

E. EXPEDITED DUE PROCESS HEARINGS

Authority: The requirements for expedited due process hearings are found in the regulations at 34 CFR §§300.532-533.

Question E-1: What is an expedited due process hearing?

Answer: An expedited due process hearing is a hearing involving a due process complaint regarding a disciplinary matter, which is subject to shorter timelines than a due process hearing conducted pursuant to 34 CFR §§300.507-300.516. Under 34 CFR §300.532(a), a parent²⁹ of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under 34 CFR §300.530(e), or an LEA that believes that maintaining the child’s placement is substantially likely to result in injury to the child or to others, may appeal the decision by requesting a hearing. If a parent or LEA files a due process complaint to request a due process hearing under one of these circumstances the SEA or LEA is responsible for arranging an expedited due process hearing, which must occur within 20 school days of the date that the due process 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). Although this hearing must be conducted on an expedited basis under these shortened timelines, it is an impartial due process hearing subject to the requirements of 34 CFR §§300.507, 300.508(a)-(c), and §§300.510-300.514, except as provided in 34 CFR §300.532(c)(2)-(4), as described in Question E-3. 34 CFR §300.532(c)(1).

The shortened timelines for conducting expedited due process hearings in disciplinary situations should enable hearing officers to make prompt decisions about disciplinary matters while ensuring that all of the due process protections in 34 CFR §§300.510-300.514 are maintained.

Note that when a due process complaint requesting an expedited due process hearing is filed either by the parent or the LEA, the child must remain in the alternative educational setting chosen by the IEP Team pending the hearing officer’s decision or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise. 34 CFR §300.533 and 71 FR 46726 (August 14, 2006).

²⁹ See Footnote 5 in Section A of this Q&A document for the definition of the term “parent” and for information about the transfer of rights accorded to parents under Part B of the IDEA to a student who has reached the age of majority under State law.

Question E-2: What is the hearing officer’s authority in an expedited due process hearing?

Answer: An impartial hearing officer conducting an expedited due process hearing under 34 CFR §300.511 hears, and makes a determination regarding, the due process complaint. Under 34 CFR §300.532(b)(2), a hearing officer also has the authority to determine whether the child’s removal from his or her placement violated 34 CFR §300.530 (authority of school personnel); whether a child’s behavior was a manifestation of his or her disability; and whether maintaining the child’s current placement is substantially likely to result in injury to the child or to others. In determining what is the appropriate relief, if any, the hearing officer may return the child to the placement from which he or she was removed or may order that a child’s placement be changed to an appropriate interim alternative educational setting for no 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. 34 CFR §300.532(b)(2). These procedures 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)(3).

A decision in an expedited due process hearing may be appealed consistent with 34 CFR §§300.514 and 300.516. 34 CFR §300.532(c)(5). In a one-tier system, where the SEA conducts the expedited due process hearing, a party aggrieved by the findings and decision has the right to appeal by bringing a civil action in a 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) and 300.532(c)(5). In a two-tier system, where the public agency directly responsible for the education of the child conducts the expedited due process hearing, the findings and decision in the hearing can be appealed to the SEA. 34 CFR §300.514(b). If a party is dissatisfied with the SEA’s decision, the party may appeal by bringing a civil action in an appropriate State or Federal court, pursuant to 34 CFR §300.516. 34 CFR §300.514(d).

Question E-3: How is the timeline for conducting an expedited due process hearing calculated? Does this timeline begin after the resolution period?

Answer: The following shortened timelines apply when a due process complaint requesting an expedited due process hearing is filed. The resolution meeting must occur within seven days of receiving notice of the parent’s due process complaint (34 CFR §300.532(c)(3)(i)), unless the parents and the LEA agree in writing to waive the resolution meeting, or agree to use the mediation process described in 34 CFR §300.506 (34 CFR §300.532(c)(3)). Under 34 CFR §300.532(c)(3)(ii), the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. Thus, for expedited due process

hearings, there is a 15-day resolution period from the date the parent’s due process complaint requesting an expedited due process hearing is received, and the time period for resolution is measured in terms of calendar days, not school days. Under 34 CFR §300.11(a), “[d]ay means calendar day, unless otherwise indicated as business day or school day.” The Part B regulations define school day as “any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.” 34 CFR §300.11(c).

Further, the expedited due process hearing must occur within 20 school days from the date that the parent’s due process complaint requesting a due process hearing is filed. Thus, the resolution period is part of, and not separate from, the expedited due process hearing timeline. If an expedited due process hearing occurs, the hearing officer must make a determination within 10 school days after the hearing. 34 CFR §300.532(c)(2).

Question E-4: May the parties mutually agree to extend the resolution period to resolve an expedited due process complaint?

Answer: No. There is no provision in the IDEA or the Part B regulations that permits adjustments to the 15-day resolution period for expedited due process complaints. 34 CFR §300.532(c). Also, there is no provision in the Part B regulations permitting the parties to agree to extend this time period. Therefore, when the parties have participated in a resolution meeting or engaged in mediation and the dispute has not been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the expedited due process hearing may proceed. 34 CFR §300.532(c)(3)(ii).

Question E-5: How must SEAs and LEAs apply the timeline requirements for expedited due process hearings if the due process complaint is filed when school is not in session?

Answer: When a due process complaint requesting an expedited due process hearing is filed during the summer or when school is not otherwise in session, the SEA or LEA responsible for arranging the expedited due process hearing is not required to count those days in calculating the expedited due process hearing timelines. A school day has the same meaning for all children in school, including children with and without disabilities. 34 CFR §300.11(c)(2). Therefore, any day that children without disabilities are not in school is not counted as a school day, and is not considered in calculating the expedited due process hearing timelines. For example, a day on which a public agency only provides extended school year services to children with disabilities and does not operate summer school programs for all children cannot be counted as a “school day.” 71 FR 46552 (August 14, 2006). In contrast, if a due process

complaint requesting a hearing is filed under 34 CFR §§300.507-300.516, when school is not in session, the SEA is required to meet the 30-day resolution period and 45-day hearing timelines in 34 CFR §§300.510 and 300.515(a).

Question E-6: May a party challenge the sufficiency of a due process complaint requesting an expedited due process hearing?

Answer: No. The sufficiency provision in 34 CFR §300.508(d), described previously in Questions C-3 and C-4 of this Q&A document, does not apply to expedited due process complaints. Because of the shortened timelines that apply to conducting an expedited due process hearing, it would be impractical to extend the timeline in order for this provision to apply. 34 CFR §300.532(a) and 71 FR 46725 (August 14, 2006).

Question E-7: May a hearing officer extend the timeline for making a determination in an expedited due process hearing?

Answer: No. The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the due process 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). 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 this determination at the request of a party to the expedited due process hearing.

A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines in 34 CFR §300.532(c)(3), those rules must be consistent with 34 CFR §§300.510 through 300.514.

Question E-8: How can the parties meet the requirement in 34 CFR §300.512(b) to disclose evaluations and recommendations to all parties at least five business days before an expedited due process hearing begins?

Answer: Because the 15-day resolution period for a due process complaint requesting an expedited due process hearing concludes well before the 20-school-day period within which the hearing must occur, the parties should have enough time to meet this requirement before the hearing begins. This is because 15 calendar days would usually be the equivalent of 11 school days. Also, there is nothing in the IDEA that would prevent the parties from agreeing to disclose relevant information to all other parties less than five business days prior to an expedited due process hearing. 71 FR 46706 (August 14, 2006).

Question E-9: May a school district proceed directly to court for a temporary injunction to remove a student from his or her current educational placement for disciplinary reasons or must the school district exhaust administrative remedies by first filing a due process complaint to request an expedited due process hearing?

Answer: While this situation is not addressed specifically by the Part B regulations, the Department's position, in the context of discipline, is that a school district may seek judicial relief through measures such as a temporary restraining order when necessary and legally appropriate. In addition, there is extensive case law addressing exigent circumstances where exhaustion of administrative remedies is not required or where the failure to exhaust administrative remedies may be excused. In general, a school district that goes directly to court seeking to remove a child with a disability would need to show that the proposed removal is appropriate (e.g., that other interventions will not reduce the immediate risk of injury) and that exhaustion of the expedited due process hearing process should not be required (e.g., due to the exigency of the situation). If appropriate, prior to seeking a court order, the LEA should attempt other interventions which could include, but are not limited to, the use of positive behavioral interventions and supports and other strategies to address the behavior giving rise to the proposed removal. See 34 CFR §§300.324(a)(2)(i) and 300.530(e)-(f).

Key regulatory references related to expedited due process hearings, as cited above, can be found at <http://idea.ed.gov/explore/home> and include the following:

- 34 CFR §300.11
- 34 CFR §§300.506-300.516
- 34 CFR §§300.530-300.533