing in the Act or these regulations that would prohibit the parties from entering into a confidentiality agreement as part of their resolution agreement. A State could not, however, require that the participants in a resolution meeting keep the discussions

confidential or make a confidentiality agreement a condition of the parent's participation in a resolution meeting. (71 Fed. Reg. 46704)

In its *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*, the Department also addressed this issue as follows:

Question D-5: Are there any provisions that require that discussions that occur at resolution meetings remain confidential?

Answer: Unlike mediation, the Act and the final regulations do not prohibit or require that discussions that occur during a resolution meeting remain confidential. However, the confidentiality provisions in the Part B regulations and the Family Educational Rights and Privacy Act (FERPA), and its regulations, continue to apply.³



If successful, must the resolution meeting result in a written agreement?

Yes. The final Part B regulations at §300.510(d) and (e) address the written agreement that must emerge from a successful resolution meeting. These appear on **Handout E-12** and in the box below.

To summarize IDEA's requirements at §300.510(d) and (e), then:

- If a resolution to the dispute is reached at the resolution meeting, the parent and LEA must enter into a legally binding agreement.
- The agreement must be signed by the parent and a public agency representative with "the authority to bind the agency."

- The agreement is enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.
- Either party (the parent or the LEA) may void the agreement within three business days of the date the agreement was signed.

Additionally, the resolution agreement may be enforceable by the SEA itself, if the State has developed other mechanisms for enforcing written settlement agreements reached at resolution meetings (such as the State complaint procedures). Note the word *if*—a State is not required to develop such mechanisms. However, if the State has developed them, it may not require a party to use those mechanisms or limit the parties' right to seek enforcement through an appropriate court. 34 CFR §300.537.

What about timelines?

As you know, a 30-day resolution period begins upon the filing of a due process complaint. In other words, the parents and the LEA have 30 days in which to try to resolve the parent's due process complaint without initiating a due process hearing. If the dispute cannot be resolved during that period, then a due process hearing—a more formal, often costly legal proceeding—may occur.

As we'll see on the next slide, another timeline attaches to due process hearings: 45 days to reach a decision in the hearing. This is specified at §300.515(a), which we've provided in the box on the next page for your reference. You'll be returning to it on the next slide, for sure.

So, we have two timelines to consider here:

- the 30-day resolution period, and
- the 45-day due process hearing period.

The 30-day resolution period is not set in stone. Flexibility is necessary to accommodate the choices that the disputing parties may make about which approach to use in resolving the issues in the due process complaint. For example, the LEA and the parent may agree to waive the resolution meeting, which impacts timelines for the resolution period and, like dominos going down, the 45-day timeline for due process decisions. As the Department's Model Form for the procedural safeguards notice states:

More Provisions From...

§300.510 Resolution process.

(d) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) 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 §300.537.

(e) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

[§300.510(d)-(e)]

[T]he 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period.⁴

Adjustments to the 30-day resolution period are specified at §300.510(c), provided in the box at the right and on **Handout E-12**. Go over these adjustments with participants. Timelines established in IDEA (and by a State) are usually a subject of great interest and, indeed, importance. Participants may especially want to know “when the clock starts ticking” on the 45-day due process timeline.



Let's Talk Timelines:

More from §300.510 (and Elsewhere)

From §300.510

(c) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in §300.515(a) starts 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 resolution 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 public agency withdraws from the mediation process.

[§300.510(c)(3)]

And then there's the "Elsewhere"...

§300.515 Timelines and convenience of hearings and reviews.

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

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

[§300.515(a)]

¹ U.S. Department of Education. (2007, January). *Questions and answers on procedural safeguards and due process procedures for parents and children with disabilities*. Washington, DC: Author. (Quote from page 9. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C6%2C>)

² *Id.*, p. 11.

³ *Id.*, p. 10.

⁴ U.S. Department of Education. (2006, August). *Model form: Procedural safeguards notice*. Washington, DC: Author. (Quote from page 22. Available online at: http://idea.ed.gov/download/modelform3_Procedural_Safeguards'_Notice.pdf)

Due Process Hearings

What happens there?

What rights do the parties have?

What are the timelines?

Slide loads with this view. No clicks needed except to advance to the next slide.



CLICK to advance to next slide.

Before launching into a close look at the due process hearing, it's helpful to know that States organize their due process systems in two different ways:

- one-tier, or
- two-tier.

In a **one-tier** system, the SEA or another State-level agency is responsible for conducting due process hearings, and an appeal from a due process hearing decision goes directly to court.

In a **two-tier** due process system, the school district is responsible for conducting due process hearings, and an appeal from a due process hearing is to a State-level review hearing before appealing to court.

There are differences in the timelines for issuing decisions and rights of appeal for each of these systems.

According to the findings of the Study of State and Local Implementation and Impact of the Individuals with Disabilities Education Act (SLIIDEA):

- 57% of the nation's school districts use a one-tiered system (hearings held only at the State level),

- 43% use the two-tiered (hearings at the local level, with right to appeal to State-level hearing officer or panel).¹

The public agency's procedural safeguards notice provides information about the type of



Trainer Note

For the upcoming discussion, refer participants to **Handout E-13**.

due process system used in the State. The notice should identify the agency that is responsible for conducting hearings (e.g., the school district, the SEA, or another State-level agency or entity).

IDEA's Due Process Provisions

We've just looked at IDEA's provisions governing the filing of a due process complaint as reflected in the final Part B regulations at §300.507 and the due process complaint itself as reflected at §300.508. Included in that discussion were IDEA's new provisions regarding the resolution process as reflected at §300.510. If the resolution process does not succeed in resolving the dispute that was the subject of the parent's due process complaint, then other provisions of IDEA come into play. Now it's time to examine IDEA's provisions on:

- Impartial due process hearing (§300.511);
- Hearing rights (§300.512);
- Hearing decisions (§300.513);
- Finality of decision, appeal, and impartial review (§300.514); and
- Timelines and convenience of hearings and reviews (§300.515).

All of these provisions are presented on **Handout E-13** for participants to refer to as you move through Slides 13-18.

What's a due process hearing, and what happens there?

There are times when the parties have been unable or unwilling to resolve the dispute themselves, and so they proceed to a due process hearing. There, an impartial, trained hearing officer hears the evidence and issues a hearing decision.

During a due process hearing, each party has the opportunity to present their views in a formal legal setting, using witnesses, testimony, documents, and legal arguments that each believes is important for the hearing officer to consider in order to decide the issues in the hearing. Since the due process hearing is a legal proceeding, a party will often choose to be represented by an attorney.

Important point: The party requesting the hearing can only raise the issues included in the due process complaint, filed under §300.508(b) unless the other party agrees otherwise. [§300.511(d)]

What rights does each party have in a due process hearing?

IDEA affords specific rights to any party to a due process hearing. These rights are found



The Beginning of...

§300.512 Hearing rights.

(a) *General.* Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to—

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

[§300.512(a)]

at §300.512. The beginning of that section—paragraph (a)—is provided in the box on the previous page and, of course, on **Handout E-13**. Direct participants to §300.512(a) and go over the rights that are identified there (e.g., the right to be accompanied and advised by counsel; the right to confront, cross-examine, and compel the attendance of witnesses; and so on).

The next paragraph of §300.512—(b)—states that, at least five business days prior to a hearing conducted under §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. The hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

The final Part B regulations continue, as they have done in the past, to provide parents with additional rights in due process hearings. These are identified at §300.512(c), shown in the box on this page.

Go over these provisions with participants. You'll see that they include a reference to "paragraphs (a)(4) and (a)(5) of this section." Have participants find these paragraphs and review what they contain, so that the full meaning of §300.512(c)(3) is understood—which is that parents have the right:

Additional, Parent-Specific Rights— More Provisions of:

§300.512 Hearing rights.

(c) *Parental rights at hearings*. Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

[§300.512(c)]

- to have the record of the hearing made available to them at no cost, in written or electronic form, at their option; and
- to obtain findings of fact and decisions at the due process hearing and State-level review, if applicable, also in written or electronic form, at no cost to parents.

Who has the burden of proof in an IDEA due process hearing?

The question of which party has the burden of proof in an IDEA due process hearing—the parent or public agency—was addressed in the Supreme Court case *Shaffer v. Weast*.² While the IDEA is silent on the issue of burden of proof, the Supreme Court has held that, unless State law assigns the burden of proof differently, in general, the party who requests the hearing will have the burden of proving their case.

Do parents of children with disabilities have the right to represent themselves in an IDEA case in federal court?

Yes. Generally, federal law allows any person to represent themselves in federal court to protect their own federal rights. In *Winkelman v. Parma City Sch. Dist.*,³ the U.S. Supreme Court held that non-lawyer parents of a child with a disability may represent themselves pro se (i.e., without an attorney) in federal court, because the IDEA grants parents independent, enforceable rights that encompass the entitlement to FAPE and are not limited to procedural or reimbursement rights. Since parents have rights under IDEA, they can bring and defend IDEA claims on their own and without an attorney in federal court.

May other individuals who are not attorneys assist parents in a due process hearing and recover fees for their services?

The question naturally arises as to whether parents are entitled to recover fees for expert services.

The straight answer: No.

The details: The U.S. Supreme Court decided this matter in *Arlington Cent. Sch. Dist. Bd. of Educ. V. Murphy*.⁴ In that case, the court held that section 1415(i)(3)(B) of the statute, which authorizes courts to award reasonable attorneys' fees to parents who are prevailing parties in actions or proceedings brought under the IDEA, does not authorize recovery of fees for experts' services.

What is the timeline for issuing the hearing decision?

Regardless of whether a State has a one- or two-tier system for handling due process hearings, the SEA or the public agency directly responsible for the child's education (whichever agency is responsible for conducting the hearing in your State) must ensure that, not later than 45 days after the 30-day resolution period expires (or any of the adjustments made to that period that were discussed under Slide 12), a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. The hearing officer may grant specific extensions of this time period at the request of either party. You'll recall the provisions at §300.515(a) that were presented

under Slide 12, too, but we've repeated them in the box on this page for convenience.

What else does IDEA have to say about the final decision of the hearing officer?

Here's a list of additional points to be made about the all-important decision of the hearing officer.

- A copy of the hearing officer's decision must be mailed to each of the parties within the 45-day timeline [§300.515(a)(2)], unless the hearing officer grants a specific extension of this timeline at the request of either party. [§300.515(c)]
- If the hearing officer's decision is not appealed, it is final. [§300.514(a)]

- Consistent with IDEA's procedural safeguards, the public agency must implement the hearing decision as soon as possible and, in any event, within a reasonable period of time. If the public agency fails to implement the hearing decision, parents may seek court enforcement of an administrative decision. Parents may also file a complaint with the SEA as specified at §300.152(c)(3) and discussed earlier in this training module.



What Were Those Timelines Again?

§300.515 Timelines and convenience of hearings and reviews.

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

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

[§300.515(a)(1)-(2)]

And then there's this timeline-related provision...

(c) A hearing...officer may grant specific extensions of time. . . beyond the period set out in paragraph (a) of this section at the request of either party.

[§300.515(c)]

- Did you know that, after personally identifiable information is deleted, due process hearing findings and decisions must be made available to the public? That provision is longstanding and is found in the final Part B regulations at §300.513(d)(2). Many States have this information available in searchable online databases,

too. Additionally, findings and decisions in due process hearings, with the deletion of personally identifiable information, must be transmitted to the State advisory panel established under §300.167. [§300.513(d)(1)]



References

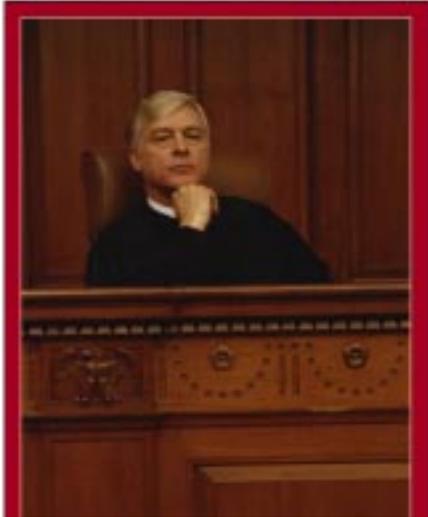
¹ O'Reilly, F. (2003, April). *Dispute resolution: Year 1 survey findings and Year 1 and 2 focus study findings*. Paper presented at the annual meeting of the IDEA Part B Data Managers, Arlington, Virginia. (Available online at: www.abt.sliidea.org/Reports/DisputeResolution_04012003.ppt)

² *Shaffer v. Weast*, 546 U.S. 49 (2005). (The decision is available online at: www.law.cornell.edu/supct/html/04-698.ZO.html)

³ *Winkelman v. Parma City Sch. Dist.*, 127 S.Ct. 1994 (2007). (Read all about it at: http://www.abanet.org/publiced/preview/briefs/pdfs/06-07/05-983_Petitioner.pdf)

⁴ *Arlington Cent. Sch. Dist. Bd. Of Educ. v. Murphy*, 548 U.S., 126 S.Ct. 2455 (2006). (The decision is available online at: <http://www.law.cornell.edu/supct/html/05-18.ZO.html>)

Due Process Hearings



Qualifications of Hearing Officer

Slide loads with this view. No clicks needed except to advance to the next slide.

CLICK to advance to next slide.

We have devoted some discussion to hearing officers, because the hearing officer has an important role as the individual who presides over a due process hearing conducted under Part B of the IDEA. You will see that IDEA spells out a set of minimum qualifications that hearing officers must have and why one entire slide in this training module is devoted to the subject.

IDEA's list of qualifications for hearing officers is found at §300.511(c) and is provided in the box on the next page and on the first page of **Handout E-13**.

What qualifications must a hearing officer have?

Under IDEA and §300.511(c), the hearing officer may not be an employee of the SEA or the public agency involved in the education or care of the child [§300.511(c)(1)(I)(A)]. Although the public agency pays selected individuals to serve as hearing officers, IDEA explicitly states that they are not to be considered employees of the agency [§300.511(c)(2)]. To safeguard the impartiality of the hearing

process, the hearing officer must not have a personal or professional interest that will conflict with the hearing officer's objectivity in the hearing [§300.511(c)(1)(B)]. This is an exceedingly important qualification, because it points directly to the requirement that the hearing



Trainer Note

For the upcoming discussion, refer participants to **Handout E-13**.

officer, the person who makes decisions on the issues in the due process complaint, must be impartial.

Impartiality of the hearing officer is essential!

In addition, an individual serving in this capacity must also be knowledgeable about and understand the provisions of IDEA, federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by federal and State courts [§300.511(c)(1)(B)(ii)]. He or she must have the knowledge and ability to conduct hearings and to make and write decisions, consistent with appropriate, standard legal practice. [§300.511(c)(1)(B)(iii)]

Using This Slide With Participants

Have participants take a look at §300.511(c) on **Handout E-13**. Reflect back on some of those methods for deciding disputes discussed at the beginning of this module (for example, thumb wars and foot races, as well as what they listed on the activity sheet that's **Handout E-8**). IDEA's emphasis on impartiality in due process hearings is distinct from those methods, and the outcome of a due process hearing will not rest on physical prowess or the ability to shoot marbles.



§300.511(c): Qualifications of a Hearing Officer

(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

[§300.511(c)]

Starting View

Due Process Hearings



Standard for Hearing Officer's Decision

Slide loads with this view and the first point to be discussed: Standard for the hearing officer's decision.

Click 1

Standard for Hearing Officer's Decision

Click 1: Point 2 to be discussed appears: Appealing a hearing officer's decision.

Appealing a Hearing Officer's Decision



CLICK AGAIN to advance to next slide.

(discussion on next page) 



Due process hearings occur when the LEA and parent are unable to resolve their differences through less formal means. Since the parties are at an impasse, it is essential that the hearing officer be impartial, and, as we've seen, IDEA contains such a requirement. It's the hearing officer's job to weigh the merits of each party's argument, evidence, and witnesses, in light of what IDEA and State law require, also bearing in mind relevant federal and State regulations pertaining to the Act and legal interpretations of the Act by federal and State courts. The hearing officer must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice. How does the hearing officer do this?

hearing officer can find that there is a denial of FAPE as the result of an alleged procedural violation.

The essence of the contrast between *substantive* and *procedural* is well captured in the National Center for State Courts' definition of "substantive law," which reads:

SUBSTANTIVE LAW - The law dealing with rights, duties, and liabilities, as contrasted with *procedural law*, which governs the technical aspects of enforcing civil or criminal laws.¹

So, under what circumstances would "procedural inadequacies" be sufficient for a hearing

officer to find that a child did not receive FAPE?

According to IDEA, a hearing officer may so find when those procedural violations:

- impeded the child's right to FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

What is the standard for the hearing officer's decision?

The regulations set forth the standard that must be applied when a hearing officer is deciding whether a child received FAPE. These requirements are found at §300.513(a) and in the box at the right for your reference—again, refer participants to **Handout E-13**.

It's interesting that IDEA's provisions reference two contrasting words *substantive* and *procedural*. A hearing officer's decision on whether a child received FAPE must be made on "substantive grounds." But due process hearings are also requested because of alleged procedural violations. IDEA and the final Part B regulations are very specific about when a

**§300.513(a):
The Standard for Hearing Officer Decisions**

§300.513 Hearing decisions.

(a) *Decision of hearing officer on the provision of FAPE.* (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

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

- (i) Impeded the child's right to a FAPE;
- (ii) 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
- (iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

[§300.513(a)]

- caused a deprivation of educational benefit. [§300.513(a)(2)]

Can the hearing officer’s decision be appealed?

If a party disagrees with the hearing officer’s decision, do they have recourse for appealing that decision? Yes, they do. However, if not appealed, the decision made by the hearing officer is final. This is unchanged from the 1997 Amendments to IDEA and is stated as follows:

§300.514 Finality of decision; appeal; impartial review.

(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

And what might “paragraph (b)” have to say? We’ve provided paragraph (b) in its entirety in the box on this page. These provisions will be used to guide much of this slide’s look at appealing a hearing officer’s decision.

First, though, let us mention another paragraph (b) that’s pertinent here. We’re talking about §300.513(b)—513, not 514—a construction clause that immediately follows the provisions we cited on the previous page. Section 300.513(b) also provides the right to appeal, as follows:

**§300.514(b):
Appeal of Decisions and Impartial Review**

(b) *Appeal of decisions; impartial review.* (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

- (i) Examine the entire hearing record;
- (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
- (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
- (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- (v) Make an independent decision on completion of the review; and
- (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

[§300.514(b)]

(b) *Construction clause.* Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available. [§300.513(b)]

[emphasis added]. Equally noticeable is that both provisions reference the *same* paragraph (b), namely §300.514(b). Let’s have a look at that mysterious, but obviously important, paragraph now.

You’ll notice, though, that the right to appeal expressed under this provision refers to the “right of the parent,” while the right to appeal expressed under §300.514(a) refers to “any party involved in the hearing”



You Guessed It!

For the upcoming discussion, refer participants to **Handout E-13**.

What's involved in appealing the hearing officer's decision?

The specific actions required to appeal the hearing officer's decision are dependent upon the SEA's type of due process system (one-tier or two-tier), as described below.



Appealing in a one-tier system. In States using a one-tier system for due process hearings, the SEA is the entity that conducts the initial due process hearing and issues the decision. So, in a one-tier system, a State-level review of a hearing decision is not available. If one of the parties disagrees with the decision, the only "appeal" will be for the party to bring a civil action in an appropriate State or Federal court. This is discussed after we take a look at appealing in a two-tier system.

Appealing in a two-tier system. In States that have a two-tier system, a State-level appeal to the SEA is available. This occurs where the initial due process hearing was conducted by the public agency directly responsible for the child's education, so appeal to the SEA exists as an option. This is a longstanding provision of IDEA.

In such cases, the SEA must conduct an impartial review of the findings and decision in the hearing, as specified at §300.514(b). That's our mysterious (b) paragraph, which was presented in the box on the previous page. Go over those provisions with participants, using **Handout E-13** and discussing the various aspects of an impartial review. As can be

seen in these provisions, the review conducted by the SEA:

- is based on examining the entire hearing record;
- must ensure that the procedures used in the original due process hearing were consistent with due process requirements; and
- may involve the SEA asking for additional evidence, if necessary, and holding a hearing to receive it.

If a hearing is held to receive additional evidence, the rights in §300.512 apply. These were discussed earlier under Slide 13 (e.g., the right to be accompanied and advised by counsel; the right to confront, cross-examine, and compel the attendance of witnesses; and so on).

It also bears mentioning that IDEA uses slightly different language in referring to *where* and *when* hearings and reviews that involve oral arguments must be conducted. With respect to scheduling IEP meetings, the phrase IDEA uses is "mutually agreed on time and place" (see §300.322(a)(2) and discussed in the module *Meetings of the IEP Team*). The phrase IDEA uses

with respect to scheduling hearings and reviews involving oral arguments is "reasonably convenient to the parents and child involved." This is found in the provision at §300.515(d), which reads:

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. [§300.515(d)]

Why the difference? Why is there no requirement that the parties mutually agree to the hearing time and place?

In the Analysis of Comments and Changes, the Department responded to a public comment seeking clarification about the standard for determining the time and place for conducting hearings, stating:

The Department believes that every effort should be made to schedule hearings at times and locations that are convenient for the parties involved. However, given the multiple individuals that may be involved in a hearing, it is likely that hearings would be delayed for long periods of time if the times and locations must be "mutually convenient" for all parties involved. (71 Fed. Reg. 46707)

Okay, then, all the evidence is in. What happens next? As might be expected, the reviewing official must make an independent decision and issue findings of fact and decisions, providing a copy to both parties. Under

§300.512(c)(3), the parent has the right to a copy of the findings of fact and decision on appeal in written or electronic form, at the parent's option, at no cost.

Are there timelines for issuing a final decision in the review?

Yes. The SEA must ensure that, not later than 30 days after receipt of a request for review, a final decision is reached in the review and a copy of the decision is mailed to the parties. This requirement is stated at §300.515(b)—oh no, another paragraph (b)!—which you'll find on **Handout E-13** and in the box on this page.

Note: The 30-day timeline may be extended by the reviewing officer at the request of either party, as specified at §300.515(c) and mentioned under Slide 13. This provision is also presented in the box on this page.

Can the SEA's decision be appealed?

Suppose that one of the parties is still not satisfied with the decision? Can the SEA's decision be appealed? Yes, by bringing a *civil action*.

This is the same dispute resolution process mentioned just a bit ago when we were talking about one-tier due process systems where there is no right to appeal to the SEA for any party aggrieved by the decision in the initial hearing.

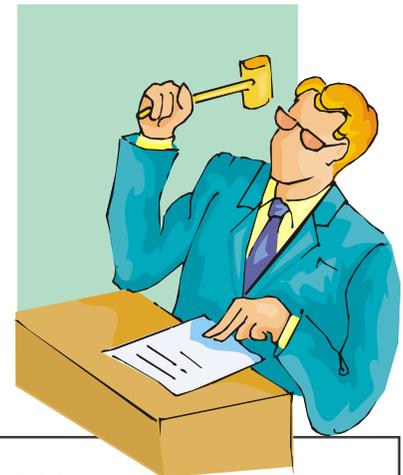
Who can bring a civil action, and what's involved?

First, let us re-state, for clarity, who may bring a civil action. Under §300.516(a)—shown on **Handout E-13** and in the box on the next page—a civil action may be brought by:

- any party aggrieved by the decision in a initial due process hearing in a one-tier State (where there is no right to appeal to the SEA); and
- any party aggrieved by the decision in the SEA-level review in a two-tier State (where an appeal of the initial hearing decision *can* be made to the SEA) .

The civil action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in controversy.

Under a new provision in the statute and regulations, there is now a timeline for filing a civil action. Under §300.516(b), in a one-tier system, the party must bring the civil action within 90 days of the date of the hearing officer's decision (or, if the State has established a different timeframe, within the time allowed under the State's law). In a two-tier due process system, the civil action must be brought within 90 days from the date of the State review official's decision (or, if the State has established a different timeframe, within the time allowed under the State's law). It's important to



§300.515(b) and (c): Timelines for Impartial Review

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—

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

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

[§300.515(b) and (c)]

note that, under the final Part B regulations, the public agency must, through the procedural safeguards notice, notify parents of the time period to file a civil action [§300.504(c)(12)].

In any civil action, the court receives the records of the administrative proceedings and hears additional evidence at the request of either party. Refer to §300.516(c), shown in the box on this page and on **Handout E-13**.

The court bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate [§300.516(c)(3)]. IDEA provides that the district courts of the United States have the authority to rule on actions brought under Part B of the IDEA without regard to the amount in controversy [§300.516(d)].

It's also important to note that IDEA sets forth a "rule of construction" at §300.516(e) that pertains to civil actions.

(e) *Rule of construction.* Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the

§300.516: Bringing a Civil Action

§300.516 Civil action.

(a) *General.* Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) *Time limitation.* 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.

(c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

- (1) Receives the records of the administrative proceedings;
- (2) Hears additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

[§300.516(a), (b), and (c)]

party filed the action under Part B of the IDEA.

What does that mean? The Department explains:

This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process

complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.²



References

¹ National Center for State Courts. (2001). *English legal glossary*. Retrieved on June 15, 2007, at http://www.ncsconline.org/wc/publications/Res_CtInte_EnglishLegalGlossaryPub.pdf

² U.S. Department of Education. (2006, August). *Model form: Procedural safeguards notice*. Washington, DC: Author. (Quote from pp. 32-33. Available online at: http://idea.ed.gov/download/modelform3_Procedural_Safeguards_Notice.pdf)

Due Process

What is the **child's placement** until completion of the due process proceedings?



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IDEA requires that, once notice of a due process complaint requesting a due process hearing is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process or court proceeding, unless the parent and the State or school district agree otherwise, the child must remain in his or her current educational placement, pending the completion of the proceedings. This requirement is found in §300.518, on **Handout E-13**, and in the box on the next page. The child's status during proceedings is sometimes referred to as "stay put."

Other important information you should know about "stay put requirements" includes:

- If the due process complaint involves an application for initial admission to public school, the child, with the parent's consent, must be placed in the regular public school program until the completion of the proceedings. [§300.518(b)]
- If the due process complaint involves an application for initial services under Part B of IDEA for a child transitioning from receiving services under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the LEA is not required



Stay Put on E-13!

For the upcoming discussion, refer participants to the last page of **Handout E-13**, where §300.518 appears.

to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and the parent provides written consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the LEA must provide the services that are not being disputed, that is, those which the parent and the school district both agreed upon. [§300.518(c)]

- If the hearing officer in a due process hearing conducted by the SEA or a 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, and the child must remain in that placement during any subsequent appeal of that decision. [§300.518(d)]

An exception to the so-called “stay-put” rule is when the parent or school district has filed a due process complaint in a disciplinary situation, as described on Slide 18. Under those circumstances, the child remains in the interim alternative educational setting chosen by the IEP Team, pending the decision of the hearing officer or the expiration of the time period specified in §300.530(c) or (g) for the disciplinary action, whichever occurs first, unless the parent and the SEA or LEA agree otherwise. This provision is found at §300.533 and is

described in more detail in the *Key Issues in Discipline* module (see **Handout E-16**). Within the current module, a due process complaint in a disciplinary situation is addressed on Slide 18.



**§300.518:
And Where Is The Child During All This?**

§300.518 Child’s status during proceedings.

- (a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
- (d) If the hearing officer in a due process hearing conducted by the SEA or a 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 paragraph (a) of this section.

Due Process

Attorneys' Fees



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CLICK to advance to next slide.

Discussion of attorneys' fees is likely a topic of interest to the audience, but the statute and regulation set out complex parameters in this area. The relevant provisions are found at the Part B regulation at §300.517 and appear on **Handout E-14**. The regulation is essentially the same as the IDEA statute in this area.

Section 300.517 begins as follows:

(a) *In general.* 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...

Then comes a list of the parties to which the court may award reasonable attorneys' fees. These are:

- the prevailing party who is the parent of a child with a disability [§300.517(a)(i)];
- a prevailing party who is an SEA or LEA against the attorney of a parent who files a due process 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 [§300.517(a)(ii)]; 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 [§300.517(a)(iii)].



Different Handout!

For the upcoming discussion, refer participants to **Handout E-14**.

How are attorneys' fees awarded?

IDEA is clear that the court, in its discretion, may award reasonable attorneys' fees to the prevailing party who is the parent of a child with a disability and to a prevailing party who is the SEA or LEA under the circumstances set out in §300.517(a). IDEA requires that the public agency include information about attorneys' fees in its procedural safeguards notice to parents [§300.504(c)(13)].

A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

- Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. [§300.517(c)(1)]
- Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement to a parent if:

—The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;

—The offer is not accepted within 10 calendar days; AND

—The court or administrative hearing officer finds that the relief finally obtained by the

parent is not more favorable than the offer of settlement. [§300.517(c)(2)(i)]

Despite these restrictions, attorneys' fees may be awarded and related costs may be made if a parent prevails and was substantially justified in rejecting the settlement offer [§300.517(c)(3)].

Are attorneys' fees available for IEP Team meetings?

As explained at §300.517(c)(2)(ii), IDEA does not permit attorneys' fees to be awarded relating to any meeting of the IEP Team *unless* the meeting is held as a result of an administrative proceeding or judicial (court) action, or at the discretion of the State, for a mediation described in §300.506. Participants can see this provision on **Handout E-14**; it also is provided in the box below.

According to §300.517(c)(2)(ii), then, it is up to each State to decide whether attorneys' fees can be awarded for participation in mediation.

What about attorneys' fees for resolution meetings?

It's important to note that the final Part B regulations expressly *exclude* resolution meetings from what is considered an administrative proceeding or court action [§300.517(c)(2)(iii)]. The Department, however, explained in the Analysis of Comments and Changes that:

... the Act is silent as to whether attorneys' fees are available for activities that occur outside the resolution meeting conducted pursuant to section 615(f)(1)(B)(i) of the Act and §300.510(a). We decline to regulate on this issue because we believe these determinations will be fact-specific and should be left to the discretion of the court. (71 Fed. Reg. 46708)



§300.517(c)(2)(ii): Attorneys' Fees and IEP Meetings

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.

[§300.517(c)(2)(ii)]

When may the court reduce attorneys' fees?

Attorneys' fees may be reduced if the court finds... well, we'll get to that in a moment. Refer participants to **Handout E-14**, at §300.517(c)(4). It may be difficult to locate with all the (iii) and (A), (B), etc., but they should look for "(c) *Award of fees*" and then advance through the (1), (2), (3) to find the (4), which begins, "(4) Except as provided in paragraph (c)(5) of this section, the court reduces..."

As they'll see, attorneys' fees may be reduced if the court finds that:

- the parent or the parent's attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- the time spent and legal services furnished were excessive considering the nature of the action or proceeding; *or*
- the attorney representing the parent did not provide to the LEA the appropriate information in the due process complaint. [§300.517(c)(4)]

So what's the "Except as provided in paragraph (c)(5)" involve? The last paragraph on **Handout E-14** is the one at (c)(5). And it states that the court may *not* reduce fees if the court finds that the State or LEA unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA. It is important to note that the statute and regulations provide that a *court* has discretion to award attorneys' fees and, as discussed above, there are numerous factors that are considered when a request for attorneys' fees is made.



§300.517(c)(4): Reducing Attorneys' Fees

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

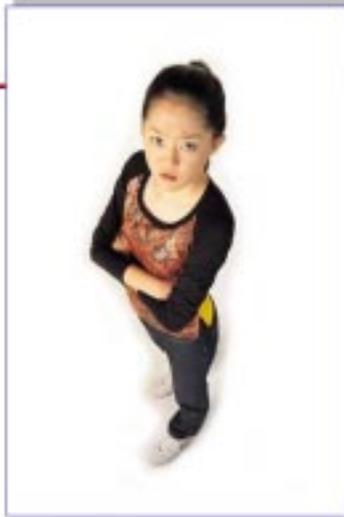
(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; *or*

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

[§300.517(c)(4)]

Due Process



Special Rules for Due Process Hearings in Disciplinary Situations

Slide loads with this view. No clicks needed except to advance to the next slide.

CLICK to advance to next slide.

We're almost through with this series of seven slides on due process hearings! Here, we'll look at IDEA's special rules for due process hearings in disciplinary situations. Before delving into what those special rules are, some background on discipline is in order.

School Discipline and IDEA

As many in the audience will already know, disciplinary procedures were introduced in the 1997 Amendments to IDEA and have since provided the framework within which schools and parents address the appropriate disciplining of children with disabilities who violate a code of student conduct. The 2004 Amendments to IDEA have modified and streamlined the disciplinary procedures (found

at §§§300.530 through 300.536), while retaining their central purpose: balancing the protection of children's rights while giving school personnel the authority to maintain safety and order for the benefit of all children. Those procedures are extensive and complex—and quite beyond the scope of this module! They are the subject of a stand-alone module, *Key Issues in Discipline*, Module 19 in this training curriculum.

However, within the context of options for resolving disputes and concluding this discussion of the due process hearing, it's important for the audience to know that there are critical differences in due process hearings associated with disciplinary situations. While we will describe the important differences briefly here, you should



Running Ahead...to E-16

For the upcoming discussion, refer participants to **Handout E-16**. Yes, skip **Handout E-15**...

see the *Key Issues in Discipline* module for a more thorough discussion. The most noteworthy difference in disciplinary situations is the hearing's expedited timelines, as we'll see.

Disagreeing with a Disciplinary "Change of Placement"

It's already been said that parents may file a due process complaint to request a due process hearing if they disagree with any decision regarding the identification, evaluation, educational placement of their child, or the provision of FAPE to their child [§300.507(a)]. Public agencies also have the right to file a due process complaint regarding these matters (*Id.*). We will summarize how these due process rights can be exercised by parents and LEAs in disciplinary situations and refer you to Module 19 for more detailed information.

In a nutshell, IDEA gives school personnel the authority to remove a child from his or her current placement under specified circumstances set out in §§300.530 through 300.536. If a child violates a code of student conduct, the child could be placed in an appropriate interim alternative educational setting—an IAES, for short—for misconduct determined not to be a manifestation of the child's disability under §300.530(c) or for drugs, weapons, or serious bodily injury offenses under §300.530(g). If the parent disagrees with a decision to change the child's placement for disciplinary reasons, or if the parent disagrees with the manifestation determination under §300.530(e), the parent has the

right to file a due process complaint and request a hearing (just as discussed in the last five slides).

LEAs also have the right to request a due process hearing if they believe that allowing the child to remain in his or her current placement is substantially likely to result in injury to the child or to others.

It is such due process situations that are the subject of this slide, because special rules apply to speed up the process and reach a final decision quickly.

IDEA's Governing Provision

Let's start with the provision at §300.532 (see the box on this page), which spells out both the LEA's and the parent's right to appeal. Refer participants to **Handout E-16**.

As the provision at §300.532(a) makes clear, either the parent of a child with a disability or an LEA has the right to request a due process hearing to appeal decisions made during disciplinary procedures, although the reasons these

parties may do so differ as follows:

- The parent may appeal any decision regarding placement of their child under §§300.530 and 300.531;
- The parent may appeal the manifestation determination under §300.530(e); and
- The LEA may appeal a decision to maintain the current placement of the child, if the LEA believes that maintaining that placement is substantially likely to result in injury to the child or others.

The last sentence in the provision indicates that a hearing is requested by filing a due process complaint as described in §§300.507 and 300.508(a) and (b). These provisions appear on **Handout E-11** and have been discussed in this module, but you may wish to ask participants



The Beginning of...

§300.532 Appeal.

(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

[§300.532(a)]

to tell you what those provisions require as a way of reviewing them. For example:

- The public agency must inform the parent of any free or low-cost legal or other relevant services in the area [§300.507(b)].
- The due process complaint must remain confidential [§300.508(a)(1)].
- The party who files a due process complaint must forward a copy of the complaint to the SEA [§300.508(a)(2)].
- The due process complaint must include specific information: name of the child; address of the child's residence; name of the child's school; description of the nature of the problem, including any related facts; and a proposed resolution of the problem (to the extent known and available to the filing party at the time) [§300.508(b)].

Speeding Up The Process: Expedited Hearings

And now to the core of this slide: the expedited hearing under §300.532. The introductory provision for expedited due process hearings is presented in the box on this page and on **Handout E-16**.

As you can see, embedded in the provision are numerous references to other provisions in the final Part B regulations, some of which were added as a result of the 2004 Amendments to the IDEA. Let's take a moment to briefly identify what these references mean, moving sequentially through them.



- “§§300.507 and 300.508(a) through (c)” and “§§300.510 through 300.514”—These are the provisions regarding filing a due process complaint; the contents of the complaint; the resolution process; impartial due process hearings; hearing rights; hearing decisions; and the finality of decision, appeal, and impartial review. All are included in the handouts provided with this module.
- “Except as provided in paragraph (c)(2) through (4)” —These provisions, which will be discussed in a moment, address among other things the timelines associated with an expedited hearing and alternatives to a hearing, such as a resolution meeting or mediation.

All right, so what does all that mean? Basically, it means that the parent and the LEA must have the opportunity for an expedited due process hearing on the disciplinary matter about which they disagree. The expedited hearing must comply with IDEA's provisions for due process hearings in general except where its expedited nature affects timelines and the process established under federal or State law for the typical, non-expedited due process hearing.

Clarifying the Nature of an Expedited Due Process Hearing

Some confusion may arise as to whether the due process hearing a parent or LEA may request under §500.532(a) is the same as the expedited hearing described under §300.532(c) or, in fact, a separate and distinct hearing. Be sure to indicate to

More Provisions of: §300.532

§300.532(c) on Expedited Due Process Hearings Begins...

(c) *Expedited due process hearing*. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

[§300.532(c)(1)]

participants that these two hearings are not two different hearings; they are the same.

As the Department explained in the Analysis of Comments and Changes:

The hearing referenced in §300.532(a) and (c) is the same hearing and not separate hearings.... Paragraph (c) of this section clarifies that a hearing requested under paragraph (a) of this section is an impartial due process hearing consistent with the due process hearing requirements of §§300.510 through 300.514 (including hearing rights, such as a right to counsel, presenting evidence and cross-examining witnesses, and obtaining a written decision), except that the timelines for the hearing are expedited and a State may establish different procedural rules for expedited due process hearings as long as the rules ensure the requirements in §§300.510 through 300.514 are met. We believe these regulations will ensure that the basic protections regarding hearings under the Act are met, while enabling States to adjust other procedural rules they may have superimposed on due process hearings in light of the expedited nature of these hearings. Further, we believe it is important that all the due process protections in §§300.510 through 300.514 are maintained because of the importance of the rights at issue in these hearings. (71 Fed. Reg. 46724)

Timeline for Expedited Due Process Hearings

IDEA establishes a timeline within which the expedited due process hearing must be conducted and the hearing officer's determination made, as follows:

- (2) 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. [§300.532(c)(2)]



You'll want to note that this provision specifying the timeline refers to a "school day," not a "calendar day," a "business day," or just plain "day." These terms have different meanings in IDEA, as was discussed at the very beginning of this module. For your convenience, we repeat the definitions at §300.11 in the box below. Mention the differences to participants, because these have direct bearing on calculating the actual timeline within which a specific event must occur.

Can due process be avoided?

As we have indicated elsewhere in this module, Congress included provisions in IDEA that strongly favor avoiding due process hearings when possible and, instead, resolving disputes through alternate, less adversarial and less costly means. So, as is true when a parent files a due process complaint requesting a due process hearing outside of the disciplinary context, the parties can always choose to attempt to resolve

Considering §300.11: What Type of "Day" Are We Talking About?

§300.11 Day; business day; school day.

(a) *Day* means calendar day unless otherwise indicated as business day or school day.

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).

(c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) *School day* has the same meaning for all children in school, including children with and without disabilities.

their differences by using mediation under §300.506. A resolution meeting is also a required intervening step when a parent requests an expedited due process hearing in the disciplinary context, except that the timelines are different. And, as is true for the resolution meeting outside of the disciplinary context, the LEA is not required to hold a resolution meeting if the parent and the LEA agree in writing to waive the meeting or to use mediation. The reference to the resolution process, in the context of an expedited due process hearing, is as follows:

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) 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. [§300.532(c)(3)]

Thus, parents and the LEA have available to them mediation and the resolution meeting as vehicles for avoiding the expedited due process hearing. If the parties do not decide to use mediation and agree to waive the resolution meeting, they would proceed to a due process hearing. Waiving the resolution meeting, however, requires that both parties agree in writing to do so.

How Expedited Due Process Affects Other Timelines and Issues

Speeding up the timeline within which a due process hearing must occur affects other timelines and due process procedures, like a line of dominos going down. For example, does anyone in the audience recall what the timeline is for the LEA to convene the resolution meeting outside of a disciplinary situation?

Wait for a response and then reference the 15-day timeline in §300.510(a)(1) (see **Handout E-12**). When a resolution meeting is held associated with an expedited due process hearing, the timeline is shortened to *seven* days from receipt of the due process complaint.

Similarly, provisions governing non-expedited due process hearings are affected. For example, the provision discussed earlier that allows the non-filing party to challenge the sufficiency of the other party's due process complaint at §300.508(d) does not apply to expedited due process complaints. The Department addressed this matter in the Analysis of Comments and Changes, stating that the sufficiency of complaint provision "is not practical to apply to the expedited due process hearing" because of the shortened timelines to resolve these types of due process complaints. (71 Fed. Reg. 46725)

State-Imposed Procedural Rules

Given that IDEA itself establishes different timelines for what occurs within expedited due process (as opposed to the non-expedited process), it's not surprising that the regulations acknowledge that States may need to adjust their procedural rules for expedited due process hearings regarding disciplinary decisions—and give them limited authority to do so. The relevant provision for this authority is provided in the box on this page and appears at §300.532(c)(4) on **Handout E-16**.

More Provisions of: §300.532

§300.532(c)(4) on State-Imposed Procedural Rules for Expedited Due Process Hearings

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

[§300.532(c)(4)]

This provision makes clear that, while a State’s procedures for expedited due process hearings may be different from its other due process procedures, the State must ensure that the requirements in §§300.510 through 300.514 are met. These are the requirements regarding the resolution process; impartial due process hearing; hearing rights; hearing decisions, and finality of decision; appeal; and impartial review.

This will ensure that the basic protections regarding expedited hearings under the Act are met, while enabling States, in light of the expedited nature of these hearings, to adjust other procedural rules they have established for due process hearings. (71 Fed. Reg. 46726)

Authority of the Hearing Officer

If the parents and LEA have not resolved their disagreement through a resolution meeting or mediation, and the due process hearing goes forward, the appeal will be decided by the hearing officer.

The box on this page and **Handout E-16** contain the provisions governing the authority of the hearing officer in expedited due process hearings to resolve disciplinary decisions. The hearing officer is given the clear authority to determine whether a child’s removal violated §300.530 (Authority of school personnel) or that a child’s behavior was a manifestation of his or her disability, and to order a change of placement if maintaining the child’s current placement is substantially likely

to result in injury to the child or to others. The hearing officer can also return the child to the placement from which he or she was removed—or order that a child’s placement be changed to an appropriate IAES for no more than 45 school days.

Moreover, it is only through the expedited due process hearing that an LEA can appeal a decision to return a child to the original placement if the LEA believes that doing so is substantially likely to result in injury to the child or others. As §300.532(b)(3) states, the procedures “may be repeated.”

For example, under the special circumstances provision at §300.530(g)—including drugs, weapons or serious bodily injury offenses—the LEA has the discretion to remove a child with a disability to an IAES, but only up to 45 school days, regardless of whether the child’s behavior is a manifestation of the child’s disability. To continue the child’s placement in an IAES after the 45-school-day period has expired, “[s]chool officials must seek permission from the hearing officer in §300.532”—the process of appeal described in this slide and the one preceding it.

More Provisions of: §300.532

§300.532(b): Authority of the Hearing Officer

(b) *Authority of hearing officer.* (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child’s behavior was a manifestation of the child’s disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

[§300.532(b)]

Hearing officers have the authority under §300.532 to exercise their judgments after considering all factors and the body of evidence presented in an individual case when determining whether a child's behavior is substantially likely to result in injury to the child or others. (71 Fed. Reg. 46722)

May the hearing officer's determination be appealed?

Yes. Decisions reached in an expedited due process hearing may be appealed in the same way as they may for decisions in other due process hearings. We reviewed these procedures earlier in this module—remember the one-tier and two-tier systems? The regulations at

§300.532(c)(5) state: “[t]he decisions on expedited due process hearings are appealable consistent with §300.514.”

Section 300.514, in its own turn, states that the decision of the hearing officer is final, save that any “party aggrieved by the findings and decision in the hearing may appeal to the SEA” [§300.514(b)(1)]. In some instances, bringing a civil action is also possible. (See requirements at §300.516 regarding bringing a civil action, as discussed earlier.)

However, “[a]bsent a decision upon appeal,” the Department states, “the SEA or the LEA may not augment or alter the hearing officer's decision. The parties, would, therefore, be required to abide by the hearing officer's decision (71 Fed. Reg. 46724).

Summary

It's easy to become confused about the timelines and processes associated with due process hearings and expedited due process hearings. The important point to drive home to participants is that special rules and expedited timelines apply to due process hearings in disciplinary situations. Under these circumstances, there are shorter time frames for the resolution period and, if a hearing is necessary, for conducting the hearing and issuing a decision.

Decisions reached in expedited due process hearings may be appealed in the same way as they may for decisions in other due process hearings. When a hearing is requested by either the parent or the LEA under the expedited procedures for disciplinary hearings, a special provision governs the child's placement during the hearing and any subsequent appeals.

View

Due Process



Slide begins with this view. Then, several different "1" images appear automatically.

Every change in the slide is *automatic*. No clicks are necessary except to advance to the next slide.

Key images you'll see are shown below, so you know how the slide progresses.



Auto-Loads

Due Process

One More Hearing



The meaning of all the "1" images is made clear: There's "one more hearing" to discuss.

(continued on next page)



Due Process

When a Child with
a Disability is
Unilaterally Placed
at a Private School
and
Tuition
Reimbursement
is at Issue

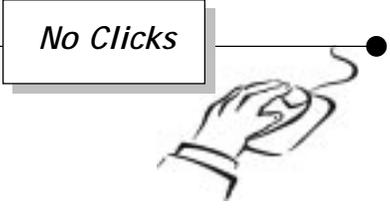


Auto-Loads

Final screen: The nature of the hearing to be discussed.

CLICK to advance to next slide.

Slide 19: Background and Discussion



Just when you thought you had due process hearings and timelines down and it was safe to go back in the water...there's one more hearing to talk about. That's the meaning of all the "1" images at the beginning of the slide—one more, we promise, just one, and then we're done.

Due Process Complaints and Unilateral Placements by Parents of Children in Private Schools at Public Expense

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school district made FAPE available to the child and the

parent chose to place the child in a private school or facility. However, as shown in the box on the next page:

(b) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures §§300.504 through 300.520. [§300.148(b)]

Note: Notwithstanding what was just said, the school district where the private school is located must include the child in the population whose needs are addressed under the Part B

provisions regarding children who have been placed by their parents in a private school under §§300.131 through 300.144. These responsibilities are examined in a separate module, *Parentally-Placed Private School Children with Disabilities*, and won't be discussed here. The focus of *this* slide will be on due process complaints seeking tuition reimbursement for the parentally-placed private school child with a disability *when FAPE is at issue.*

Reimbursement for Private School Placement

If the child previously received special education and related services under the authority of a school district, and the parent chooses to enroll the child in a private preschool, elementary school, or secondary school without the consent of, or referral by, the school district, a court or a hearing officer may require the agency to reimburse the parent for the cost of that enrollment, if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment



and that the private placement is appropriate. A hearing officer or court may find the parent's placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the SEA and its school districts.

IDEA's relevant provision—§300.148(c)—is presented in the box on the next page.

Limitation on Reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied in three specific circumstances. IDEA's relevant provisions are found at §300.148(d) but won't be cited here because they are quite lengthy. We've summarized them below and especially noted the "ORs" and "ANDs" they include, to call them to your attention.

Circumstance 1 applies if:

- At the most recent IEP meeting that the parent attended prior to the parent's removal of the child from the public school, the parent did not inform the IEP Team that the parent was rejecting the placement proposed by the school district to provide FAPE to the child. This includes the parent stating his or her concerns and the intent to enroll the child in a private school at public expense.

OR—

- At least 10 business days (including any holidays that occur on a business day) prior to the parent's removal of the child from the public school, the parent did not give written notice to the school district of that information.

Circumstance 2 applies if, prior to the parent's removal of the child from the public school, the school district provided prior written notice to the parent of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the child available for the evaluation.

OR—

Circumstance 3 applies upon a court's finding that the parent's actions were unreasonable.

Note the "OR," which means that *any* (not all) of these three circumstances may be sufficient to result in the cost of reimbursement being reduced or denied.

The Beginning of...

§300.148 Placement of children by parents when FAPE is at issue.

(a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.

(b) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures §§300.504 through 300.520.

[§300.148(a) and (b)]

There are, of course, exceptions to the above. Specifically, the cost of reimbursement:

- must not be reduced or denied for failure to provide the notice if:
 - the school prevented the parent from providing the notice;
 - the parent had not received notice of his or her responsibility to provide the notice described above; or
 - compliance with the requirements above would likely result in physical harm to the child;

AND—

- may not be reduced or denied, at the discretion of the court or a hearing officer, for the parents' failure to provide the required notice if:
 - the parent is not literate or cannot write in English; or
 - compliance with the above requirement would likely result in serious emotional harm to the child.

Again, note the "OR" and the "AND"—both are very critical elements in interpreting IDEA's provisions.

§300.148 continues...

Reimbursement for Private School Placement

(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

[§300.148(c)]

Roundup Time!



Slide loads with this view. No clicks needed except to END the slide show.

CLICK to END the slide show.

Use this slide for a review and recap of your own devising, or open the floor up for a question and answer period. Depending on how much time you have available for this training session, you can have participants work in small groups to make a quick list of what information they've gleaned from this session, what options are available in IDEA for dispute resolution, what's different in IDEA as a result of the 2004 reauthorization, what's the same, or what aspects of dispute resolution are most pertinent to them. Emphasize the local or personal application of the information presented here.