

NAVIGATING THE MAZE OF THE NEW DUE PROCESS REQUIREMENTS

IDEA 2004 AND FEDERAL REGULATIONS 2006

The attached document is offered as guidance to school administrators, parents, attorneys, advocates, and special education hearing officers in implementing the new mandates of *Individuals with Disabilities Education Improvement Act of 2004*, specific to the due process hearing system. These mandates became effective July 1, 2005. In addition, on August 14, 2006 the United States Department of Education published in the Federal Register updated federal implementing regulations that are effective October 13, 2006. These mandates include those provisions that apply specifically to the immediate steps that need to be taken when the school division receives or initiates Notice of a request for a due process hearing. These regulations and the related analysis provide additional insight into the mandates required by the revised statute and federal regulations. The other federal and state regulations that govern the hearing process remain in effect.

This document includes a flow chart and summary of the requirements. Questions regarding this information should be directed to:

- Judy Douglas, Director, Office of Dispute Resolution/Administrative Services
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- Ron Geiersbach, Coordinator of Due Process Services, Office of Dispute Resolution/Administrative Services
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Terms:

LEA: local education agency or school division

WPN: written prior notice

HO: hearing officer

**Summary of Requirements
for
Due Process Hearings
Effective: July 1, 2005**

□ Filing Request for a Due Process Hearing [Notice]

- Either a parent(s) or the local school division (LEA) may file a Notice requesting a due process hearing when a disagreement arises regarding the identification of a child with a disability, evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation), educational placement and services of the child, and the provision of a free appropriate public education.
- The Notice must be filed within 2 years of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the request. Exceptions to the timeline apply if the parent was prevented from requesting the hearing due to:
 - (1) specific misrepresentations by the LEA that it had resolved the problem forming the basis of the request for due process; or
 - (2) the LEA's withholding of information from the parent that was required, under the federal and state requirements governing special education, to be provided to the parent.
- The Virginia Department of Education (VDOE) is responsible for developing and maintaining a model due process Notice form. Copies are available by calling VDOE at 804-225-2013, or from VDOE's website at: www.doe.virginia.gov/VDOE/dueproc
- The Notice requesting a due process hearing must be in writing to the LEA superintendent, special education director or other representative of the LEA, with copy to VDOE. If the Notice does not copy the VDOE, the LEA is to forward a copy to the VDOE. If the LEA is requesting the due process hearing, the LEA provides the Notice to the parent(s) with copy to VDOE.

There are 45 calendar days after the expiration or waiver of the resolution period, described below, for the hearing officer to issue a decision from the date the LEA receives or initiates a Notice requesting a due process hearing.

□ Content of Notice The Notice must include:

- the name of the child, address of the residence of the child, name of the school the child is attending;
- a description of the child's issue(s) relating to the proposed or refused initiation or change including facts relating to the issue(s); i.e., what are the issues, what is wrong; what happened that caused the problem); and
- a proposed resolution of the issue(s) to the extent known and available to the parent at the time of the notice.

- In the case of a homeless child or youth, available contact information is needed for the child, including the name of the school the child is attending.

☐ Response to the Notice Requesting a Due Process Hearing

- Within 10 calendar days of receiving the Notice requesting a due process hearing, the non-requesting party must send the requesting party a response that specifically addresses the issues raised in the Notice. The LEA is not required to provide such a response if the LEA already provided the parent with written prior notice.
- If the LEA has not sent WPN to the parent regarding the issues raised by the parent, the LEA must, within 10 calendar days of receiving the Notice requesting a due process hearing, send the parent WPN that shall include:
 - (1) an explanation of why the LEA proposed or refused to take the action raised in the notice;
 - (2) a description of other options that the IEP team considered and the reasons why those options were rejected;
 - (3) a description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
 - (4) a description of the factors that are relevant to the LEA’s proposal or refusal.
- Providing the parent with such WPN shall not be construed to preclude the LEA from asserting that the parent’s due process notice was insufficient where appropriate, as noted below (Challenging the Sufficiency of the Notice).

☐ Appointment of Hearing Officer

- The LEA shall appoint a hearing officer within 5 business days of the request for a hearing. In the case of an expedited hearing, the LEA must appoint the hearing officer within 3 business days of the request for a hearing.
 - (1) The LEA contacts the Supreme Court of Virginia, 804-786-6455 to secure the name of a hearing officer. Hearing officers are appointed by region and rotation.
 - (2) The LEA contacts the hearing officer to confirm availability.
 - (3) The LEA sends the hearing officer a written confirmation of appointment, with copy to the Virginia Department of Education.

☐ Challenging the Sufficiency of the Notice

- A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the content information required for Notice.
- The Notice is deemed sufficient unless the party receiving the Notice notifies the hearing officer in writing within 15 calendar days of receiving the Notice that the Notice does not meet the content requirements.
- Within 5 calendar days of receiving the notification regarding the insufficiency of the Notice, the hearing officer determines on the face of the Notice whether it meets the content requirements. The hearing officer notifies the parties in writing of his/her determination.
- If the hearing officer determines that the **Notice is insufficient**:

- (1) The party amends the Notice **IF** the other party consents and has the opportunity to resolve issues through the Resolution Session process, **OR**
- (2) The hearing officer permits the party to amend the Notice (not later than 5 calendar days before the hearing occurs).

The 45 day timeline begins again at the time the party files the amended notice, including the timeline for the resolution session process.

□ Resolution Session

- Within 15 calendar days of receiving the parents' Notice of a request for a due process hearing and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the Notice.

The meeting need not be held if the parents and the LEA agree in writing to waive the Resolution Session, or they agree to use the mediation process.

If the LEA has not resolved the disagreement to the satisfaction of the parent within 30 days of receiving of the notice, the due process hearing may occur. The 45-day timeline for issuing a final decision begins at the end of the 30-day resolution period.

- The team shall include a representative of the LEA who has decision-making authority on behalf of the LEA.
- The team shall not include an attorney of the LEA unless an attorney accompanies the parent.
- During the Resolution Session, the parents of the child discuss their issues in the Notice, and the LEA is provided the opportunity to resolve the issues.
- If resolution is reached, the LEA and the parent must execute a legally binding agreement that is:
 - (1) signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and
 - (2) enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.
- Either party has 3 business days to void the agreement.

• If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts, the LEA may request that the hearing officer dismiss the pending due process case.

• If the LEA fails to hold the resolution meeting within 15 days of receiving the parent's Notice or fails to participate in the meeting, the parent may seek the intervention of the hearing officer to begin the due process 45-day timeline.

□ Adjustments to the 30-day period

- When the parties agree to waive the resolution meeting in writing, the 45-day timeline starts the next day.
- Both parties may agree in writing to continue mediation at the end of the 30-day period. However, if the parent or LEA withdraw from the mediation process, the 45-day timeline begins the next day.
- After either the mediation meeting or resolution meeting starts but before the end of the 30 day period, the parties agree in writing that no agreement is possible then the 45-day timeline starts the next day.

Please refer to the following documents for the additional federal and state requirements for the due process hearing:

- Guidance Document on the Implementation of IDEA 2004 - Part B Requirements, May 2005
- Guidance Document on the Implementation of the Federal Regulations, Part B Requirements, October 2006
- Procedural Safeguards Document, revised October 2006
- *The Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 2002

These documents are available on VDOE's website at:

<http://www.doe.virginia.gov/VDOE/dueproc/>

**PROVISIONS UNIQUE TO
EXPEDITED DUE PROCESS HEARINGS
AND EXTENSION OF TIMELINES**

- Either parent or LEA may request an expedited due process hearing related to matters involving discipline of a student with a disability. Examples may include: the decision of the Manifestation Determination Review; the placement of the student as a result of disciplinary action.
- There is no sufficiency challenge applicable to expedited hearings. (This only applies to general due process hearings initiated under 34 C.F.R. §300.508 and not expedited hearings under 34 C.F.R. §300.532.)
- A resolution meeting must occur within seven days of receiving notice of the due process complaint.
- The resolution period for the expedited cases is 15 days.
- The controlling timeline is 30 school days for the hearing officer to issue the decision from the date the LEA receives or initiates the Notice requesting a due process hearing.
- The LEA must appoint a hearing officer within 3 business days of receipt of the request for the due process hearing or sending Notice to the parent that the school division is initiating due process on the division's behalf.
- The hearing officer must hold the hearing within 20 school days of the LEA's receipt of the request for due process, or initiating due process on the division's behalf.
- The hearing officer's decision must be sent to the parties within 10 school days after the hearing.

EXTENSIONS OF TIMELINES

- A hearing officer may grant specific extensions of the timeline beyond the 45 calendar day period at the request of either party only when it serves the best interest of the child. The hearing officer must document this in writing to the parties and VDOE, including establishing a new date for issuing the decision.
- For expedited hearings, the timeline may not be extended without exception.

LEA Receives/Initiates Request for Due Process Hearing [non-expedited hearing]

45 calendar days for HO to issue decision from the date LEA receives/initiates request for due process hearing

