

View

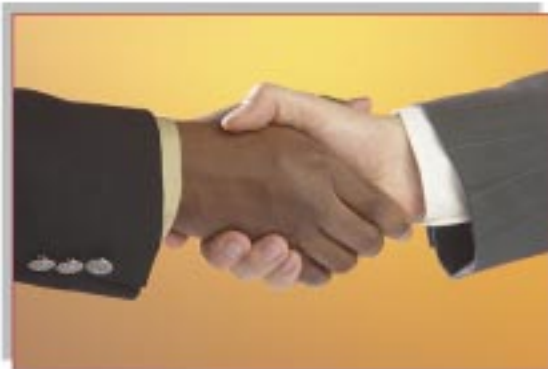
Resolution Process



- Description

Slide loads with Bullet 1.

Resolution Process



- Description
- Benefits

Click 1

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

Resolution Process

Clicks 2-4

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



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

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

CLICK to advance to next slide.

Slide 12: Background and Discussion

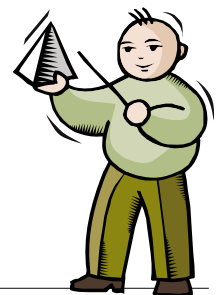
4 Clicks

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

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



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



Trainer Note

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

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

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

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

(2) The purpose of the meeting is for the parent of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.
[§300.510(a)(2)]

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

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

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

The Beginning of...

§300.510 Resolution process.

(a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—

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

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

[§300.510(a)(1)]

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

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

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

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

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

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

Who comes to the resolution meeting?

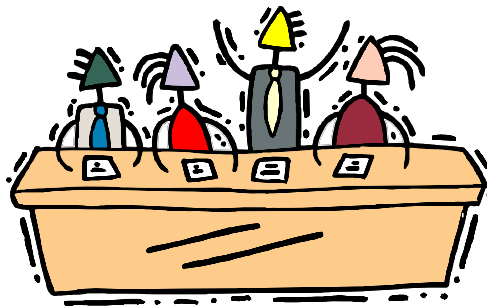
The opening paragraph of §300.510 (provided in the box above) states who must be involved in the resolution meeting: the parents and

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

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

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

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



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

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

What about the participation of attorneys in the resolution meeting?

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

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

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

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

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

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

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

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

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

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

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

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

In situations where an LEA convenes a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Must the discussions during the resolution meeting be kept confidential?

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

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

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

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

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

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

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



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

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

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

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

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

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

What about timelines?

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

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

So, we have two timelines to consider here:

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

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

More Provisions From...

§300.510 Resolution process.

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

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

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

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

[§300.510(d)-(e)]

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

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



Let's Talk Timelines:

More from §300.510 (and Elsewhere)

From §300.510

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

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

[§300.510(c)(3)]

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

§300.515 Timelines and convenience of hearings and reviews.

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

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

[§300.515(a)]

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

² *Id.*, p. 11.

³ *Id.*, p. 10.

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