

Starting View

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## Due Process Complaints

- What is a due process complaint?



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## 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:

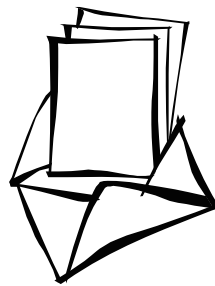


A due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a 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.

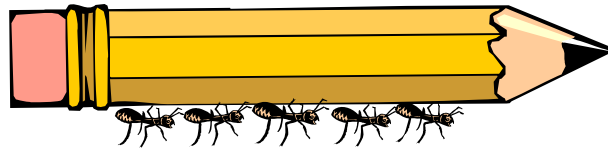
(3) A party may amend its due process complaint only if—

(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.<sup>1</sup> Question C-4 asks:

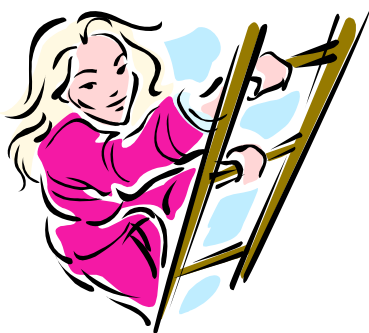


If a due process complaint is amended and the 15-day timeline to conduct a resolution meeting starts over, must the LEA conduct another resolution meeting?

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 answer<sup>2</sup>— 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.



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.



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<sup>1</sup> 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>)

<sup>2</sup>*Id.*, p. 8.