

Office of Special Education Programs Q&A, June 22, 2020, IDEA Part B Dispute Resolution Procedures

By: Ronald M. Hager, National Disability Rights Network

Q1. How can parents and public agencies resolve disagreements regarding special education matters while school buildings and other public facilities are closed due to the pandemic?

- Work collaboratively in the best interests of children with disabilities to resolve disagreements.
- While schools may not be able to provide all services in the same manner as typically provided, parents and school staff are encouraged to collaborate creatively to continue to meet student needs.
- Timely communication may help to resolve disagreements which may arise.
- When informal efforts are not successful, IDEA's three dispute resolution options are available—mediation, State complaint and due process.

Q2. Is the SEA permitted to extend the 60-day timeline for resolving a State complaint due to the circumstances related to the pandemic?

- Yes, but only on a case-by-case basis
- Two allowable reasons for extensions: (1) exceptional circumstances regarding a particular complaint; (2) mutual consent of the parties to engage in alternative dispute resolution, such as mediation.
- Exceptional circumstances can only be used on a case-by-case basis related to the pandemic or health and safety restrictions
- An SEA may not categorically determine it will not engage in investigations based solely on assumptions that COVID-19 is an exceptional circumstance warranting an extension for all complaints.
- Exceptional circumstances could exist regarding a specific complaint if SEA staff are unavailable or absent for an extended period because of the pandemic or SEA cannot access needed information to resolve the complaint due to conditions related to the pandemic.

Q.3 How can parents and public agencies use IDEA's mediation procedures to resolve disputes when schools and other public facilities are closed or have restrictions that prevent face-to-face meetings?

- IDEA does not contain specific timeframes for mediation, as long as it does not deny or delay parental rights
- Parties have flexibility in determining a mutually agreeable time to meet.
- Nothing in IDEA that would prevent parties from agreeing to mediate through alternate means such as video or audio conferencing, as long as State procedures do not prohibit it.

Q.4 Can the parent and LEA agree to extend the timelines applicable to the resolution process given the challenges associated with school and other public facility operations during the COVID-19 pandemic?

- Yes; Nothing in IDEA which would prevent parties from mutually agreeing to extend resolution timelines.

- If parties are unable to meet in person or through virtual means, they may mutually agree to extend timelines until they can meet face-to-face.
- No extensions for expedited due process complaints for discipline.

Q.5 Can the parent and LEA agree to hold a resolution meeting virtually, rather than face-to-face?

- Yes; where circumstances prevent in person meetings, parties can agree to meet via video or audio conferences.
- For expedited due process complaints, resolution meetings may also be conducted in the same manner, upon parental agreement.

Q.6 May due process hearings be conducted virtually when schools and other public facilities are closed or have restrictions that prevent face-to-face meetings?

- Yes; States can permit due process hearings to be conducted through video or audio conferences if a hearing officer concludes this consistent with State legal practice.
- Must ensure parents have access to an impartial due process hearing consistent with all applicable requirements.
- State-level review, if applicable, may also be conducted virtually.

Q.7 Do hearing officers, or where applicable, review officers, have the authority to extend the applicable timelines for issuing decisions on due process complaints during the pandemic?

- Yes; IDEA permits hearing or review officers to grant specific extensions at the request of either party.
- No IDEA requirement that both parties agree to the extension request, but the officer must document the length of the request and the reason for it.
- No similar provision for extending expedited hearings in discipline cases, although they may be conducted via video or audio conferences.