STATE ADMINISTRATION OF DUE PROCESS COMPLAINTS & HEARINGS

UNDER PART B of IDEA

34 CFR §§300.507 through 300.518

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ABOUT THIS RESOURCE

This publication was developed by CADRE, a project of Direction Service pursuant to Cooperative Agreement CFDA H326X180001 with the Office of Special Education Programs, United States Department of Education, Carmen M. Sánchez, Project Officer.

This manual draws from the OSEP's Dispute Resolution Self-Assessment and OSEP Memo and Q&A on Dispute Resolution (2013), US Dept. of Education policy documents, comments to the regulations, and relevant case law. This resource is not intended to interpret, modify, replace requirements of federal or State law, or serve as a definitive treatment of the regulations. Application of information presented may be affected by State statutes, regulations, departmental and local policies, and any new guidance not issued at the time of this publication.

CADRE
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DUE PROCESS COMPLAINTS & HEARINGS

Each State is required to establish, implement, and maintain procedural safeguards related to due process hearings. To assist State Education Agencies (SEAs) in meeting federal requirements under IDEA, and effectively and efficiently administer due process complaints and hearings, CADRE has created a general manual that is aligned with the federal regulations. This manual includes hyperlinked citations, responses to some frequently asked questions, coaching questions to prompt reflection about DR system design and how some procedures are, or might be, operationalized, and more. Key features needed for the State administration of due process complaints and hearings include:

- Written State procedures that align with IDEA
- Infrastructure to support the oversight, case management, data collection and reporting, and implementation of the procedural safeguards related to due process complaint and hearings
- Trained and impartial hearing officers that align practices and decisions with federal and State law
- Clear communications related to due process to external and internal stakeholders, including hearing officers
- Mechanisms to effectively communicate with stakeholders about due process, as well as to explain how it operates in conjunction with the other IDEA dispute resolution options.
- Means to access the due process option, including but not limited to a model form

CADRE has identified five management function areas for effective systems: Systemwide Oversight, Infrastructure & Organization; Program Access & Delivery; Standards & Professional Development; Public Awareness & Outreach Activities; and Evaluation & Continuous Quality improvement (CQI). For more information, visit CADRE's System Improvement online resource.

To conduct a crosswalk of your State regulations, policies, and procedures with the federal requirements under IDEA, use OSEP's Dispute Resolution Self-Assessment.

States are strongly encouraged to periodically review their due process complaint and hearing procedures to ensure that they 1) align with State and federal law; 2) are clear; and 3) help facilitate an efficient and effective due process complaint system. Changes to policy and procedures necessitate public participation [34 CFR §300.165(a)]. States may consider developing an internal operations manual addressing the implementation of the State's policies and procedures.

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In order to request a due process hearing under the IDEA, a parent or a public agency, or the attorney representing the party, first must file a due process complaint consistent with 34 CFR §§300.507 and 300.508.

The IDEA uses the term "complaint" to mean two different processes: 1) a State administrative complaint (or written State complaint); and 2) a due process complaint. Both processes seek to have an authority make a formal determination about the issues identified by the complainant. The State administrative complaint requires the SEA to investigate and rule on the allegations of IDEA violations, whereas a due process complaint requests a decision to be made by a hearing officer after an administrative hearing. For more information about State administrative complaints, see the *State Administrative Complaints Under Part B of IDEA* manual.

Due Process Complaint May Be Filed On

A due process complaint may be filed on any matters described in §300.503(a)(1) and relating to the:

- identification
- evaluation
- educational placement, or
- provision of FAPE to the child with a disability [34 CFR §300.507(a)(1)].

Nothing precludes a parent from filing a different due process complaint on an issue separate from a due process complaint already filed [34 CFR §300.513(c)]. Public agencies cannot deny a parent's request for a due process hearing because they believe the issue has been previously adjudicated. This matter is an issue for the hearing officer to decide.

Allowable Scope of a Hearing

A question each SEA needs to address is whether to allow a hearing officer to hear a 504 issue raised in a due process complaint, as Section 504 requires that parents have the option to file a request for a due process hearing [34 CFR §104.36].

States have three options:

1. Hearing officers do not have authority to address any 504 issues raised.
2. Hearing officers have the authority to address 504 issues if based on the same alleged facts as the IDEA claims. A number of States follow this option but caution about the use of Part B funds to support a hearing officer in addressing 504 issues.
3. LEAs can privately contract with the hearing officer to conduct a 504 hearing, but the SEA plays no role in that process.

Matters Necessitating an Expedited Hearing

The following matters necessitate an expedited hearing* and call for accelerated timelines and some different procedures than a regular due process hearing that facilitate faster resolution of certain IDEA disputes:

- the parent of a child with a disability who disagrees with any decision regarding discipinary placement decisions 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 request a hearing [34 CFR §300.532].

* For more information on expedited hearings, see page 25.

The Right to Request a Due Process Hearing Transfers to Legal Adult Student

When a student with a disability becomes a legal adult under State law, all IDEA rights, including the right to request a due process hearing, transfer to the legal adult. Exceptions include an adult student who is deemed incompetent by a court, where the public agency has deemed the student unable to provide informed consent [34 CFR §300.520 (b)], or the adult student has assigned that authority to another adult such as their parent under State law.

Therefore, unless an exception exists, the parents do not have the legal right to request a hearing for their adult student. [See: *Ravenna School District Board of Education v. Williams*, U.S. District Court, Northern District, Ohio (2012) and *Doe v. Westport Board of Education*, U.S. District Court, Connecticut (2020), among other cases.]

Situations Where Public Agencies or Parents Do Not Have the Right to File

There are limited situations where LEAs do not have the right to file a due process complaint, specifically concerning, 1) consent for initial placement in special education, and 2) revocation of consent for continued special education services [34 CFR §300.300(b)(3)(i), (b)(4)(ii), and (d)(4)(ii)].

Unless inconsistent with State law related to parental consent, a public agency may use the due process procedures to override a parent's refusal to consent, failure to respond to a request to provide consent *only* for initial evaluations and reevaluations of children enrolled, or seeking to be enrolled in public schools [34 CFR §§300.300 and 300.300(c)(1)(ii)]. Due process procedures may *not*, however, be used to override a parent's refusal to consent to an initial evaluation, reevaluation of a child who is homeschooled, or parentally placed in a private school at the parent's expense [34 CFR §300.300(d)(4)].

Qualifications of special education teachers of the public agency are not subject to a cause of action, including a due process. However, this may be appropriate for a State administrative complaint [34 CFR §300.156(e)].

There are limited exceptions to due process rights that apply to parents of parentally-placed private school children, as well. A parent does not have the right to request a hearing regarding their child's private school service plan but does have the right to request a hearing with the public agency to address child find issues [34 CFR §§300.148 and 300.140].

When FAPE at the public agency is at issue for a public-school student who has been placed by the parent in a private school by the parent (a unilateral placement), disagreements between the public agency and parents are subject to due process procedures.

Time Limitation for Filing a Due Process Complaint

Alleged violations must not have occurred more than two years prior to the date that the parent or public agency knew, or should have known, about the alleged action which forms the basis of the due process complaint unless the parent was prevented from filing a due process complaint due to:

- specific misrepresentations by the LEA stating it had resolved the problem which formed the basis for the due process complaint; or
- the LEA's withholding of information from the parent which was required [34 CFR §300.511(f)].

States, however, may adopt explicit time limitations for filing a due process complaint other than the two years [34 CFR §300.507(a)(2)].

The time limitation for filing a due process complaint used by the State, whether the IDEA timeline or the State-established timeline, must be included in the notice of procedural safeguards, which must be given to parents upon initial referral for a special education evaluation, a parent request for an evaluation once per year, and upon receipt of the first due process complaint under §300.507 in a school year [34 CFR §§300.504(a)(2) and 300.504(c)(5)(i)]. The regulations also require that the safeguards be given to the parent upon receipt of the first State administrative complaint, when a disciplinary change of placement is being proposed, and upon parent request.

FILING A DUE PROCESS COMPLAINT

Forms Must Be Made Available

Each SEA must develop model forms to assist parents and other parties in filing a due process complaint in accordance with §§300.507 and 300.508, however, the SEA or LEA may not require the use of the model forms [34 CFR §300.509(a)].

Coaching Questions

- ***Are your State's model forms easy to understand?***
- ***Are your State's model forms made accessible?***
- ***What considerations are made for non-English speakers?***

States must have procedures that require the party filing the due process complaint, or the attorney representing the party, to forward a copy of the complaint to the other party and to the SEA [34 CFR §300.508(a)].

Support for Parents

The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if requested or when a due process complaint is filed [34 CFR §300.507(b)(2)]. States may wish to share information for Parent Training and Information Centers (PTI), Community Parent Resource Centers (CPRC), and Protection and Advocacy Agencies (P&A). Some States train their hearing officers to ask parents at the first pre-hearing conference whether they have received the required information.

States may also wish to consider sharing or linking to CADRE's parent guides and companion videos on due process and other DR options, as appropriate.

Coaching Question

- ***What is available in your State to ensure that parents have access to information about dispute resolution options, including how to file a DPH?***

Ways to Improve Access

Although early resolution of disputes is encouraged, it is also important to communicate clear, consistent, and accurate information about due process via multiple formats, (e.g., technical assistance, presentations, website, videos, brochures) so that informed decisions can be made. Minimize barriers to access by ensuring your State's due process complaint model form is easy to understand, access, and submit.

Steps can be taken to improve access to any DR option.

Required Information

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;
- ❑ in the case of a child experiencing homelessness, available contact information for the child and the name of the school the child is attending;
- ❑ a description of the nature of the problem, including relevant facts; and
- ❑ a proposed resolution of the problem to the extent known and available to the party at the time [34 CFR §300.508(b)].

Filing Electronically

States may establish procedures permitting a due process complaint to be filed electronically, including with an electronic signature. States considering accepting, or choosing to accept, electronic filings of due process complaints would need to ensure that there are appropriate safeguards to protect the integrity of the process.

Safeguards should:

- identify and authenticate a particular person as the source of the consent;
- be sufficient to ensure that a party filing a due process complaint electronically understands that the complaint has the same effect as if it were filed in writing; and
- ensure that the same confidentiality requirements that apply to written due process complaints apply to due process complaints filed electronically [34 CFR §§300.611-300.626].

States must explain the due process procedures in the notice of procedural safeguards, specifically the criteria for determining when a State considers a due process complaint to be received, including notices filed electronically if the State permits such filing. This would include how a State determines the date of receipt of an electronic complaint sent after business hours, on holidays, or weekends. States cannot require in-person or hand delivery of due process complaints.

States that are considering, or have chosen to accept, due process complaints filed electronically should also consult any relevant State laws governing electronic transactions.

Coaching Questions

- ***How does your State determine when the due process complaint is received by both the SEA and the LEA in order to uniformly determine timelines?***
- ***Where is this information made available? Is this information included in the procedural safeguards?***

Sufficiency of the Complaint

Hearing officers have complete authority to determine the sufficiency of all due process complaints and their jurisdiction over issues raised. States may not dismiss a due process complaint or limit the issues that can be raised in a due process complaint [34 CFR §300.508(d)(2)].

The due process complaint must be deemed sufficient, unless the receiving party notifies the other party and the hearing officer in writing, within 15 days of receiving the complaint, that they believe the complaint does not meet the content requirements in §300.508(d)(1), as stated previously. The hearing officer then has five days to determine, based solely on the face of the due process complaint (briefs are not allowed), if the complaint is sufficient. The hearing officer must immediately notify the parties in writing of that determination [34 CFR §300.508(d)(2)].

Note: The Comments to the Regulations clarify that there is no requirement that the party who alleges that a complaint notice is insufficient must state in writing the basis for the allegation [71 Federal Register, August 14, 2006, pg. 46698].

If the hearing officer determines the complaint is not sufficient, the hearing officer's decision will identify how the notice is insufficient, so that the filing party can amend the notice, if appropriate [71 Federal Register, August 14, 2006, pg. 46698].

OSEP has taken the long standing position that the public agency does not have the authority to deny a request for a hearing even if the SEA (or LEA) believes the issues included in the complaint are beyond the jurisdiction of the IDEA hearing process. The issue of whether the issues are proper for an IDEA hearing would be for a hearing officer to determine [OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), C-16].

Also, if the parent names the SEA as a party in the complaint, it is up to the hearing officer whether the SEA should be dismissed or kept as a proper party to the hearing [*Letter To Anonymous*, OSEP, 2017].

Amending the Complaint

A party may amend the due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510, or the hearing officer grants permission to amend the complaint at any time not later than five days before the due process hearing begins [34 CFR §300.508(d)(3)(ii)].

If a party files an amended due process complaint, the timelines for the resolution meeting and resolution period begin again with the filing of the amended due process complaint [34 CFR §300.508(d)(4)]. If the hearing officer determines that the complaint is insufficient and the complaint is not amended, the complaint may be dismissed [71 Federal Register, August 14, 2006, pg. 46698].

States should clarify in their procedures and/or trainings for hearing officers whether, if found insufficient, a complaint should be dismissed or whether they should give the party filing the complaint a specific time to submit an amended complaint addressing the insufficiency. If an amended complaint is submitted, all timelines start over again [34 CFR §300.508(d)(4)]. If the party does not file an amended complaint by the timeline in the hearing officer's sufficiency determination, the written order should make it clear that the insufficient complaint will be dismissed. The vast majority of States follow the second option of allowing the same hearing officer to continue and allow an amended complaint.

Tracking Receipt of Complaint

States must have procedures, which may be determined by State laws, to determine when due process complaints are received. While the States have some discretion in making this determination, the procedures must allow for the timely resolution of due process complaints and due process hearings. These procedures must be uniformly applied, consistent with §§300.510 and 300.515.

OSEP encourages States to adopt procedures which ensure that the LEA or public agency provides a copy of the due process complaint to the SEA when the parent fails to provide the required copy. If the due process complaint is filed with the SEA but not the LEA, for example, the State needs procedures to explain how such action impacts the timelines, such as when a resolution meeting must be held [OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), D-5].

A practical sequence of steps to be taken would be to appoint a hearing officer, as provided under State law or procedure, immediately after receiving a due process complaint. Since a hearing officer is the only person who has authority to determine sufficiency, a hearing officer must be appointed before the 15-day period for filing a sufficiency challenge occurs.

CHILD'S STATUS DURING PROCEEDINGS

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 the current educational placement [34 CFR §300.518(a)]. This is commonly referred to as the "stay put" provision.

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 [34 CFR §300.518(b)].

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 which are not in dispute between the parent and the public agency [34 CFR §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 [34 CFR §300.518(d)].

RESPONDING TO DUE PROCESS COMPLAINTS

Other Party Response to a Due Process Complaint

When a party receives a due process complaint, they must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint, except as described above [34CFR §300.508(f)].

Coaching Question

- ***Some SEAs require or allow the hearing officer to order that the response from the receiving party be sent to the hearing officer. If so, the response becomes part of the administrative record. What is the process in your State?***

The *Comments to the Regulations* state that the IDEA does not establish consequences for the failure to respond to a due process hearing complaint notice. However, if either party fails to respond to or file the requisite notices, it 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 Federal Register, August 14, 2006, pg. 46699].

LEA Response When the LEA Did Not Send a Prior Written Notice

If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

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

The requirement to file a response does not preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate [34 CFR §300.508(e)].

PRE-CONFERENCE HEARINGS

While not required under the IDEA, some SEAs require through State law or procedure that the hearing officer hold a pre-hearing conference with the parties. This has become standard practice in virtually every State. Potential issues that could be presented to a hearing officer during the pre-hearing period include: the sufficiency of the complaint; the sufficiency of the response and notice pursuant to § 300.508(e); the sufficiency of the response pursuant to § 300.508(f); motions for stay-put; the hearing schedule; the order of witnesses; the burden of proof; the burden of going forward; witness testimony by telephone or video conference; production of records; exchange of evidence; admissibility of evidence; and issuance and enforcement of subpoenas and subpoenas *duces tecum* appropriate [71 Federal Register, August 14, 2006, pg. 46704]. Additionally, determining if the hearing will be open or closed to the public and who will be in attendance can also be addressed at a pre-conference hearing [34 CFR §(300.512(c)]. [See also *Letter to Eig*, OSEP, 2016 and *Letter to Reisman,* OSEP, 2012].

RESOLUTION PERIOD

IDEA provides a 30-day resolution period prior to the initiation of a due process hearing [34 CFR §300.510]. The purpose of the resolution period is to resolve the dispute as early as possible at the local level and to avoid the need for a more costly, adversarial, and time-consuming due process proceeding [34 CFR §300.510(a)(2)].

At the expiration of the 30-day resolution period, the 45-day timeline for issuing a final decision under §300.515 begins, unless adjustments to the resolution period have been made [34 CFR §300.510(b)(2)].

Adjustments to the Resolution Period

The 45-day timeline for the due process hearing in §300.515 starts the day after one of the following events:

- both parties agree in writing to waive the resolution meeting;
- after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
- if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process [34 CFR §300.510(c)].

Coaching Questions

- ***How is the hearing officer informed of any adjustments to the timelines? Some States give that responsibility to the parties, however that doesn't always happen in a timely fashion. Others SEAs may inform the hearing officer directly. What is the process in your State?***

As part of the State's general supervisory responsibility, the SEA must ensure that due process hearing decision timelines are properly calculated and enforced. Therefore, the SEA must establish a mechanism for tracking the resolution process to determine when the resolution period has concluded and the 45-day due process hearing timeline in §300.515(a) (or the expedited due process hearing timeline in §300.532(c)(2)) begins.

States must have a system in place to track when the 30-day or adjusted resolution period ends.

RESOLUTION MEETINGS

The SEA must monitor LEAs for compliance with the resolution meeting requirements under its general supervisory responsibilities [OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), D-15].

Timeline for Convening a Resolution Meeting

The LEA must convene a resolution meeting within 15 days of receiving the parent's complaint unless the meeting is waived by both parties or the parent and the LEA agree to use the mediation process described in §300.506 [34 CFR §300.510(a)(3)(i-ii)]. The IDEA does not require the LEA to convene a resolution meeting if the LEA is the complaining party.

Use of alternative methods, such as facilitated IEP meetings, does not relieve the LEA of the obligation to convene a resolution meeting. If the parents indicate to the district that certain circumstances prevent the parent from attending the meeting in person, the district should offer alternative means of participation, such as videoconferences or conference telephone calls. The LEA should also document the efforts to secure parental participation [71 Federal Register, August 14, 2006, pg. 46701].

The SEA or LEA may not suspend the 15-day resolution meeting timeline while schools are closed for breaks or holidays. Also, the LEA must proceed with the resolution meeting even if it has challenged the sufficiency of the parent's due process complaint.

Waiving a Resolution Meeting

Only a written waiver by both parties of the resolution process or an agreement to use the mediation process under §300.506 relieves the LEA of its obligation to convene a resolution meeting. Unless the parties have jointly agreed in writing to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held [34 CFR §300.510(b)(3)]. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in §300.322(d), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint [34 CFR §300.510(b)(4)].

Failure to Hold a Resolution Meeting

If the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline [34 CFR §300.510(b)(5)].

States must have procedures in place to enforce the requirement that LEAs convene resolution meetings within the required timeline. Additionally, the SEA must have procedures for collecting data on the timeliness and outcomes of resolution meetings.

Coaching Question

- ***What procedures are in place for the SEA to verify a resolution meeting was convened or waived?***

Resolution Meeting

During a resolution meeting, the parties discuss the complaint and the facts that form the basis of the complaint so that the LEA has an opportunity to resolve the dispute. The parent and the LEA determine the relevant members of the IEP Team to attend the resolution meeting [34 CFR §300.510(a)(4)]. The meeting must include 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 include a representative of the public agency who has decision-making authority [34 CFR §300.510(a)(1)(i)]. An attorney of the LEA must not be present unless the parent is accompanied by an attorney [34 CFR §300.510(a)(1)(ii)].

Confidentiality and the Resolution Meeting

Unlike mediation, the IDEA does not keep the resolution discussions confidential, and such discussions may be admitted in a due process hearing or civil proceeding. LEAs may not require a confidentiality agreement as a precondition to conducting a resolution meeting. However, there is nothing in the IDEA or its implementing regulations that would prohibit the parties to a resolution meeting from entering into a confidentiality agreement as part of their resolution agreement resolving the dispute which gave rise to the parent's complaint [71 Federal Register, August 14, 2006, pg. 46704].

Coaching Question

- ***What is the process for the SEA to learn of any agreement that occurs during the 30-day resolution period or if a hearing request has been withdrawn or a case has been dismissed?***

Parties to the resolution meeting may find it difficult to discuss the complaint and the facts which form the basis of the complaint without a neutral third party facilitating the meeting. Some States offer state-sponsored facilitators for this purpose. The LEA and parent would both need to agree to participate in a facilitated resolution meeting. The IDEA does not require the availability of facilitators.

Some States offer a facilitator to assist with the resolution meeting.

WRITTEN SETTLEMENT AGREEMENTS

If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally-binding agreement which is signed by both the parent and a representative of the agency who has the authority to bind the agency. These agreements are 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, such as their State administrative complaint procedures which permit parties to seek enforcement of resolution agreements [34 CFR §300.510(d)].

Use of other mechanisms or procedures may not be mandatory nor delay or deny a party the right to seek enforcement of the settlement agreement in a State court of competent jurisdiction or in a district court of the United States. If other mechanisms or procedures are used, they should be clearly established in policy/procedure to ensure consistent implementation and to inform parties of the availability of this mechanism.

Agreement Review Period

A party may void the resolution agreement within three business days of the agreement's execution [34 CFR §300.510(e)].

Impact of Agreement on Due Process Complaint

The Part B regulations do not address the status of the due process complaint or which party is responsible for requesting that the due process complaint be dismissed or withdrawn once a resolution agreement is reached and the three-business-day review period has passed. Such matters are left to the discretion of the State and the hearing officer. [OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), D-20].

Under standard legal practice, although not specified in IDEA regulations, the requesting party would submit a written withdrawl of their due process complaint, although the resolution agreement need not be sent to the hearing officer.

The hearing officer would then issue a written dismissal order and send it to the parties and the State's dispute resolution person.

If No Agreement Was Reached During the Resolution Meeting

If no agreement was reached during the resolution meeting, the parties may have additional discussions and may execute a written settlement agreement within the 30-day resolution period. Only a legally-binding agreement reached during the 30-day period which meets the requirements of §§300.510(d) and (e) is considered an agreement under the resolution process requirements.

Coaching Question

- ***What procedures are in place to track whether or not a written agreement was reached during the resolution period?***

After the 30-day resolution period, parties may choose to enter into private settlement agreements which resolve some or all of the issues in the due process complaint and may result in the petitioner's withdrawl of a due process complaint. These agreements would not be considered "resolution agreements" for the purposes of SEA reporting.

MEDIATION

Mediation is an impartial and voluntary process which brings together parties who have a dispute concerning any matter arising under 34 CFR part 300 (the Part B of the IDEA (Part B) regulations) to have confidential discussions with a qualified and impartial individual. The goal of mediation is for the parties to resolve the dispute and execute a legally binding written agreement reflecting that resolution. Mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint or to deny any other rights afforded under Part B [34 CFR §§300.506(b)(1) and (8)].

States must have procedures to offer mediation to resolve disputes concerning any matter arising under Part B of the IDEA, including matters arising prior to the filing of a due process complaint.

Mediation During the Resolution Period

Parties may choose to engage in mediation during the 30-day resolution period. The resolution period may be adjusted if both parties agree in writing to continue with the mediation process after the 30-day resolution period. If this occurs, the 45-day due process hearing timeline does not begin until one of the parties withdraws from the mediation process or the parties agree in writing that no agreement can be reached through mediation [34 CFR §§300.510(c)(2) and (3)].

Coaching Questions

- ***How does your State offer mediation to parties as a result of a filed due process complaint?***
- ***For the purpose of tracking data, how does the SEA become informed about: 1) when parties agree to mediation; 2) if parties agree to adjusting the resolution period in order to continue mediation; 3) if a mediation ends in an agreement; or 4) if a party withdraws from the mediation?***

Mediation Discussions are Confidential

All discussions that occur in mediation, including the negotiation discussions and discussions involving any settlement positions of parties in a mediation session, are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding [34 CFR §300.506(b)(8)].

Note: OSEP holds that, "Because mediation under the IDEA is a voluntary process, districts may choose not to engage in it. At the same time, districts may not compel parents to sign a confidentiality agreement as a prerequisite to the district taking part in the process, since the IDEA already mandates that mediation sessions remain confidential." Instead, OSEP suggests that "districts concerned about a parent potentially releasing information disclosed during mediation should consider providing parents a notice written in nonlegal language describing the IDEA's confidentiality requirements related to mediation and review those requirements before each mediation session starts" [*Letter to Anonymous*, OSEP, July 31, 2020].

IMPARTIAL DUE PROCESS HEARINGS

Following the resolution period, or waiver of the resolution period, a due process complaint proceeds to a due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510 [34 CFR §300.511(a)].

The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child [34 CFR §300.511(b)]. If the State has adopted a one-tiered due process hearing system, the SEA is responsible for conducting the due process hearing. If the State has adopted a two-tiered due process hearing system, the public agency directly responsible for the education of the child is responsible for conducting the due process hearing, and a party aggrieved by the decision has the right to appeal to the SEA. The SEA typically sets the rate of pay for the hearing officers, and some States require the LEA to pay or partially pay the hearing officer invoice and fees for the court reporter and transcripts.

States should clearly indicate in their State statute, regulations, or written policies which agency is responsible for conducting the due process hearing and the process for initiating a due process hearing complaint, including the appointment of a hearing officer.

The public agency's procedural safeguards notice must provide information about whether the due process system is a one-tiered or two-tiered system used in the State. The notice should identify the agency which is responsible for conducting hearings (e.g., the school district, the SEA, or another State-level agency or entity).

Subject Matter of the Hearing

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise. [34 CFR §300.511(d)] The hearing officer has discretion, in light of the particular facts and circumstances, whether to address issues raised by the non-complaining party which were not in the complaint [71 Federal Register, August 14, 2006, pg. 46706, and OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), C-18].

Extensions of the Timelines

At the request of either party, a hearing or reviewing officer may grant specific extensions of the timelines [34 CFR §300.515(c)]. If a hearing or reviewing officer decides to grant an extension at the request of a party, the hearing or reviewing officer must extend the timeline for a specific period of time. A hearing or review officer may not unilaterally extend the timelines. Extensions should be documented and the SEA timely informed. Many States insert a "good cause" standard for determining whether an extension should be granted.

If an extension is granted, the State must document the all parts of the extension (e.g., when it was granted, the reason(s) for the extension, the specific length of the extension) and ensure timelines are met.

Document All Parts of the Extension.

HEARING RIGHTS

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:

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether or not parties have the right to be represented by non-attorneys at due process hearings is determined under State law;
- present evidence and confront, cross-examine, and compel the attendance of witnesses;
- prohibit the introduction of any evidence at the hearing which has not been disclosed to that party at least five business days before the hearing*;
- obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- obtain written or, at the option of the parents, electronic findings of fact and decisions [34 CFR §300.512(a)].

*At least five business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations which the party intends to use at the hearing.

A hearing officer may bar 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 [34 CFR §300.512(b)].

There is nothing to prohibit parties from agreeing to disclose relevant information less than five business days prior to the hearing. Best practice would be for the hearing officer to document such an agreement. In early OSEP guidance, disclosure includes not only any exhibits planned to be introduced but also the names of witnesses to be called with a description of the general thrust of their testimony [See *Letter to Bell,* OSEP, 1979].

Coaching Questions

- ***Does your State allow parties the right to be represented by non-attorneys at due process hearings?***
- ***Does the hearing officer training in your State address the hearing officer's process and authority for enforcing a subpoena issued to compel the attendance of witnesses?***
- ***What is the process for the creation and provision of a written or, at the option of the parents, electronic, verbatim record of the hearing, and provision of written or, at the option of the parents, electronic findings of fact and decisions?***

Convenience

Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved [34 CFR §300.515(d)]. While a public agency must make a good faith effort to accommodate the parent's scheduling request, public agencies are not precluded from also considering their own scheduling needs when accommodating the parent's request and in setting a time and place for conducting the due process hearing or review. Additionally, make sure the location of the hearing is private and accessible.

Several States now offer virtual hearings when in-person hearings are not possible. To learn more about virtual hearings, see CADRE's webinar, *Due Process in a Quarantined World: The Nuts and Bolts of Effective Virtual Hearings*.

Accommodations

The IDEA specifically requires that certain documents be translated into the parent's native language "unless it is clearly not feasible to do so" [34 CFR §§300.503(c) and 504(d)]. There is no such provision under the IDEA addressing due process hearings.

The U.S. Department of Justice guidance holds that Title VI of the Civil Rights Act of 1964 prohibits discrimination based on national origin and requires that certain documents are translated. Title VI regulations require that recipients of federal funds "take reasonable steps" to "provide information in appropriate languages" to persons with limited-English proficiency (LEP) so that they are effectively "informed of" or able to "participate in" the recipient's program [28 CFR 42.405(d)(1)].

Subsequent to that guidance, the U.S. Department of Justice and the Office for Civil Rights issued guidance [*Dear Colleague Letter*, OCR/USDOE, January 7, 2015)] which states, "School districts and SEAs have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of

information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents." The guidance specifically mentions special education and grievance procedures.

Coaching Question

- ***What is your State's process for determining necessary accommodations for the parties or witnesses?***

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 decision at no cost to the parents [34 CFR §300.512(c)]. [See also *Letter to Eig*, OSEP, 2016 and *Letter to Reisman,* OSEP, 2012]. These issues must be clarified prior to the start of the hearing.

Burden of Proof for Hearings

Although the IDEA does not address the issue of burden of proof, the U.S. Supreme Court held that the burden of proof in a due process hearing is on the party challenging the IEP. Note: The Court commented that this decision does not address those States that have a State law which places the burden of proof on the school district in a due process hearing [*Schaffer v. Weast*, 564 U.S. 49 (2005)].

HEARING DECISIONS

Decisions on the Provision of FAPE

A hearing officer's determination of whether a child received FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefit. This, however, does not preclude a hearing officer from ordering a LEA to comply with procedural requirements under §§300.500 through 300.536 [34 CFR §300.513(a)]. Note: 34 CFR §300.500 through 300.536 address only the procedural safeguards in the IDEA and not other procedural issues.

IDEA does not address whether hearing officers may raise and resolve issues of noncompliance if the party requesting the hearing does not raise the issues. Such decisions are best left to States and are generally addressed in their procedures for conducting due process hearings [71 Federal Register, August 14, 2006, pg. 46706].

Finality of the Decision

A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision [34 CFR §300.514(a)].

If the State permits reconsideration, the State's written hearing procedures or State rules must include a provision which permits reconsideration of due process decisions, and parties should be notified that they can request reconsideration of the hearing officer's decision. If the State permits either party to request reconsideration of the hearing officer's decision (prior to filing a civil action), the reconsideration process must be completed so that the final decision is issued within the 45-day timeline or a properly extended timeline.

Enforcing the Decision

As part of the State's general supervisory responsibility under §300.149, the State must ensure that hearing officer decisions, or reviewing officer decisions, if applicable, are implemented within the timeline specified by the hearing officer or reviewing officer, or if there is no specific timeline articulated in the decision within a reasonable timeframe set by the State (unless either party appeals the decision).

A State must examine every due process hearing decision to determine if the decision identifies any procedural and/or substative violations of the IDEA [*Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR)*, OSEP, September 3, 2008, Question 6]. If noncompliance that requires corrective action is identified, the SEA must ensure that the corrective action is implemented [*Letter to Copenhaver*, OSEP, 2008]. The SEA may use "appropriate enforcement actions" if necessary to achieve compliance [OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), C-26].

Additionally, the State must account for all noncompliance, whether collected through the State's on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, State complaint or due process hearing decisions, data system, or statewide representative sample or 618 data [*Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR)*, OSEP, September 3, 2008, Question 5. See also: OSEP Memo 09-02].

Timeliness and Tracking of the Decision

The public agency must ensure a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties no 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) [34 CFR §300.515(a)].

OSEP requires States to maintain a log to track due process complaints and hearings. The log can be used to ensure that due process complaints are resolved, and resolution sessions, when applicable, are held in a timely manner. The log can also be used to facilitate the collection of information which must be reported under Section 618(a)(1)(F) of the IDEA. See the section Reporting of Dispute Resolution Data on pages 29-31.

A number of States have procured or internally developed a case management and data system software solution to assist with the administration of due process complaints and hearings. These software solutions vary, but many have features to facilitate due process complaint submissions, hearing officer assignments, and the tracking of due process cases. Some platforms also allow for secure correspondence between hearing officers and parties and the payment of invoices.

Review Process for States with a Two-tiered System

If a State has a two-tiered system in which the public agency directly responsible for the education of the child conducts the hearing, any party aggrieved by the findings and decision in the hearing may appeal to the SEA [34 CFR §300.514(b)(1)].

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

- ❑ examine the entire hearing record;
- ❑ ensure that the procedures at the hearing were consistent with the requirements of due process;
- ❑ seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
- ❑ afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- ❑ make an independent decision on completion of the review; and
- ❑ give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties [34 CFR §300.514(b)(2)].

The decision made by the reviewing official is final unless a party brings a civil action under §300.516 [34 CFR §300.514(d)].

Following a request for a review of a final decision, the SEA must ensure that a final decision in the review and a copy of the decision is mailed to each of the parties no later than 30 days after the receipt of a request for a review of a final decision [34 CFR §300.515(b)].

Coaching Question

- ***What tracking procedures are in place to ensure that hearing decisions and, if applicable, hearing reviews, are completed within IDEA timelines for decisions?***

CIVIL ACTION

Any party aggrieved by the findings and hearing decision who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and review decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint [34 CFR §300.516(a)].

The civil 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 [34 CFR §300.516(a)]. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy [34 CFR §300.516(d)].

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 [34 CFR §300.516(b)].

If the State has an explicit time limitation for bringing civil actions under Part B of the IDEA, the State must include this information about the timeline for civil action in the procedural safeguards notice.

Additional Requirements

In a civil action under Part B of the Act, the court:

- receives the records of the administrative proceedings;
- hears additional evidence at the request of a party; and
- basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate [34 CFR §300.516(c)].

Nothing in this part restricts or limits the rights, procedures, and remedies available under other federal laws, with the exception that before filing a civil action under these laws which are also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act [34 CFR §300.516(e)].

Findings and Decision to Advisory Panel and General Public

The public agency responsible for conducting the hearing, after deleting any personally identifiable information, must:

- transmit the findings and decisions to the State advisory panel established under §300.167; and
- make those findings and decisions available to the public [34 CFR §300.513(d)].

[See also *Letter to Anonymous,* OSEP, 2016]

Personally Identifiable Information Defined

- The name of the child, the child's parent, or other family member;
- The address of the child;
- A personal identifier, such as the child's social security number or student number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty [34 CFR §300.32]

Due process hearing findings and decisions must be made available to the State advisory panel and public within a reasonable period of time. A SEA may meet these requirements by posting the redacted decisions on its website or another website location dedicated for this purpose and directing State advisory panel members or members of the public to that information, or otherwise transmitting the information. States may not require a public records/freedom of information request to make the findings and decisions available [34 CFR §300.513(d)]. There is no requirement for the SEA to post decisions on a website, however they must be made available without a requirement for a public records or freedom of information request. Public agencies may choose to also provide summaries of findings and decisions, in addition to the complete findings and decisions.

If a State has a two-tiered due process system and the decision is appealed, the SEA, after deleting any personally identifiable information, must transmit the findings and decisions in the review to the State advisory panel and make those findings and decisions available to the public [34 CFR §300.514(c)].

EXPEDITED DUE PROCESS HEARINGS FOR DISCIPLINE

The parent of a child with a disability who disagrees with any decision regarding a disciplinary placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or in the case when a 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 an expedited hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b) [34 CFR §300.532(a)].

The Authority of the Hearing Officer

When a hearing officer makes a determination in an expedited hearing, the hearing officer may:

- 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

- order a change of placement of the child with a disability to an appropriate interim alternative educational setting (IAES) 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. The procedures placing the student in an IAES 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 [34 CFR §300.532(b)].

Expedited Due Process Hearing

Whenever a hearing is requested to appeal the manifestation determination or placement decisions described above, 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 for the expedited timelines described in §§300.532(c)(2) through (4) [34 CFR §300.532(c)(1)].

Appealing Expedited Due Process Hearing Decisions

The decisions on expedited due process hearings are appealable consistent with §300.514 [34 CFR §300.532(c)(5)].

Expedited Timelines

The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing [34 CFR §300.532(c)(2)].

Note: A party may not challenge the sufficiency of an expedited due process complaint due to the shortened timelines of expedited due process hearings.

Resolution Meeting

Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting must occur within seven days of receiving notice of the due process complaint. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint [34 CFR §300.532(c)(3)]. A hearing officer cannot grant an extension of the timelines in an expedited due process hearing.

If an expedited due process hearing is requested with less than 20 school days remaining in the school year or made during the summer, the hearing must be held within 20 school days even if the due date falls during the following school year [*Letter to Fletcher*, OSEP, 2018].

Resolution Period

The resolution period for expedited due process hearings is 15 calendar days from the date the parent's due process request is received. It is part of, not in addition to, the 20-school-day expedited due process hearing timeline. The resolution period to resolve an expedited due process complaint may not be extended.

There is no provision in the Part B regulations that would give a hearing officer conducting an expedited due process hearing the authority to extend the timeline for issuing a determination at the request of a party to the expedited due process hearing.

State-imposed Procedures for Expedited Due Process Hearings

A State may establish different State-imposed procedural rules for expedited due process hearings than it has established for other due process hearings, but with the exception of the timelines described in §300.532(c)(3), the State must ensure that the requirements in §§300.510 through 300.514 are met. [34 CFR §300.532(c)(4)] If the State has established different State-imposed procedural rules for expedited due process hearings, the State must include this information in its procedural safeguards notice. The five-day rule for disclosure of evidence cannot be shortened in an expedited hearing [71 Federal Register, August 14, 2006, pg. 46726].

CONSIDERATIONS FOR OPERATIONALIZING THE QUALIFIED IMPARTIAL HEARING OFFICER REQUIREMENT

One-tiered or Two-tiered State System

States may adopt a one-tiered or two-tiered due process system. In a one-tiered 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-tiered due process system, the LEA is responsible for conducting due process hearings. An appeal of a due process hearing decision is made to a state-level hearing review, prior to appealing to court.

- In a one-tiered system, appeals are brought directly to federal or State court.
- In a two-tiered system, an aggrieved party may appeal the public agency's decision to the SEA.

The public agency's procedural safeguards notice will provide information about the type of due process system used in the State. The notice should identify the agency which is responsible for conducting hearings (e.g., the school district, the SEA, or another State-level agency or entity).

Whether in a one- or two-tiered State, the SEA must ensure hearing officers are qualified.

Maintaining a Roster of Hearing Officers

States have different processes to secure a roster of hearing officers, such as:

- using a central panel to manage the cases and provide Administrative Law Judges (ALJs); or
- contracting with Independent Hearing Officers (IHOs).

OSEP's implementation guidance states that SEAs must have more than one individual on their roster to serve as hearing officers [See: OSEP's Dispute Resolution Self-Assessment].

Coaching Questions

- ***If your State utilizes a central panel through another agency to provide Administrative Law Judges, how will the SEA monitor timelines and otherwise ensure IDEA compliance?***
- ***Is there an interagency agreement in place with procedural expectations clarified?***

Qualifications of Impartial Hearing Officers

Each public agency must keep a list of the persons who conduct due process hearings, including their qualifications [34 CFR §300.511(c)(3)].

At a minimum, a hearing officer must:

- ❑ not be an employee of the SEA or the LEA which is involved in the education or care of the child. Note: A person is not considered an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer [34 CFR §300.511(c)(2)];
- ❑ not be a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- ❑ 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;
- ❑ possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- ❑ possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice [34 CFR §300.511(c)(1)]

Note: The SEA is ultimately responsible for ensuring IDEA compliance of their due process complaint and hearing system, regardless of if another State agency provides a central panel of Administrative Law Judges to conduct the hearings.

Coaching Question

- ***What are the recruitment and appointment procedures in your State to ensure hearing officers are impartial and meet required qualifications?***

Standards of Practice

To ensure hearing officers adhere to federal and State regulations, some States create procedures and implement standards of practice on their roster for the hearing officers to follow.

Coaching Questions

- ***Does your State's hearing officer contracts specify their IDEA responsibilities, as well as the responsibilities of the SEA (e.g., transmission of the record, communicating schedule notifications)?***
- ***What mechanisms does your State use to monitor timelines, address any issues, and evaluate hearing officers prior to renewing contracts?***

Training of Hearing Officers

States have the discretion to determine the required training and frequency of training consistent with State rules and procedures [71 Federal Register, August 14, 2006, pg. 46705]. While States with one-tiered systems cannot review decisions for the purpose of seeing if the decisions are "correct," and States do not have the authority to change a hearing officer's decision, decisions that have been issued should be reviewed to identify hearing officer training needs.

Coaching Question

- ***What initial and ongoing training and support is provided to hearing officers to ensure necessary knowledge of IDEA?***

REPORTING OF DISPUTE RESOLUTION DATA

SEA data managers submit to Office of Special Education Programs (OSEP) their annual State data via E*MAPS* showing that the IDEA is being implemented. There are 12 data collections authorized under Section 618 of the IDEA, which include the State's Part B Dispute Resolution data.

In November, SEAs submit the previous school year's (SY) data, ending on June 30. OSEP reviews the reported data for quality issues and provides feedback. SEAs submit their finalized data, generally the following May. It is important to note that only actions initiated during the school year are reported. Actions initiated in a previous reporting year that continued into the current reporting year are not included in the current counts. For more detailed instructions, view OSEP's ED*Facts* Initiative. In addition to reporting on mediation and State complaints, SEAs report data on due process complaints and hearings, and expedited due process complaints and hearings (Sections 3 and 4).

IMPORTANT! Report only the actions initiated during the reporting year. Do NOT include actions initiated in a previous reporting year that continued into the current reporting year.

Specifically for due process activity, SEAs report:

Variable Reported	Explanation
3. Total number of due process complaints filed	Total number of due process complaints filed between July 1 and June 30. Expedited due process complaints are to be included in the counts entered in this section. Expedited due process complaints are also entered separately in Section D
3.1 Resolution meetings	The number of due process complaints (from row 3) that resulted in a resolution meeting as of the end of the reporting period (June 30)
3.1 (a) Written settlement agreements reached through resolution meetings	The number of resolution meetings that resulted in a written settlement agreement as of the end of the reporting period. *Note: States should include all written settlement agreements reached through resolution meetings during the 30-day resolution period. This includes written settlements finalized during a resolution meeting, as well as those finalized after the meeting, as long as they are finalized during the 30-day resolution period*
3.2 Hearings fully adjudicated	The number of the due process complaints (row 3) that resulted in hearings fully adjudicated as of the end of the reporting period; that is, the due process hearing was conducted, and the hearing officer issued a written decision by June 30
3.2 (a) Decisions within timeline (include expedited)	The written decisions included in row (3.2) that were decisions within timeline. (Do not include here the decisions within extended timelines.)
3.2 (b) Decisions within extended timeline	The number of the written decisions included in row 3.2 that were decisions within extended timelines. (Decision must be issued within specific time extension granted by the hearing or reviewing officer)
3.3 Due process complaints pending	The number of due process complaints (from row 3) that were due process complaints pending as of the end of the reporting period (June 30)
3.4 Due process complaints withdrawn or dismissed (including resolved without a hearing)	The number of due process complaints (from row 3) that were withdrawn or dismissed (including resolved without a hearing) as of the end of the reporting period (June 30)

Specifically for expedited due process activity (related to disciplinary decision), SEAs report:

Variable Reported	Explanation
4. Total number of expedited due process complaints filed	The total number of expedited due process complaints filed in the reporting period (between July 1 and June 30). The expedited due process complaints entered in row 4 are a subset of the due process complaints reported in row 3 of Section C
4.1 Expedited resolution meetings	The number of expedited due process complaints (from row 4) that resulted in a resolution meeting as of the end of the reporting period (June 30)
4.1 (a) Expedited written settlement agreements	The number of resolution meetings that resulted in a written settlement agreement as of the end of the reporting period (June 30). *Note: States should include all written settlement agreements reached through resolution meetings during the 15-day resolution period. This includes written settlements finalized during a resolution meeting, as well as those finalized after the meeting, as long as they are finalized during the 15-day resolution period.*
4.2 Expedited hearings fully adjudicated	The number of expedited due process complaints (from row 4) that resulted in expedited hearings fully adjudicated as of the end of the reporting period; that is, the due process hearing was conducted, and the hearing officer issued a written decision by June 30
4. 2 (a) Change of placement ordered	The number of the written decisions (from row 4.2) that resulted in a change of placement ordered
4.3 Expedited due process complaints pending	The expedited due process complaints (from row 4) that were expedited due process complaints pending as of the end of the reporting period (June 30)
4.4 Expedited due process complaints withdrawn or dismissed	The expedited due process complaints (from row 4) that were withdrawn or dismissed as of the end of the reporting period (June 30)

APPENDIX A: COACHING QUESTIONS

FILING A DUE PROCESS COMPLAINT

Forms Must Be Made Available

- *Are your State's model forms easy to understand?*
- *Are your State's model forms made accessible?*
- *What considerations are made for non-English speakers?*

Support for Parents

- *What is available in your State to ensure that parents have access to information about dispute resolution options, including how to file a DPH?*

Filing Electronically

- *How does your State determine when the due process complaint is received by both the SEA and the LEA in order to uniformly determine timelines?*
- *Where is this information made available? Is this information included in the procedural safeguards?*

RESPONDING TO DUE PROCESS COMPLAINTS

Other Party Response to a Due Process Complaint

- *Some SEAs require or allow the hearing officer to order the response from the receiving party be sent to the hearing officer. If so, the response becomes party of the administrative record. What is the process in your State?*

RESOLUTION PERIOD

Adjustments to the Resolution Period

- *How is the hearing officer informed of any adjustments to the timelines? Some States give that responsibility to the parties, however that doesn't always happen in a timely fashion. Others SEAs may inform the hearing officer directly. What is the process in your State?*

RESOLUTION MEETINGS

Failure to Hold a Resolution Meeting

- *What procedures are in place for the SEA to verify a resolution meeting was convened or waived?*

Confidentiality and the Resolution Meeting

- *What is the process for the SEA to learn of any agreement which occurs during the 30-day resolution period or if a hearing request has been withdrawn or a case has been dismissed?*

If No Agreement Was Reached During the Resolution Meeting

- *What procedures are in place to track whether or not a written agreement was reached during the resolution period?*

MEDIATION

Mediation During the Resolution Period

- *How does your State offer mediation to parties as a result of a filed due process complaint?*

- *For the purpose of tracking data, how does the SEA become informed about: 1) when parties agree to mediation; 2) if parties agree to adjusting the resolution period in order to continue mediation; 3) if a mediation ends in an agreement; or 4) if a party withdraws from the mediation?*

HEARING RIGHTS

- *Does your State allow parties the right to be represented by non-attorneys at due process hearings?*
- *Does the hearing officer training in your State address the hearing officer's process and authority for enforcing a subpoena issued to compel the attendance of witnesses?*
- *What is the process for the creation and provision of a written, or at the option of the parents, an electronic, verbatim record of the hearing and provision of written, or at the option of the parents, electronic findings of fact and decisions?*

Accommodations

- *What is your State's process for determining necessary accommodations for the parties or witnesses?*

HEARING DECISIONS

Review Process for States with a Two-tiered System

- *What tracking procedures are in place to ensure that hearing decisions and hearing reviews, if applicable, are completed within IDEA timelines for decisions?*

CONSIDERATIONS FOR OPERATIONALIZING THE QUALIFIED IMPARTIAL HEARING OFFICER REQUIREMENT

Maintaining a Roster of Hearing Officers

- *If your State utilizes a central panel through another agency to provide Administrative Law Judges, how will the SEA monitor timelines and otherwise ensure IDEA compliance?*
- *Is there an interagency agreement in place with procedural expectations clarified?*

Qualifications of Impartial Hearing Officers

- *What are the recruitment and appointment procedures in your State to ensure hearing officers are impartial and meet required qualifications?*

Standards of Practice

- *Does your State's hearing officer contracts specify their IDEA responsibilities, as well as the responsibilities of the SEA (e.g., transmission of the record, communicating schedule notifications)?*
- *What mechanisms does your State use to monitor timelines, address any issues, and evaluate hearing officers prior to renewing contracts?*

Training of Hearing Officers

- *What initial and ongoing training and support is provided to hearing officers to ensure necessary knowledge of IDEA?*