

QUICK REFERENCE FOR MEDIATION – DUE PROCESS

SUFFICIENT NOTICE

Request must be sent to other party (respondent) and OSEP. The request serves as notice to the respondent of the issues in the due process complaint.

The respondent may challenge the sufficiency of the notice within 15 days of receipt of the request.

THE ALJ has 5 days to decide the challenge and notify the parties.

The request may be determined sufficient or insufficient. If insufficient, permission may be granted to amend the request.

RESPONSE TO A REQUEST FOR A DUE PROCESS HEARING

If the district has not sent written notice to the parents regarding the subject matter in their due process request, the district must send written notice within 10 days of receiving the request.

When the district requests a due process hearing the parent must send a written response to the district that specifically address the issues raised in the due process request. The response must be sent to the superintendent or board attorney within 10 days of receipt of the request for a due process hearing.

RESOLUTION SESSION

Within 15 days of a parental request for a due process hearing, the district must conduct a resolution session. Within seven (7) days of a parental request for an expedited due process hearing, the district must conduct a resolution session.

Within 30 days of a parental request for a due process hearing, the resolution activities must be concluded.

Within 15 days of a parental request for an expedited due process hearing, the resolution activities must be concluded.

The parent, relevant members of the IEP team and a representative of the district with decision-making authority attend. The board attorney may attend only if the parent brings an attorney.

A signed, written agreement may be voided within three (3) days of the date it was signed. An executed agreement may be enforced in a State court or a district court of the United States.

No resolution session for district initiated due process. No resolution session for emergency relief.

MEDIATION IN PLACE OF RESOLUTION

Parents can indicate on the request for a due process hearing that they would like mediation instead of a resolution session. If the district agrees to mediation in place of the resolution

session, the district must contact the OSEP to facilitate the scheduling of the mediation conference.

Mediation, including mediation as part of a due process hearing, is scheduled within 15 days of the request for mediation and mediation activities are concluded within 30 days.

Mediation as part of an expedited due process hearing is scheduled within seven (7) days and mediation activities are concluded within 15 days.

WAIVING THE RESOLUTION SESSION

Parents can indicate on the request for a due process hearing that they want to waive the resolution session. The parent and a representative of the district who has decision-making authority may agree in writing to waive the resolution session. Upon receiving the signed waiver, the OSEP will transmit the case to the OAL for a hearing.

TIMELINE FOR REQUESTING A DUE PROCESS HEARING

A parent or district must request a due process hearing within two (2) years of the date the parent or district knew or should have known about the alleged action that forms the basis of the complaint. The timeline does not apply if the parent was prevented from requesting the due process hearing due to:

- specific misrepresentations by the district that it had resolved the problem forming the basis of the complaint; or
- the district's withholding of information from the parent that was required under this part to be provided to the parent.

TIMELINES FOR ISSUING A DECISION

The timelines for conducting a due process hearing start when the case is transmitted to the OAL. The ALJ has 45 days to issue a written decision. If an adjournment is granted at the request of a party, the time is not counted until the adjournment expires.

An expedited hearing is conducted within **20 school days** of receipt of the request. A decision is issued within **10 school days** after the hearing.

RIGHT TO BRING A CIVIL ACTION (APPEAL)

The decision of the ALJ is final except that any party may appeal the decision in any State court of competent jurisdiction or in a District court of the United States. The party bringing the action has 90 days from the date of the decision of the ALJ to file an appeal.