C. DUE PROCESS COMPLAINTS AND DUE PROCESS HEARING PROCEDURES

Authority: The requirements for due process complaints and due process hearings are found in the regulations at 34 CFR §§300.507-300.516.

Question C-1: Why does the IDEA require that a party file a due process complaint in order to request a due process hearing?

Answer: The IDEA Amendments of 2004 made significant changes to IDEA's due process procedures, and parties no longer have the right to request a due process hearing directly. Rather, in order to request a due process hearing under the IDEA, a party (a parent[21] or a public agency[22]) or the attorney representing the party, first must file a due process complaint consistent with 34 CFR §§300.507 and 300.508. When a parent or a parent's attorney files a due process complaint, the IDEA provides for a 30-day resolution period, subject to certain adjustments, prior to the initiation of a due process hearing. 34 CFR §300.510. The purpose of the resolution process[23] is to attempt to achieve a prompt resolution of the parent's due process complaint as early as possible at the local level and to avoid the need for a more costly, adversarial, and time-consuming due process proceeding. Thus, the IDEA's due process procedures emphasize prompt and early resolution of disputes between parents and public agencies through informal mechanisms at the local level without resorting to the more formal and costly due process hearing procedures and potential for civil litigation.

Question C-2: Who may file a due process complaint?

Answer: A parent or a public agency may file a due process complaint to request a due process hearing on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child. 34 CFR §300.507(a).

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[21] 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.

[22] See Footnote 6 in Section A of this Q&A document for the definition of the term "public agency."

[23] For more information on the resolution process, see Section D of this Q&A document.

Question C-3: What happens after a due process complaint is submitted?

Answer: Under 34 CFR §300.508(a), the party filing the due process complaint, or the attorney representing the party, must forward a copy of the complaint to the other party and to the SEA, and that complaint must remain confidential. A due process complaint must meet the content requirements in 34 CFR §300.508(b) and therefore, must contain: 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 homeless youth, 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.

The next step in the process is to determine whether the complaint can be deemed sufficient—i.e., whether the due process complaint contains the information outlined above. Section 300.508(d)(1) provides that 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 the receiving party believes the complaint does not meet the content requirements in 34 CFR §300.508(b). Under 34 CFR §300.508(d)(2), the hearing officer has five days to make a determination on the sufficiency of the complaint (i.e., whether the due process complaint meets the applicable content requirements). This determination is made based on the hearing officer's review of the complaint alone. The hearing officer must immediately notify both parties in writing of the determination of whether the due process complaint meets the content requirements in 34 CFR §300.508(b). If the hearing officer determines that the due process complaint notice is not sufficient, the hearing officer's decision must identify how the notice is insufficient so that the filing party can amend the due process complaint, if appropriate. 71 FR 46698 (August 14, 2006).

In addition, with the one exception described below, the party receiving a due process complaint must send the other party a response, which specifically addresses the issues raised in the due process complaint, within 10 days of receiving notice of the complaint from the other party. The one exception is if the LEA receiving the due process complaint has not sent the parent a prior written notice consistent with 34 CFR §300.503, concerning the subject matter of the parent's due process complaint. If the LEA has not done so before the parent's due process complaint has been filed, the LEA must send the parent a prior written notice, consistent with 34 CFR §300.503, which explains, among other matters, why the LEA proposed or refused to take the action raised in the due process complaint.

Prior to the initiation of a due process hearing, within 15 days of receiving notice of the parent's due process complaint, the LEA must convene a

resolution meeting with the parent and the relevant member or members of the IEP Team to discuss the issues in the parent's due process complaint, unless the parent and the LEA agree in writing to waive the meeting or the parties agree to use mediation under 34 CFR §300.506.[24] 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).

Question C-4: What happens if a hearing officer determines that a due process complaint is insufficient?

Answer: As explained in the *Analysis of Comments and Changes* to the final Part B regulations:

> If the hearing officer determines the notice [due process 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 FR 46698 (August 14, 2006).

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 (opportunity for a resolution meeting or, the parent and the LEA agree in writing to waive the meeting, or if the parties agree to use the mediation process in §300.506); 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 FR 46698 (August 14, 2006).

In general, a party may refile a due process complaint if the complaint remains within the applicable timeline for filing, whether the IDEA timeline or the State-established timeline, under 34 CFR §§300.507(a)(2) and 300.511(f).

Question C-5: What is the timeline for filing a due process complaint?

Answer: 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

[24] For more information on mediation, see Section A of this Q&A document.

complaint, or, if the State has an explicit time limitation for filing a due process complaint under 34 CFR part 300, in the time allowed by that State law. 34 CFR §300.507(a)(2). The applicable timelines described above do not apply to a parent if the parent was prevented from filing a due process complaint due to: (1) specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) the LEA's withholding of information from the parent it was required under part 300 to provide to the parent. 34 CFR §300.511(f). There is nothing in the IDEA or the Part B regulations that would preclude a State from having a time limit for filing a due process complaint that is shorter or longer than two years. 71 FR 46697 (August 14, 2006). 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 that must be given to parents one time a year and upon receipt of the first due process complaint under 34 CFR §300.507 in a school year.
34 CFR §§300.504(a)(2) and 300.504(c)(5)(i).

Question C-6: May States establish procedures permitting a due process complaint to be filed electronically?

Answer: Yes. Under 34 CFR §300.508(a)(1), the public agency must have procedures that require the party or the attorney representing the party to provide to the other party a due process complaint (which must remain confidential). The party filing the due process complaint must forward a copy of the complaint to the SEA, and the complaint must include specific content as described in Question C-3. 34 CFR §300.508(a)(2) and (b). So long as these requirements are met, there is nothing in the Part B regulations that would prohibit a State from accepting due process complaints that are filed electronically. Because the IDEA does not prohibit this practice, 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. Compare, 71 FR 46629 (August 14, 2006) (regarding whether States can accept electronic parental consent).

In developing the appropriate safeguards, States also should consider that the Department has addressed criteria for accepting electronic signatures to satisfy the signed, written consent requirements in the FERPA regulations in 34 CFR part 99. Under 34 CFR §99.30(d), "signed and dated written consent" may include a record and signature in electronic form that identifies and authenticates a particular person as the source of the consent and indicates such person's approval of the information contained in the electronic consent.

Applying these criteria to electronic due process complaint submissions, it would be reasonable for States that either are considering accepting, or have chosen to accept, electronic filings of due process complaints to ensure that their process includes safeguards sufficient to identify or authenticate the

party filing the complaint and indicate that the party approves of the information in the due process complaint. In other words, these safeguards should 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. States would also need to 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 that are considering or have chosen to accept due process complaints filed electronically should also consult any relevant State laws governing electronic transactions.

Question C-7: Must States have procedures for tracking when due process complaints are received, including due process complaints filed electronically if a State accepts due process complaints filed electronically?

Answer: Yes. States must have procedures, which may be determined by State law, to determine when due process complaints are received, whether filed in hard copy or electronically, including mechanisms to ensure the timely resolution of due process complaints in accordance with 34 CFR §300.510 and for the timely resolution of due process hearings in accordance with 34 CFR §300.515. While a State has some discretion in establishing procedures for determining when a due process complaint notice is considered received, the State remains responsible for ensuring that its procedures allow for the timely resolution of due process complaints and due process hearings and are uniformly applied, consistent with 34 CFR §§300.510 and 300.515. For example, if a due process complaint notice is filed electronically on a day that is not considered a business day (e.g., the weekend), the State could consider the due process complaint notice received on the date the due process complaint notice is filed or on the next business day.

Under 34 CFR §300.504(c)(5), the State must include an explanation of the State's due process complaint procedures in the notice of procedural safeguards, which must be given to parents one time a year and upon receipt of the first due process complaint under 34 CFR §300.507 in a school year. Because these procedures must include filing and decisional deadlines, these procedures would need to address the criteria that the State uses for determining when the State considers a due process complaint notice to be received, including due process complaint notices filed electronically, if the State permits due process complaints to be filed electronically.

Question C-8: Are there any mechanisms that an SEA must provide to assist parents and public agencies in filing a due process complaint?

Answer: Under 34 CFR §300.509, each SEA must develop model forms to assist parents and public agencies in filing a due process complaint; however, the

SEA or LEA may not require the use of the model forms. Parents and public agencies may use the appropriate model form, or another form or document, so long as the form or document that is used meets the content requirements in 34 CFR §300.508(b) for filing a due process complaint. If the SEA's model form includes content not required by 34 CFR §300.508(b), the form must identify that content and specify that it is optional.

Question C-9: May a parent file a due process complaint because his or her child's teacher is not highly qualified?

Answer: No. The regulations in 34 CFR §300.18(f) state that there is no right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified. See also 34 CFR §300.156(e). However, a parent may file a State complaint with the SEA or use the mediation process under 34 CFR §300.506 to resolve issues regarding staff qualifications. See also Question C-1 in *Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities, dated January 2007* and Question A-6 of this Q&A document.

Question C-10: Under what circumstances does the IDEA permit parents of parentally-placed private school children with disabilities to use IDEA's due process procedures?

Answer: The Department provided the following explanation in Question L-1 in *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, April 2011:

> As provided in 34 CFR §300.140(b), a parent of a child enrolled by that parent in a private school has the right to file a due process complaint regarding the child find requirements in 34 CFR §300.131, including the requirements in 34 CFR §§300.300 through 300.311. The due process provisions in section 615 of the Act and 34 CFR §§300.504 through 300.519 of the regulations do not apply to issues regarding the provision of services to any particular parentally-placed private school child with disabilities whom an LEA has agreed to serve because there is no individual right to services for such children under the IDEA. 34 CFR §300.140(a).

However, as described in Question A-7 of this Q&A document, disputes that arise about equitable services are subject to the State complaint procedures in 34 CFR §§300.151-300.153.[25] 34 CFR §300.140(c)(1). A parent wishing to

[25] For more information on State complaint procedures, see Section B of this Q&A document.

file a complaint alleging that an SEA or LEA has violated the requirements in 34 CFR §§300.132-300.135 and §§300.137-300.144 may file a State complaint with the SEA in accordance with the State complaint procedures in 34 CFR §§300.151-300.153.

In addition, under 34 CFR §300.148 and Supreme Court case law, where FAPE is at issue, parents of a parentally-placed private school child with a disability may utilize the due process procedures, including mediation, if seeking reimbursement for the private school placement based on a denial of FAPE.

Question C-11: Under what circumstances may a public agency use IDEA's due process procedures to override a parent's refusal to consent?

Answer: A public agency may use the due process procedures to override a parent's refusal to consent or 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. If a parent of a child enrolled in public school, or seeking to be enrolled in public school, does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the due process procedures in 34 CFR §§300.507-300.516, if appropriate, except to the extent inconsistent with State law relating to such parental consent. 34 CFR §300.300(a)(3)(i). Also, a public agency may, but is not required to, use the due process procedures to seek to override a parent's refusal to provide consent to a reevaluation, if the parent has enrolled his or her child or is seeking to enroll the child in a public school. 34 CFR §300.300(c)(1)(ii).

However, if a parent of a child who is home schooled or parentally-placed in a private school by the parent at the parent's expense does not provide consent (or fails to respond to a request to provide consent) for the initial evaluation or reevaluation of his or her child, the public agency may not use the due process procedures under 34 CFR §§300.507-300.516 in order to obtain agreement or a ruling that the evaluation or reevaluation may be provided to the child. 34 CFR §300.300(d)(4).

In addition, if a parent fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services to his or her child, the public agency may not use the due process procedures under 34 CFR §§300.507-300.516 in order to obtain agreement or a ruling that the services may be provided to the child. 34 CFR §300.300(b)(3). Further, if at any time subsequent to the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of special education and related services to his or her child, the public agency may not use the due process procedures under 34 CFR §§300.507-300.516 in

order to obtain agreement or a ruling that the services may be provided to the child. 34 CFR §300.300(b)(4).

Question C-12: If a parent wishes to obtain an independent educational evaluation (IEE) at public expense pursuant to 34 CFR §300.502(b)(1), and the public agency believes that its evaluation is appropriate, must the public agency file a due process complaint to request a due process hearing?

Answer: Yes. Under 34 CFR §300.502(b)(2), if a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§300.507-300.513 that the evaluation obtained by the parent did not meet agency criteria. If the public agency files a due process complaint to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. Once a final decision is rendered, a parent aggrieved by that decision would have the right to appeal that decision to the SEA pursuant to 34 CFR §300.514, if applicable, or to bring a civil action in an appropriate State or Federal court pursuant to 34 CFR §300.516.

Question C-13: If both parents have legal authority to make educational decisions for their child and one parent revokes consent for the provision of special education and related services pursuant to 34 CFR §300.9(c), may the other parent file a due process complaint to override the revocation of consent?

Answer: No. As long as the parent has legal authority pursuant to applicable State law or a court order to make educational decisions for the child, the public agency must accept either parent's revocation of consent under 34 CFR §300.300(b)(4). A parent who disagrees with the other parent's revocation of consent does not have the right to use the due process procedures to override the other parent's revocation of consent for their child's continued receipt of special education and related services. The IDEA does not address this issue as State law governs the resolution of disagreements between parents. However, the public agency may, based on State or local law, provide or refer parents to alternative dispute resolution systems to attempt to resolve their disagreements.

Question C-14: Does the IDEA address where due process hearings and reviews are held?

Answer: The Part B regulations require that each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. 34 CFR §300.515(d). OSEP believes that it is important for public agencies to be flexible in scheduling due process hearings to enable parents to participate. While a public agency

must make a good faith effort to accommodate the parent's scheduling request, consistent with 34 CFR §300.515(d), 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 and/or review.

Question C-15: What requirements apply to the qualifications and impartiality of hearing officers?

Answer: The Part B regulations are designed to ensure the independence of hearing officers, while maintaining minimum qualifications. Under 34 CFR §300.511(c), a hearing officer must not be: (1) an employee of the SEA or the LEA that is involved in the education or care of the child; or (2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing. This provision addresses independence.

Under 34 CFR §300.511(c)(1)(ii)-(iv), a hearing officer also must: (1) possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; (2) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (3) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. This provision addresses minimum qualifications for impartial hearing officers.

Also, 34 CFR §300.511(c)(2) provides that a person who otherwise qualifies to conduct a hearing under 34 CFR §300.511(c)(1) is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. This provision clarifies that hearing officers may be reimbursed for serving as hearing officers without compromising their impartiality. 71 FR 46705 (August 14, 2006).

Question C-16: Does the SEA have the authority to determine whether a due process complaint constitutes a new issue compared to a previously adjudicated due process complaint between the same parties?

Answer: No. The *Analysis of Comments and Changes* accompanying the 1999 final Part B regulations reflects the Department's long-standing position that this matter is an issue for the hearing officer to decide and is not a decision that can be made by the public agency, including an LEA or an SEA. Therefore, a public agency does not have the authority to deny a parent's due process complaint requesting a due process hearing on the basis that it believes the parent's issues are not new. Rather, IDEA leaves these determinations to a hearing officer. 64 FR 12613 (March 12, 1999).

Question C-17: May State law authorize the SEA to unilaterally dismiss or otherwise limit the issues that can be the subject of a party's due process complaint?

Answer: No. Under the IDEA, hearing officers have complete authority to determine the sufficiency of all due process complaints filed and to determine jurisdiction of issues raised in due process complaints consistent with 34 CFR §§300.508(d) and 300.513.

Question C-18: Do hearing officers have jurisdiction over issues raised by either party during the prehearing or hearing which were not raised in the due process complaint?

Answer: Pursuant to 34 CFR §300.511(d), 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 34 CFR §300.508(b), unless the other party agrees. The IDEA does not address whether the non-complaining party may raise other issues at the hearing that were not raised in the due process complaint. Therefore, the decision as to whether such matters can be raised at the hearing should be left to the discretion of the hearing officer in light of the particular facts and circumstances of the case. 71 FR 46706 (August 14, 2006).

Question C-19: Do hearing officers have the authority to raise and address issues of noncompliance that were not raised by the parties?

Answer: The 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 FR 46706 (August 14, 2006).

Question C-20: Under what circumstances may a State prohibit hearing officers from reviewing the appropriateness, and ordering the implementation of, settlement agreements reached under the IDEA?

Answer: The IDEA provides that agreements reached through the mediation or resolution processes may be enforced in an appropriate State or Federal court, or by the SEA if applicable. 34 CFR §§300.506(b)(7), 300.510(d)(2), and 300.537. Neither the IDEA nor the Part B regulations specifically address the authority of hearing officers to review or approve these settlement agreements. Also, the IDEA does not specifically address enforcement by hearing officers of settlement agreements reached by the parties outside of the IDEA's mediation and resolution processes. Therefore, in the absence of controlling case law, a State may have uniform rules relating to a hearing officer's authority or lack of authority to review and/or enforce settlement

agreements reached outside of the IDEA's mediation and/or resolution processes. However, such rules must have general application and may not be limited to proceedings involving children with disabilities and their parents.

Question C-21: Once the 30-day resolution period or adjusted resolution period expires, what is the timeline for issuing a final hearing decision?

Answer: The public agency conducting the due process hearing (either the SEA or the public agency directly responsible for the education of the child) must ensure that not later than 45 days after the expiration of the 30-day resolution period described in 34 CFR §300.510(b) or the adjustments to the time period permitted in 34 CFR §300.510(c), a final decision is reached in the due process hearing and a copy of the decision is mailed to each of the parties. The SEA is responsible for monitoring compliance with this timeline, subject to any allowable extensions described in Question C-22. 34 CFR §§300.149 and 300.600.

Question C-22: When would it be permissible for a hearing officer to extend the 45-day timeline for issuing a final decision in a due process hearing on a due process complaint or for a reviewing officer to extend the 30-day timeline for issuing a final decision in an appeal to the SEA, if applicable?

Answer: The timelines for due process hearings and reviews described in 34 CFR §300.515(a) and (b) may only be extended if a hearing officer or reviewing officer exercises the authority to grant a specific extension of time at the request of a party to the hearing or review. 34 CFR §300.515(c).

A hearing officer may not unilaterally extend the 45-day due process hearing timeline. Also, a hearing officer may not extend the hearing decision timeline for an unspecified time period, even if a party to the hearing requests an extension but does not specify a time period for the extension. Likewise, a reviewing officer may not unilaterally extend the 30-day timeline for reviewing the hearing decision. In addition, a reviewing officer may not extend the review decision timeline for an unspecified time period, even if a party to the review requests an extension but does not specify a time period for the extension.

Question C-23: If an SEA contracts with another agency to conduct due process hearings on its behalf, can those decisions be appealed to the SEA?

Answer: No. In a one-tier system, the SEA conducts due process hearings. In a two-tier system, the public agency directly responsible for the education of the child conducts due process hearings. The determination of which entity conducts due process hearings is based on State statute, State regulation, or a written policy of the SEA. 34 CFR §300.511(b). In a one-tier system, a party

aggrieved by the SEA's findings and decision has the right to appeal by bringing a civil action 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). In a one-tier system, an aggrieved party has no right of appeal to the SEA. However, in a two-tier system, an aggrieved party has the right to appeal the public agency's decision to the SEA which must conduct an impartial review of the findings and decision appealed. 34 CFR §300.514(b). A party dissatisfied with the decision of the SEA's reviewing official has the right to bring a civil action 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 §§300.514(d) and 300.516(a). There is nothing in the IDEA that would prohibit a State with a one-tier due process system from carrying out its responsibility by retaining impartial hearing officers under contract to conduct the hearings or contracting with another agency that is not a public agency under the IDEA to conduct the hearings. Because the SEA is the entity responsible for conducting the hearing, there is no right of appeal to the SEA.

Question C-24: Does a parent have the right to receive a hearing record at no cost, even though the applicable time period to appeal the hearing decision has expired?

Answer: Yes. The IDEA provides specific rights to a party to a due process hearing conducted pursuant to 34 CFR §§300.507-300.513, or a party appealing the due process hearing decision to the SEA pursuant to 34 CFR §300.514(b), if applicable, or a party to an expedited due process hearing conducted pursuant to 34 CFR §300.532. A party to these proceedings has the right to obtain a written, or, at the option of the parents, an electronic, verbatim record of the hearing. A party to these proceedings also has the right to obtain a written, or, at the option of the parents, electronic findings of fact and decisions. 34 CFR §300.512(a)(4) and (5). Parents must be given the right to have the record of the hearing and the findings of fact and decisions provided at no cost. 34 CFR §300.512(c)(3).

The IDEA and the Part B regulations do not establish a time period within which a parent must request a record of the hearing or the findings of fact and decisions; nor do they otherwise limit the time period of a parent's right to receive the hearing record and findings of fact and decisions at no cost. We also note that in very limited circumstances, judicial principles of fairness may allow a reviewing officer or court to waive the timeline for a specific appeal. Moreover, the information contained in a hearing record or in the findings of fact and decisions could be used for purposes other than appealing a due process hearing decision. There could be situations where a parent would need the information contained in the hearing record or decision for an IEP Team meeting or for mediation or in a subsequent State complaint or due process complaint.

In addition, States and their public agencies are required to retain records to show compliance with programmatic requirements for a three-year period. If any litigation involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. 34 CFR §§76.731 and 80.42(b).

Question C-25: Are "motions for reconsideration" permitted after a hearing officer has issued findings of fact and a decision in a due process hearing?

Answer: As explained in Question C-23, in a one-tier system where the due process hearing is conducted by the SEA, or its agent, a party does not have the right to appeal a decision to the SEA or make a motion for reconsideration. Under 34 CFR §300.514(a), a decision made in a due process hearing conducted by the SEA is final, except that a party aggrieved by that decision may appeal the decision by bringing a civil action in any State court of competent jurisdiction or in a district court of the United States under 34 CFR §300.516.

Once a final decision has been issued, no motion for reconsideration is permissible. However, a State can allow motions for reconsideration prior to issuing a final decision, but the final decision must be issued within the 45-day timeline or a properly extended timeline. For example, motions for reconsideration of interim orders made during the hearing would be permissible as long as the final decision is issued within the 45-day timeline or a properly extended timeline. Proper notice should be given to parents if State procedures allow for amendments and a reconsideration process may not delay or deny parents' right to a decision within the time periods specified for hearings and appeals. 64 FR 12614 (March 12, 1999).

There may be situations in which the final due process hearing decision contains technical or typographical errors. It is permissible for a party to request correction of such errors when the correction does not change the outcome of the hearing or substance of the final hearing decision. This type of request does not constitute a request for reconsideration as discussed within this response.

Question C-26: What is the SEA's responsibility after a due process hearing decision is issued?

Answer: Hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State as required by 34 CFR §§300.511-300.514. The SEA, pursuant to its general supervisory responsibility under 34 CFR §§300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing

officer's decision in a timely manner, unless either party appeals the decision. If necessary to achieve compliance from the LEA, the SEA may use appropriate enforcement actions consistent with its general supervisory responsibility under 34 CFR §§300.600 and 300.608.

Question C-27: Which public agency is responsible for transmitting the findings and decisions in a hearing to the State advisory panel (SAP) and making those findings and decisions available to the public?

Answer: The entity that is responsible for conducting the hearing transmits the findings and decisions to the SAP and makes them available to the public. In a two-tier system where the hearing is conducted by the public agency directly responsible for the education of the child (i.e., the LEA), that public agency, after deleting any personally identifiable information, must transmit the findings and decisions in the hearing to the SAP and make those findings and decisions available to the public. In a one-tier system where the hearing is conducted by the SEA, the SEA must first delete any personally identifiable information and then transmit the findings and decisions in the hearing to the SAP and make those findings and decisions available to the public.
34 CFR §300.513(d). If a State has a two-tier 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 SAP and make those findings and decisions available to the public.
34 CFR §300.514(c). In carrying out these responsibilities, SEAs and LEAs must comply with the confidentiality of information provisions in 34 CFR §§300.611-300.626. 34 CFR §300.610.

OSEP has advised that in a one-tier due process system, the SEA may meet these requirements by means such as posting the redacted decisions on its Web site or another Web site location dedicated for this purpose and directing SAP members or members of the public to that information.

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

- 34 CFR §300.140
- 34 CFR §300.149
- 34 CFR §300.167
- 34 CFR §§300.507-300.516
- 34 CFR §300.520
- 34 CFR §300.600
- 34 CFR §§300.611-300.626

The Q&A documents cited in this section can be found at:

- *Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, January 2007: http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C2%2C
- *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, April 2011: http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C