

D. RESOLUTION PROCESS

Authority: The requirements for the resolution process are found in the regulations at 34 CFR §300.510.

Question D-1: What is the purpose of the resolution meeting?

Answer: The purpose of the resolution meeting is to achieve a prompt and early resolution of a parent's²⁶ due process complaint to avoid the need for a more costly, adversarial, and time-consuming due process hearing and the potential for civil litigation. Section 300.510(a)(1) of the Part B regulations, consistent with section 615(f)(1)(B)(i) of the IDEA, provides that within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of an impartial due process hearing under 34 CFR §300.511, the LEA must convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the due process complaint.²⁷ The two exceptions to this requirement are described in Question D-6. In the *Analysis of Comments and Changes* accompanying the August, 2006 final Part B regulations, the Department described the purpose of a resolution meeting as follows:

The purpose of the [resolution] meeting is for the parent to discuss the due process complaint and the facts that form the basis of the due process complaint so that the LEA has an opportunity to resolve the dispute. 71 FR 46700 (August 14, 2006).

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).

²⁶ 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.

²⁷ For expedited due process complaints, the resolution meeting must occur within seven days of receiving notice of the parent's due process complaint. 34 CFR §300.532(c)(3). The resolution process requirements for expedited due process complaints are described in more detail in Section E of this Q&A document.

Question D-2: Why is a resolution meeting not required when an LEA files a due process complaint?

Answer: The IDEA requires an LEA to convene a resolution meeting only if the parent is the complaining party.²⁸ Section 615(f)(1)(B)(i) of the IDEA is clear that the LEA's obligation to convene a resolution meeting prior to the initiation of a due process hearing is triggered within 15 days of receiving notice of a parent's due process complaint, and the implementing regulation in 34 CFR §300.510(a) reflects this statutory provision. As explained in Note 212 of Conf. Rpt. (Conference Report) No. 108-779, p. 217 (2004), "[b]oth the House Bill and Senate amendment require the LEA and parent of a child with a disability to meet within 15 days of a parent's complaint being filed to attempt to resolve the complaint." Thus, as also explained in the *Analysis of Comments and Changes* accompanying the Part B regulations, "[t]here 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 FR 46700 (August 14, 2006). Therefore, we expect that LEAs will attempt to resolve disputes with parents prior to filing a due process complaint. 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. The LEA and parent may also choose to voluntarily engage in the mediation process described in 34 CFR §300.506 or another appropriate alternative dispute resolution mechanism available in the State to resolve the issue.

Because there is no requirement to convene a resolution meeting when an LEA files a due process complaint, the 45-day timeline for issuing a final decision in a due process hearing begins the day after the LEA's due process complaint is received by the other party and the SEA.

Question D-3: Does the parent still have the right to challenge the sufficiency of the due process complaint when an LEA files a due process complaint? Must the parent respond to the LEA's due process complaint?

Answer: A parent's rights and obligations are not altered even though the resolution process requirements do not apply when an LEA files a due process complaint. The parent still retains the right to challenge the sufficiency of the due process complaint within 15 days of receipt of the complaint, consistent with 34 CFR §300.508(d). It should be noted that one way for an LEA to amend a due process complaint that is not sufficient is for the parent to agree

²⁸ It should be noted, however, that one way for an LEA to amend a due process complaint that is not sufficient, is for the parent to agree in writing and be given an opportunity to resolve the LEA's due process complaint through a resolution meeting. 34 CFR §300.508(d)(3)(i).

in writing and be given an opportunity to resolve the LEA's due process complaint through a resolution meeting. 34 CFR §300.508(d)(3)(i). Also, the parent must send a response to the LEA that addresses the issues raised in the due process complaint within 10 days of receiving the complaint. 34 CFR §300.508(f).

Question D-4: 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?

Answer: Yes. Under 34 CFR §300.508(d)(3), a party may amend its due process complaint subject to the following conditions. The other party must consent in writing to the amendment and be given the opportunity to resolve the complaint through a meeting held pursuant to 34 CFR §300.510. Alternatively, the hearing officer may grant permission to amend the complaint at any time not later than five days before the due process hearing begins. This process is intended to ensure that the parties involved understand the nature of the complaint before the due process hearing begins. 71 FR 46698 (August 14, 2006).

Under 34 CFR §300.508(d)(4), when a due process complaint is amended, the timeline for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint. 71 FR 46698 (August 14, 2006).

Question D-5: If a parent files a due process complaint with the LEA or public agency but does not forward a copy of the due process complaint to the SEA, when does the timeline for convening a resolution meeting begin?

Answer: The Part B regulations do not address this specific question. In establishing procedures for administering the due process complaint system, States should address how a parent's failure to provide the required copy of the due process complaint to the LEA or public agency and SEA will affect the resolution process and due process hearing timelines. However, such procedures must be consistent with the due process requirements of Part B of the IDEA.

For example, a State could require that the LEA advise the parent in writing that the timeline for starting the resolution process will not begin until the parent provides the SEA with a copy of the due process complaint as required by the regulations. As an additional protection for parents, consistent with 34 CFR §300.199, we encourage States to adopt procedures that ensure the LEA or public agency provides a copy of the due process complaint to the SEA and proceeds with the established timelines.

Question D-6: Are there circumstances in which an LEA would not be required to convene a resolution meeting when it receives notice of a parent's due process complaint?

Answer: Yes. Under 34 CFR §300.510(a)(3), there are two occasions when a resolution meeting need not occur: (1) when the parent and LEA agree in writing to waive the meeting; and (2) when the parent and LEA agree to use the mediation process described in 34 CFR §300.506 to resolve the due process complaint. There are no provisions in the IDEA that allow a parent or an LEA to unilaterally waive the resolution meeting, because 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." 71 FR 46702 (August 14, 2006). Likewise, an agreement to use another alternative dispute resolution mechanism if available in the State, by itself, would not relieve the LEA of its obligation to convene a resolution meeting.

Question D-7: Does the timeline for a due process hearing decision always begin after the 30-day resolution period?

Answer: No. The Part B regulations allow adjustments to the 30-day resolution period. These adjustments may result in a shorter or longer period to resolve the due process complaint and affect when the timeline for a due process hearing decision begins.

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). However, under 34 CFR §300.510(c), there are three circumstances which permit the resolution period to be made shorter than 30 days or longer than 30 days. Note that the 45-day due process hearing timeline in 34 CFR §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; or (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.

In addition, as set out in Question D-13, a hearing officer may begin the timeline for a due process hearing decision after receiving a parent's request to begin that timeline, under 34 CFR §300.510(b)(5), based on the LEA's failure to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or failure to participate in the resolution meeting.

Further, except where the parties jointly agree to waive the resolution process or use mediation, 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 resolution meeting is held.

34 CFR §300.510(b)(3). As explained in Question D-13, an LEA may request a hearing officer to dismiss a complaint when the LEA has been unable to obtain the participation of the parent in a resolution meeting despite making reasonable efforts to do so. 34 CFR §300.510(b)(4).

Question D-8: Which individuals participate in the resolution meeting?

Answer: Under 34 CFR §300.510(a)(4), the parent and the LEA determine the relevant members of the IEP Team to attend the resolution meeting. The LEA must convene a resolution meeting with the parent and relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the parent's due process complaint. The resolution meeting must include a representative of the public agency who has decision-making authority on behalf of that agency. An attorney of the LEA may not attend the resolution meeting unless the parent is accompanied by an attorney. 34 CFR §300.510(a)(1). This is true even if a non-attorney advocate attends the meeting on behalf of the parent. We encourage LEAs and parents to cooperate in determining who will attend the resolution meeting, because a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot agree on who should attend. 71 FR 46701 (August 14, 2006).

Question D-9: May the LEA bring its attorney to a resolution meeting when the parent is accompanied by a non-attorney or qualified representative or advocate with the authority under State law to represent the parent at a due process hearing?

Answer: No. Under 34 CFR §300.510(a)(1)(ii), an LEA's attorney may not participate in the resolution meeting unless the parent is accompanied by an attorney. Therefore, the attendance of an LEA's attorney is expressly limited to instances where the parent brings an attorney, not a non-attorney advocate or other qualified individual, to the resolution meeting. While the IDEA states that parties to a due process hearing may be accompanied and advised by non-attorneys, the issue of whether non-attorneys may "represent" parties to a due process hearing is a matter that is left to each State to decide. 34 CFR §300.512(a)(1) and 73 FR 73006, 73017, and 73027 (Dec. 1, 2008).

Question D-10: Must an LEA include the days when schools are closed due to scheduled breaks and holidays in calculating the timeline for convening a resolution meeting?

Answer: Yes. Even during periods when school is closed, the LEA must hold the resolution meeting within 15 days of receiving notice of the parent's due

process complaint. 34 CFR §300.510(a). The only exceptions to this requirement are if the parent and the LEA agree in writing to waive the resolution meeting, or the parent and the LEA agree to use mediation under 34 CFR §300.506.

Under 34 CFR §300.11(a), “[d]ay means calendar day unless otherwise indicated as business day or school day.” Therefore, the SEA or LEA may not suspend the 15-day timeline for convening a resolution meeting while schools are closed for breaks or holidays. Such a delay would be inconsistent with the 15-day timeline for convening the resolution meeting and the 30-day resolution period described in 34 CFR §300.510, and also would delay the initiation of the 45-day timeline for issuing a final decision in a due process hearing under 34 CFR §300.515(a). 71 FR 46704 (August 14, 2006).

Question D-11: What is an LEA’s responsibility to convene a resolution meeting when the parent cannot attend within the 15-day timeline?

Answer: The LEA must attempt to schedule an in person meeting with the parent within 15 days of receiving the parent’s due process complaint. If the LEA notifies the parent of its intent to schedule a resolution meeting within the 15-day timeline 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 video conferences or conference telephone calls, subject to the parent’s agreement. 71 FR 46701 (August 14, 2006). Whether the meeting is conducted in person or by alternative means, the LEA must include the required participants and be prepared to discuss with the parent the facts that form the basis of the due process complaint and any possible resolution of the complaint.

Question D-12: Must the LEA continue its attempts to convince a parent to participate in a resolution meeting throughout the 30-day resolution period?

Answer: Yes. If a parent fails or refuses to participate in a resolution meeting that the LEA attempts to convene within 15 days of receiving notice of the parent’s due process complaint, an LEA must continue to make diligent efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in a resolution meeting. At the conclusion of the 30-day resolution period, an LEA may request that a hearing officer dismiss the complaint when the LEA is unable to obtain the participation of a parent in a resolution meeting, despite making reasonable efforts to obtain the parent’s participation and documenting its efforts, using the procedures in 34 CFR §300.322(d). 71 FR 46702 (August 14, 2006).

Examples of appropriate efforts LEAs can make to obtain the participation of the parent in the resolution meeting include detailed records of telephone calls made or attempted and the results of those calls and copies of correspondence sent to the parents and any responses received. 34 CFR §300.510(b)(4). In making such efforts, it also would be appropriate for an LEA to inform the parent that the LEA may seek the intervention of a hearing officer to dismiss the parent's due process complaint if the parent does not participate in the resolution meeting.

Question D-13: If a party fails to participate in the resolution meeting, must the other party seek the hearing officer's intervention to address the pending due process hearing on the parent's due process complaint?

Answer: Yes. The regulations in 34 CFR §300.510(b)(4) provide that an LEA may request a hearing officer to dismiss a complaint when the LEA has been unable to obtain the participation of the parent in a resolution meeting despite making reasonable efforts to do so and documenting those efforts. Under 34 CFR §300.510(b)(5), if an LEA fails to hold a resolution meeting within the required timelines or fails to participate in a resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. The appropriate party must seek the hearing officer's intervention to either dismiss the complaint or to initiate the hearing timeline, depending on the circumstances.

Question D-14: If a party fails to participate in the resolution meeting, and neither party seeks the hearing officer's intervention to address the pending due process complaint, would the timeline for a due process hearing decision still apply?

Answer: Yes. If there is no adjustment to the 30-day resolution period timeline as described in Question D-7, and if the LEA or the parent does not seek the hearing officer's intervention as described in Question D-13, regardless of the reasons for the parties' inaction, the 45-day timeline for a due process hearing decision would remain in effect. 34 CFR §§300.510(b)(2) and 300.515(a).

Question D-15: What is the SEA's responsibility for ensuring that LEAs comply with the resolution process requirements?

Answer: As explained in the *Analysis of Comments and Changes*, the Department fully expects 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. In instances of noncompliance, parents are able to request a hearing officer to allow the due process hearing to proceed. 71 FR 46702 (August 14, 2006).

In addition, an SEA has an affirmative obligation to ensure its LEAs' compliance with the resolution process timelines, consistent with its general supervisory and monitoring responsibilities. 34 CFR §§300.149 and 300.600(d)(2). The SEA must monitor LEAs located in the State for compliance with the requirements for resolution meetings in 34 CFR §300.510. Accordingly, the State must ensure that its LEAs convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint. If the LEA fails to convene a resolution meeting and the parties have not agreed to use mediation or agreed in writing to waive the meeting, the State must ensure the LEA corrects the noncompliance as soon as possible and in no case more than one year after the State's identification of noncompliance, as required in 34 CFR §300.600(e). If necessary to achieve compliance, the SEA may use appropriate enforcement actions consistent with its general supervisory responsibility under 34 CFR §§300.600 and 300.608 to ensure that the LEA complies.

Also, as part of the State's general supervisory responsibility, the SEA must ensure that due process hearing decision timelines are properly calculated and enforced. Therefore, the SEA must establish a mechanism for tracking the resolution process to determine when the resolution period has concluded and the 45-day due process hearing timeline in 34 CFR §300.515(a) (or the expedited due process hearing timeline in 34 CFR §300.532(c)(2)) begins. The SEA has the flexibility to determine its procedures and the appropriate mechanism for tracking the resolution process, given the State's unique circumstances.

Question D-16: May an LEA require a parent to sign a confidentiality agreement as a precondition to conducting a resolution meeting?

Answer: No. An LEA may not require a confidentiality agreement as a precondition to conducting a resolution meeting. The only reasons that an LEA would be excused from the requirement to convene a resolution meeting with the parent within 15 days of receiving notice of the parent's due process complaint are those specified in 34 CFR §300.510(a)(3) and discussed in Question D-6. Neither of these exceptions addresses confidentiality agreements. Nor is there any separate requirement, such as that in 34 CFR §300.506(b)(8) for mediation discussions, requiring parties to resolution meetings to keep the discussions that occur in those meetings confidential. However, as noted in the *Analysis of Comments and Changes*, there is nothing in the IDEA or its implementing regulations that would prohibit the parties to a resolution meeting from entering into a confidentiality agreement as part of their resolution agreement resolving the dispute that gave rise to the parent's complaint. 71 FR 46704 (August 14, 2006).

Question D-17: Are there any provisions in the IDEA that require discussions that occur in resolution meetings to remain confidential?

Answer: In general, the answer is no. Unlike mediation, IDEA and its implementing regulations do not prohibit or require discussions that occur during a resolution meeting to remain confidential. However, the confidentiality requirements in section 617(c) of the IDEA and the Part B regulations at 34 CFR §§300.611-300.626 and FERPA and its implementing regulations in 34 CFR part 99 apply.

Question D-18: Do the Part B regulations allow information discussed at a resolution meeting to be introduced at a due process hearing or civil proceeding?

Answer: In general, yes. Unlike mediation, the IDEA and its implementing regulations contain no requirement for discussions in resolution meetings to be kept confidential and not be introduced in a subsequent due process hearing or civil proceeding. There is nothing in the IDEA or its implementing regulations that would prevent the parties from voluntarily agreeing that the resolution meeting discussions will remain confidential, including prohibiting the introduction of those discussions at any subsequent due process hearing or civil proceeding. Absent an enforceable agreement by the parties requiring that these discussions remain confidential, either party may introduce information discussed during the resolution meeting at a due process hearing or civil proceeding when presenting evidence and confronting or cross-examining witnesses consistent with 34 CFR §300.512(a)(2). As noted in Question D-16, neither an SEA nor an LEA may require the parties to enter into such an agreement as a precondition to participation in the resolution meeting. 71 FR 46704 (August 14, 2006).

Question D-19: Must a settlement agreement be signed and executed at the resolution meeting, or may a settlement agreement be signed and executed by the parties prior to the conclusion of the 30-day resolution period?

Answer: Pursuant to 34 CFR §300.510(d), if a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement. Either party may void the agreement within three business days of the agreement's execution. This regulation contemplates that an agreement may not be finalized at the resolution meeting and therefore allows for a 30-day resolution period. At a time subsequent to the resolution meeting, the parties may have additional discussions and may execute a written settlement agreement within the 30-day resolution period. Only a legally binding agreement reached during the 30-day period that meets the requirements of 34 CFR §300.510(d) and (e), is considered an agreement under the resolution process requirements.

Question D-20: If the parties reach agreement on all issues in the parent's due process complaint and execute a written settlement agreement, what happens to the due process complaint?

Answer: The Part B regulations do not address the status of the due process complaint or which party is responsible for requesting that the due process complaint be dismissed or withdrawn once a resolution agreement is reached and the three-business-day review period has passed. Such matters are left to the discretion of the State and the hearing officer.

Question D-21: How can written settlement agreements reached through IDEA's resolution process be enforced if a party believes the agreement is not being implemented?

Answer: A written settlement agreement reached through IDEA's resolution process is enforceable in any State court of competent jurisdiction or in a district court of the United States. 34 CFR §300.510(d)(2). Even though this regulation provides for judicial enforcement of resolution agreements, it also provides an SEA the option of using other mechanisms or procedures that permit parties to seek enforcement of resolution agreements. However, this can occur only if use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in an appropriate State or Federal court. 34 CFR §300.537.

Question D-22: If an agreement is not reached during the resolution meeting, must mediation continue to be available?

Answer: Yes. Under 34 CFR §300.506, the public agency must ensure that mediation is available to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through the mediation process described in 34 CFR §300.506. However, mediation must be voluntary on the part of both parties, and may not be used to deny or delay a parent's right to a due process hearing on a due process complaint.

Question D-23: Does the 30-day resolution period apply if the parties elect to use mediation under 34 CFR §300.506 rather than convene a resolution meeting?

Answer: Yes. If the parties choose to use mediation rather than participate in a resolution meeting, the 30-day resolution period is still applicable. Under 34 CFR §300.510(c), the resolution period applies to the use of mediation after the filing of a due process complaint requesting a due process hearing. When the parties engage in mediation, the resolution period may be adjusted

in accordance with 34 CFR §300.510(c)(2) and (3). Adjustments to the resolution period when mediation is used are described in Question D-24.

Question D-24: What is the impact of mediation on the resolution and due process hearing timelines?

Answer: If both parties agree to use the mediation process described in 34 CFR §300.506 instead of the resolution process described in 34 CFR §300.510, the resolution meeting does not need to be held but the 30-day resolution period would still apply. 34 CFR §300.510(a)(3)(ii). If the parties agree in writing to continue the mediation process beyond the end of the 30-day resolution period that began when the due process complaint was received, the 45-day due process hearing timeline does not begin until one of the parties withdraws from the mediation process or the parties agree in writing that no agreement can be reached through mediation. 34 CFR §300.510(c)(2) and (3).

Question D-25: If the LEA and parents wish to continue the mediation process at the conclusion of the 30-day resolution period must the hearing officer agree to the extension in order for the parties to continue the mediation process?

Answer: In general, no. The regulations contemplate that the parties may agree in writing to continue the mediation at the end of the 30-day resolution period pursuant to 34 CFR §300.510(c)(3). Therefore, such agreements would not require hearing officer involvement or approval, but notice to the hearing officer of the agreement would be appropriate.

To the extent that the hearing officer already has established a hearing schedule that is inconsistent with the extension agreed to by the parties, either party may request a specific extension of time from the hearing officer. 34 CFR §300.515(c).

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

- 34 CFR §300.11
- 34 CFR §300.149
- 34 CFR §§300.506-300.516
- 34 CFR §300.537
- 34 CFR §300.600
- 34 CFR §§300.611-300.626