

Discipline of Students in Special Education Series

Part 5 of 9

Appeals

Both the LEA and the parent of the child with a disability have the right to request a due process hearing to appeal decisions taken during disciplinary procedures, although the reasons these parties may do so differ. As §300.532(a) makes clear:

- Parents may appeal decisions regarding placement of their children (under §§300.530 and 300.531)
- Parents may appeal decisions regarding manifestation determination under §300.530(e)
- The LEA may appeal a decision to maintain the current placement of the child, if the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others

Procedures for Filing a Due Process Complaint

A hearing is requested by filing a due process complaint as described in §300.507 and §300.508(a) and (b). Some points to note about the process include:

- The public agency must inform the parent of any free or low-cost legal or other relevant services in the area. [§300.507(b)]
- The due process complaint must remain confidential. [§300.508(a)(1)]
- The party who files a due process complaint must forward a copy of the complaint to the SEA. [§300.508(a)(2)]
- The due process complaint must include specific information: name of the child; address of the child's residence; name of the child's school; description of the nature of the problem, including any related facts; and a proposed resolution of the problem (to the extent known and available to the filing party at the time). [§300.508(b)]
- If the child is a homeless child or youth, the complaint must include available contact information for the child and the name of the school he or she is attending. [§300.508(b)(4)]

Speeding Up The Process: Expedited Hearings

The parent and the LEA have the opportunity for an expedited due process hearing on the disciplinary matter about which they are disagreeing. The expedited hearing must comply with IDEA's provisions for due process hearings (including hearing rights, such as a right to counsel, presenting evidence and cross-examining witnesses, and obtaining a written decision), although clearly the timelines for the hearing will be expedited.

It's important to know that a State may establish different procedural rules for expedited due process hearings as long as those rules meet requirements in §§300.510 through 300.514 for due

process in general (requirements regarding the resolution process; impartial due process hearing; hearing rights; hearing decisions, and finality of decision; appeal; impartial review). The State's authority to do so appears at §300.532(c)(4). This ensures that IDEA's basic protections regarding hearings are met, while enabling States to adjust other procedural rules they may have superimposed on due process hearings to address the expedited nature of these hearings. (71 Fed. Reg. 46724)

Timeline for Expedited Due Process Hearings

IDEA establishes a timeline within which the expedited due process hearing must be conducted and the hearing officer's determination made. The provisions are as follows:

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. [§300.532(c)(2)]

Can Due Process Be Avoided?

IDEA strongly favors avoiding due process hearings, when possible, by resolving disputes through alternate, less adversarial and more cost-effective means. Mediation is specifically mentioned as an option when a due process hearing, including when an expedited due process hearing, is requested. Under IDEA, parties can choose to use mediation to resolve a dispute regardless of whether a due process hearing has been requested, and a parent can choose not to have a resolution meeting, if the parent and the school district agree instead to use mediation to resolve their differences.

In the context of an expedited due process hearing, parents and the LEA have available to them either the resolution process or the mediation process as vehicles for resolving their differences without having to conduct an expedited due process hearing. They also may choose to waive either option and proceed directly to an expedited due process hearing. [§300.532(c)(3)] Waiving the resolution meeting, however, requires that both parties agree in writing to do so.

How Expedited Due Process Affects Other Timelines and Issues

Speeding up the timeline within which a due process hearing must occur affects other timelines and due process procedures, like a line of dominos going down. For example, the resolution process requires that a resolution meeting be convened by the LEA within "15 days of receiving notice of the parent's due process complaint" [§300.510(a)(1)]. When a resolution meeting is held associated with an expedited due process hearing, the timeline is shortened to seven days from receipt of the due process complaint [§300.532(c)(3)(i)].

Further, other provisions governing non-expedited due process hearings do not apply to expedited due process hearings—such as sufficiency of complaint at §300.508(d), which "is not practical to apply to the expedited due process hearing" because of the latter's "shortened timelines" (71 Fed. Reg. 46725).

The shortened timeline established for the expedited due process hearing is driven by a "need to promptly resolve a disagreement regarding a disciplinary decision." (Id.)

Authority of the Hearing Officer

If the parents and LEA have not resolved their disagreement via a resolution meeting or mediation, and the due process hearing goes forward, the hearing officer must issue a decision in an expedited due process hearing. In making that decision, the hearing officer may:

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not 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.

Thus, the hearing officer is given the authority to determine:

- whether a child's removal violated §300.530 (authority of school personnel)
- whether a child's behavior was a manifestation of his or her disability
- whether maintaining the child's current placement is substantially likely to result in injury to the child or to others

LEA's Recourse to Returning a Student to His or Her Original Placement

Suppose that a hearing officer determines in an expedited due process hearing that a removed student will return to his or her original placement, and the LEA disagrees, believing that doing so is substantially likely to result in injury to the child or others.

Does the LEA have any recourse but to return the child to the original placement?

Yes, the LEA does, but it's a limited one: to appeal the hearing officer's determination through another expedited due process hearing. As §300.532(b)(3) states:

The procedures under paragraphs (a) and (b)(1) and (2) ...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.

Note that the LEA has the discretion to remove a child with a disability to an IAES for up to 45 school days, if the special circumstances involving weapons, drugs, or serious bodily injury are present. If the special circumstances are not involved, then school officials must seek permission from the hearing officer (71 Fed. Reg. 46722 using the process of appeal just described.

May The Hearing Officer's Determination Be Appealed?

Yes. Any "party aggrieved by the findings and decision in the hearing may appeal to the SEA" [§300.514(b)(1)]. In some instances, bringing a civil action is also possible.