

# Form C

## Timelines Involving Due Process Complaint (Hearing) Parent-Initiated (Does not apply to expedited hearings)

Parents	LEA/AEA	ALJ
Timeline starts when LEA and SEA receive parent due process complaint (hearing) request. (Must allege a violation that occurred not more than <b>two years</b> before the date the parent knew or should have known about the alleged action that forms the basis of the complaint, or if the State has an explicit time limitation for presenting such a complaint under this part. There are exceptions.)	<p>Within <b>10 days</b> of receiving hearing request:</p> <ol style="list-style-type: none"> <li>1. Send a prior written notice to the parent regarding the subject matter contained in the parent's due process request if it has not been done.</li> <li>2. Send to the parents a response that specifically addresses the issues raised in the hearing request if not included in #1 (prior written notice).</li> </ol>	
	<p>Within <b>15 days</b> of receiving due process complaint (hearing) request:</p> <ol style="list-style-type: none"> <li>1. Send written notification to the DE (for ALJ) and parent <i>if</i> the hearing request is not considered to meet all the due process complaint (hearing) notice requirements.</li> <li>2. Provide an opportunity to hold resolution meeting with parents and relevant member or members of IEP team.* However, all parties have the option of using the state's mediation process instead of holding the resolution meeting but the offer for the resolution meeting must be made.</li> </ol>	<p>Within <b>5 days</b> of receiving notification from the LEA of alleged insufficient notice from the parent, rule and immediately notify parties of his/her determination of notice adequacy. This is to be in writing.</p>
If ALJ rules the due process hearing request notice is insufficient, the parent may amend the notice only under certain circumstances. No timeline is given.		
If the parent files an amended due process hearing request the timelines shall recommence on the date of receipt by the LEA and DE, including the timeline for the resolution session.		
		If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint, the due process hearing may occur. Adjustments to the 30-day resolution period are described at §300.510(c) and the 45-day timeline starts.

\* 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 the requirements.

## Taken from OSEP Document (Re: Timelines)

### *IDEA* Regulations PROCEDURAL SAFEGUARDS: RESOLUTION MEETINGS AND DUE PROCESS HEARINGS

#### **1. Specify the timeline for filing a due process complaint.**

The 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 filing a due process complaint under Part 300, in the time allowed by that State law, except that the exceptions to the timeline described in 34 CFR 300.511(f) apply to the timeline in 34 CFR 300.507.

[34 CFR 300.507(a)(2)] [20 U.S.C. 1415(b)(6)(B)]

A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or 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 300, in the time allowed by that State law.

[34 CFR 300.511(e)] [20 U.S.C. 1415(f)(3)(C)]

The timeline described in 34 CFR 300.511(e) does not apply to a parent if the parent was prevented from filing a due process complaint due to:

- Specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the due process complaint; or
- The LEA's withholding of information from the parent that was required under Part 300 to be provided to the parent.

[34 CFR 300.511(f)] [20 U.S.C. 1415(f)(3)(D)]

#### **2. 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 the requirements of 34 CFR 300.508(b).**

[34 CFR 300.508(c)] [20 U.S.C. 1415(b)(7)(B)]

The due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in 34 CFR 300.508(b).

[34 CFR 300.508(d)(1)] [20 U.S.C. 1415(c)(2)(A), 1415(c)(2)(C)]

#### **3. Specify timelines for actions related to receipt of a due process complaint.**

If the LEA has not sent a prior written notice under 34 CFR 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten days of receiving the due process request, 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.

[34 CFR 300.508(e)(1)] [20 U.S.C. 1415(c)(2)(B)(i)(1)]

A response by an LEA under 34 CFR 300.508(e)(1) shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

[34 CFR 300.508(e)(2)] [20 U.S.C. 1415(c)(2)(B)(i)(II)]

Except as provided in 34 CFR 300.508(e), the party receiving a due process complaint must, within ten 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.

[34 CFR 300.508(f)] [20 U.S.C. 1415(b)(7), 1415(c)(2)(B)(ii)]

Within five days of receipt of notification under 34 CFR 300.508(d)(1), 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 34 CFR 300.508(b), and must immediately notify the parties in writing of that determination.

[34 CFR 300.508(d)(2)] [20 U.S.C. 1415(c)(2)(D)]

A party may amend its 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 34 CFR 300.510; or
- 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.

If a party files an amended due process complaint, the timelines for the resolution meeting in 34 CFR 300.510(a) and the time period to resolve in 34 CFR 300.510(b) begin again with the filing of the amended due process complaint.

[34 CFR 300.508(d)(3) and (4)] [20 U.S.C. 1415(c)(2)(E)]

#### **4. Add requirements for a resolution process.**

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 CFR 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:

- Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
- May not include an attorney of the LEA unless the parent is accompanied by an attorney.

The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

The meeting described in 34 CFR 300.510(a)(1) and (2) need not be held if:

- The parent and the LEA agree in writing to waive the meeting; or
- The parent and the LEA agree to use the mediation process described in 34 CFR 300.506.

The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.  
[34 CFR 300.510(a)] [20 U.S.C. 1415(f)(1)(B)(i)]

**5. Specify the timelines for the resolution period and that participation is required.**

If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.  
[34 CFR 300.510(b)(1)] [20 U.S.C. 145(f)(1)(B)(ii)]

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 34 CFR 300.510(b)(1) and (2), 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 34 CFR 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)]

If the LEA fails to hold the resolution meeting specified in 34 CFR 300.510(a) 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)]

**6. Specify the timelines for the commencement of due process hearings.**

Except as provided in 34 CFR 300.510(c), the timeline for issuing a final decision under 34 CFR 300.515 begins at the expiration of the 30-day resolution period.  
[34 CFR 300.510(b)(2)]

Adjustments to the 30-day resolution period. The 45-day timeline for the due process hearing in 34 CFR 300.515(a) 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;
- 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)]

The public agency must ensure that not later than 45 days after the expiration of the 30 day period under 34 CFR 300.510(b), or the adjusted time periods described in 34 CFR 300.510(c):

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

[34 CFR 300.515(a)]

If the State offers a State level review of hearing officer decisions, as permitted by the regulations, the SEA must ensure that not later than 30 days after the receipt of a request for a review:

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

[34 CFR 300.515(b)]

A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in 34 CFR 300.515(a) and (b) at the request of either party.

[34 CFR 300.515(c)]