

NAVIGATING THE MAZE OF THE DUE PROCESS REQUIREMENTS Utilizing IDEA 2004 and 2006 FEDERAL REGULATIONS

The attached document is offered as guidance to school administrators, parents, attorneys, advocates, and special education hearing officers in implementing mandates of the *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 became effective October 13, 2006. *The Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (Regulations) became effective on January 25, 2010. These mandates include those provisions that apply specifically to the immediate steps that need to be taken when the school division receives or initiates a Request for a Due Process Hearing. These regulations and the related analysis provide a description of the due process procedures.

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

- Patricia Haymes, Director, Office of Dispute Resolution and Administrative Services
(804) 786-0116
Email: Patricia.Haymes@doe.virginia.gov
- Ron Geiersbach, Coordinator of Due Process Services, Office of Dispute Resolution and Administrative Services
(804) 225-2234
Email: Ron.Geiersbach@doe.virginia.gov

Terms:

LEA: local education agency or school division
PWN: prior written notice
HO: hearing officer

Summary of Procedures for Due Process Hearings

❑ Filing Request for a Due Process Hearing [Request]

- Either a parent(s) or the local school division (LEA) may file a request for 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 request 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 request form. Copies are available by calling VDOE at (804) 225-2013, or from VDOE's website at:
http://www.doe.virginia.gov/special_ed/resolving_disputes/due_process
The mailing address is: Office of Dispute Resolution and Administrative Services (ODRAS), Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120; Fax - (804) 786-8520; email: ODRAS@doe.virginia.gov
- The request for a due process hearing must be in writing to the Special Education Director or other designated representative of the LEA, with copy provided contemporaneously to VDOE. If the request 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 request 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 request for a due process hearing.

❑ Content of the Request

The request 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 request.
- 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 Request for a Due Process Hearing

- Within **10 calendar days** of receiving a request for a due process hearing, the non-requesting party must send the requesting party a response that specifically addresses the issues raised in the request. The LEA is not required to provide such a response if the LEA already provided the parent with prior written notice (PWN).
- If the LEA has not sent PWN to the parent regarding the issues raised by the parent, the LEA must, within **10 calendar days** of receiving the request for a due process hearing, send the parent PWN that shall include:
 1. an explanation of why the LEA proposed or refused to take the action raised in the request;
 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 PWN shall not be construed to preclude the LEA from asserting that the parent's due process request was insufficient where appropriate, as noted below (Challenging the Sufficiency of the Request).

❑ Appointment of Hearing Officer

- The LEA shall contact the Office of the Executive Secretary of the Supreme Court of Virginia for appointment of a hearing officer **within 5 business days** of receipt of the

request for a hearing. In the case of an expedited hearing, the LEA must contact the court for appointment of the hearing officer ***within 3 business days*** of the request for a hearing.

1. The LEA contacts the Supreme Court of Virginia by email at hearingofficer@courts.state.va.us to secure the name of a hearing officer. Hearing officers are appointed pursuant to the Executive Secretary's protocols. The following information must be provided in the email:
 - a. Name and address of requesting party
 - b. Style of hearing
 - c. Location of parties (take care to preserve confidential information)
 - d. If you need additional direction you may speak with the Executive Secretary's Office at (804) 786-7890 or (804) 786-6455.
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 Request

- A party may not have a due process hearing until the party, or the attorney representing the party, files a request that meets the content information required for the request.
- The request is deemed sufficient unless the party receiving the request notifies the hearing officer in writing ***within 15 calendar days*** of receiving the request that the document does not meet the content requirements.
- ***Within 5 calendar days*** of receiving the notification regarding the insufficiency of the request, the hearing officer determines on the face of the request 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 **request is insufficient**:
 1. The party amends the request **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 **request** (not later than 5 calendar days before the hearing occurs).

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

❑ Resolution Session

- ***Within 15 calendar days*** of receiving the parents' 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 request for due process.

- 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 request, 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 for the LEA unless an attorney accompanies the parent.
- During the Resolution Session, the parents of the child discuss their issues included in the request, 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 request 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 prior to the end of the 30-day resolution period. However, if the parent or LEA withdraws 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 resolution period the parties agree in writing that no agreement is possible then the ***45-day timeline*** starts the next day.

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. A sufficiency challenge 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 **7 days** of receiving the request for the due process complaint.
- ☐ The resolution period for 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 request for 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 notifying 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 issued 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 extensions 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**.

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

- *The Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, effective January 25, 2010.
http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf
- *IDEA* Federal Special Education Regulations (2006)
<https://www2.ed.gov/legislation/FedRegister/finrule/2006-3/081406a.pdf>

LEA Receives/Initiates Request for Due Process Hearing [non-expedited hearing]
 45 calendar days for hearing officer to issue decision from the date LEA receives/initiates request for due process hearing

