

## Procedures and Timelines for Due Process Hearings Under IDEA

Congress reauthorized the Individuals with Disabilities Education Improvement Act (IDEA) in December 2004, resulting in substantial changes to due process hearing procedures. The procedures and timelines in this document are intended to highlight the requirements for filing and responding to a request for a due process hearing. This document is not intended to substitute for reading the regulations applicable to due process hearing procedures, or for obtaining legal advice regarding due process hearing procedures.<sup>1</sup>

**Mediation.** Special education mediation services are available at no cost to parents or the district when the parties agree to mediate, whether or not a hearing has been requested. For more information about mediation, call Sound Options at 1-800-692-2540.

**Due Process Hearing Request Model Form.** The Office of the Superintendent of Public Instruction (OSPI) has prepared a model form for parents and districts to use in requesting due process hearings. You may access the form at <http://www.k12.wa.us/ProfPractices/adminresources/forms.aspx>. The form may be used to:

- Request a due process hearing in accordance with Washington Administrative Code (WAC) 392-172A-05085, to resolve a disagreement about the identification, evaluation or educational placement of a student, or the provision of a free appropriate public education (FAPE) to a student;
- Request an expedited due process hearing in accordance with WAC 392-172A-05160, when the parent of a student with a disability disagrees with any decision regarding the placement or manifestation determination resulting from a disciplinary action. School districts may also request an expedited hearing if the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or to others.

**Due Process Hearing Request Requirements.** Whether or not a party uses OSPI's model form, a due process hearing request must include the following information:

- The name of the student, the address of the residence of the student (or available contact information in the case of a homeless student), and the name of the school and district responsible for the student's special education program;
- A description of the nature of the problem relating to the student's identification, evaluation, educational placement or the provision of a FAPE; and,
- A proposed resolution of the problem to the extent known and available to the party at the time.

The party requesting the hearing or the attorney representing that party, must file the hearing request with the other party and must provide a copy to OSPI, Administrative Resources Section.

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<sup>1</sup> The *Notice of Special Education Procedural Safeguards for Students and Their Families* also contains information about due process hearing procedures.

**Two-Year Time Limit (Statute of Limitations).** The due process hearing request must be made within **2 years** of, and allege a violation of the IDEA that occurred not more than two years before, the date the parent or school district knew or should have known about the action that forms the basis of the alleged violation. This time limit does not apply to a parent request if the parent was prevented from timely requesting the hearing due to: (a) specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request; or (b) the school district's withholding of information from the parent that was required by the IDEA to be provided to the parent. WAC 392-172A-05080.

**Sufficiency of Hearing Request.** A due process hearing request is deemed to be sufficient unless the party receiving the request notifies the administrative law judge (ALJ) and the filing party, in writing, within **15 days**, that the request does not meet the requirements in WAC 392-172A-05085. The ALJ must make a determination on the face of the hearing request whether it is sufficient, within **5 days** of receiving an objection, and must immediately notify the parties in writing of the determination. WAC 392-172A-05085. If the ALJ determines the request does not meet these requirements, the due process hearing may not proceed until a request is filed that meets these requirements.

The party filing an objection to the sufficiency of a due process hearing request should also send a copy of the objection to the OAH/OSPI Caseload Coordinator at the Office of Administrative Hearings, One Union Square, Suite 1500, 600 University St., Seattle, WA 98101-3126.

**Amendment of Hearing Request.** A party may amend its due process hearing request only if: (a) the other party consents in writing to this amendment and is given the opportunity to resolve the issues in the hearing request through a resolution meeting; or (b) the request is made not later than 5 days before the scheduled hearing and the ALJ grants permission for the amendment. If a parent files an amended due process hearing request and the request is granted, the timelines for convening a resolution meeting and the resolution period begin again. WAC 392-172A-05085. The party requesting the hearing may not raise issues at the hearing that were not in the hearing request unless the other party agrees otherwise. WAC 392-172A-05100.

**Resolution Meeting.** When a parent requests a due process hearing by providing the district with the original due process hearing request and providing OSPI, Administrative Resources Section with a copy of the request, the district must convene a resolution meeting within 15 days, unless the parties agree in writing to waive the meeting or agree to participate in mediation instead of a resolution meeting. The purpose of the meeting is for the parent to discuss the facts related to the hearing request, so the district has the opportunity to resolve the dispute. WAC 392-172A-05090. When a hearing involves a disciplinary matter, the timelines for resolution meetings and due process hearings are expedited. Timelines related to expedited hearings are discussed below.

**Resolution Period.** If the parties are unable to resolve the dispute through the resolution meeting within 30 days of the district and OSPI's receipt of the hearing request, the 45-day due process hearing timeline begins. However, failure by either party to participate in the resolution meeting may alter the timelines as follows:

- Failure of the parent to participate in the resolution meeting will suspend the timelines for the resolution process and the hearing until the meeting is held.
- If, the school district is unable to obtain the parent’s participation using reasonable efforts to invite the parent, the district may ask the ALJ to dismiss the parent’s due process hearing request.
- If the district fails to convene a resolution meeting within 15 days of the district and OSPI receiving notice of the parent’s request for a hearing, or does not participate in the resolution meeting, the parent may request the ALJ start the due process hearing timeline.

**Hearing Timelines.** Due process hearings must be held and a final decision issued within 45 calendar days following a district’s request for a due process hearing, or the end of the resolution period when a parent files a request for a due process hearing. However, the hearing timelines may be extended at the request of either party.

The 45-day timeline for the due process hearing may begin before the end of a resolution period, if:

- Both parties agree, in writing, to waive the resolution meeting; or
- After either the mediation or resolution meeting starts, but the parties agree in writing that no agreement is possible.

The 45-day timeline for the hearing process may start after the end of a resolution period, if:

- Both parties agree in writing to continue the mediation beyond the 30-day resolution period. If one of the parties withdraws from the mediation process, the hearing timeline begins when the ALJ is notified. WAC 392-172A-05090.

**Appeal Rights.** Either party aggrieved by the ALJ’s findings and decision has a right to file a civil action in state superior or federal district court within 90 days of the decision. WAC 392-172A-05115.

### **Due Process Hearings Concerning Disciplinary Placement (Expedited Hearings)**

**Appeal of Disciplinary Decisions.** A parent who disagrees with any decision regarding a disciplinary placement or the manifestation determination may request an expedited due process hearing. A district may also request an expedited hearing if it believes the current placement of a student is likely to result in injury to the student or others. WAC 392-172A-05160.

**Expedited Due Process Hearing Timelines.** An expedited due process hearing has all the provisions of a regular due process hearing, except that it must occur within 20 school days of the request and a decision must be issued by the ALJ within 10 school days after the hearing. WAC 392-172A-05160. This timeline includes the resolution period.

**Resolution Meeting.** Unless the parents and district agree in writing to waive the resolution meeting or agree to use mediation to resolve the dispute, the district must arrange for a resolution meeting within 7 calendar days of OSPI and the district receiving the parent’s request for a due process hearing. If the matter has not been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the due process hearing may proceed. WAC 392-172A-05160.

<b>Resolution Time Period for Due Process Hearing Requests</b>	
<b>Filing</b>	<p>The parent or the district must provide the original due process hearing request to the other party and provide a copy of the request to OSPI, Administrative Resource Services Section. Hearing request forms are available at: <a href="http://www.k12.wa.us/ProfPractices/adminresources/forms.aspx">http://www.k12.wa.us/ProfPractices/adminresources/forms.aspx</a></p> <p>(The party requesting the hearing should keep proof of delivery of the hearing request provided to the other party and to OSPI.)</p>
<b>Within 1-2 business days after OSPI receives a copy of the request</b>	<p>OSPI assigns a cause number and forwards a copy of the hearing request to the Office of Administrative Hearings (OAH). OAH appoints an ALJ who sends a Scheduling Notice to both parties confirming receipt of the hearing request. The Scheduling Notice will set a date/time for an initial pre-hearing conference. OAH also provides the parties with information about mediation and provides a list of information about low cost legal representation.</p>
<b>Within 10 days after a party’s receipt of a request, the party must respond to the request.</b>	<p><u>School district response to a parent request:</u></p> <p>a) If the school district did not already send prior written notice to the parent regarding the issues raised in the due process hearing request, the district shall send the parent a response that includes:</p> <ul style="list-style-type: none"> <li>○ An explanation of why the district proposed or refused the action raised in the hearing request;</li> <li>○ A description of other options the IEP team considered and why they were rejected;</li> <li>○ A description of each evaluation procedure, assessment, record or report used as basis for the proposed or refused action;</li> <li>○ A description of factors relevant to the district’s proposal or refusal.</li> </ul> <p>b) If the district already provided the parent with prior written notice, the district must send the parent a response that specifically addresses the issues raised in the hearing request.</p> <p><u>Parent response to a district request:</u> If the hearing was requested by the district, the parent must send the district a response that specifically addresses the issues raised in the hearing request.</p>
<b>Within 15 Days (Sufficiency challenge)</b>	<p>This is the deadline for the party who receives the due process hearing request to notify both the party who requested the hearing and the ALJ in writing, that the due process hearing request is not sufficient. A copy of the request should be forwarded to the caseload coordinator.</p> <p><b>NOTE:</b> The ALJ has <b>5 days</b> from receipt to determine the sufficiency of the hearing</p>

	request on its face and to inform the parties in writing of the ALJ's finding, and requirements for refiling the due process hearing request, if any.
<b>Amending the Hearing Request</b>	A hearing request can be amended with the other party's written consent and an opportunity for the district to resolve the issues if the hearing request is filed by a parent; or, if the ALJ grants permission to amend the request, no more than five days before the hearing begins. If the due process hearing request is amended, the timelines for the resolution meeting and hearing begin again.
<b>Also within 15 days (Resolution Meeting)</b>	If the parent requested the hearing, the district must convene a resolution meeting unless the parties agree in writing to waive the resolution meeting or to participate in mediation in lieu of a resolution meeting. The resolution meeting must be held within 15 days of receipt of the parent's due process request by the district and OSPI.
<b>30-Day Resolution Period</b>	If all issues in the hearing request have not been resolved during the 30-day resolution period, the 45-day due process hearing timeline begins. Parties must keep the ALJ informed of the status of any resolution.
<b>Failure of Parties to Participate in a Resolution Meeting</b>	<p>Failure of the parent to participate in the resolution meeting will suspend the timelines for the resolution period and the due process hearing until the parent attends the resolution meeting.</p> <p>If the parent does not participate in the resolution meeting after reasonable efforts by the district to convene a resolution meeting, once the 30-day resolution period ends, the district may ask the ALJ to dismiss the parent's due process complaint.</p> <p>If the district fails to convene a resolution meeting within 15 days of the district and OSPI receiving the parent's request for a hearing, or the district does not participate in the resolution meeting, the parent may immediately request the ALJ to begin the due process hearing timeline.</p>

**Hearing Time Period**

When a parent files a hearing request, the 45-day timeline for the due process hearing begins after one of the following events:

- Both parties agree in writing to waive the resolution meeting; or
- After either the mediation or resolution meeting starts, but the parties agree in writing that no agreement is possible; or
- Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, one party withdraws from the mediation process; or
- The district fails to schedule or participate in the resolution meeting.

Also, the timeline recommences if the parent's due process hearing request is amended as discussed above.

When a district files a due process hearing request, the 45-day timeline begins when the district provides the parent with the due process hearing request and provides OSPI Administrative Resources Section with a copy of the due process hearing request.

<b>Pre-hearing conferences</b>	<p>After a due process hearing request is filed, the ALJ holds a pre-hearing conference to:</p> <ul style="list-style-type: none"> <li>• Review the parties' rights and the procedures and evidentiary requirements for the due process hearing;</li> <li>• Determine the status of any resolution meeting, mediation, or settlement process;</li> <li>• Identify issues to be resolved at hearing;</li> <li>• Establish the date(s) and expected length of hearing;</li> <li>• Set a briefing schedule (if necessary); and,</li> <li>• Determine whether the hearing will be closed or open to the public.</li> </ul>
<b>Between day 6 and day 45, or longer if the hearing is continued</b>	The ALJ completes any pre-hearing matters, parties submit evidence to the other party and to the ALJ. The hearing occurs, and the ALJ issues the written findings of fact and decision.
<b>Subject matter of due process hearings</b>	The party requesting the due process hearing may not raise issues at the hearing that were not raised in the due process hearing request or added through the amendment procedure, unless the other party agrees otherwise.
<b>Disclosure of relevant information</b>	At least 5 business days before a hearing, each party must disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing. An ALJ may bar any party that does not comply with this disclosure requirement from introducing the relevant evaluations or recommendations at the hearing without the consent of the other party.
<b>Time Period for Due Process Hearing Requests Involving Special Education Discipline Issues (Expedited Hearing)</b>	
<b>Filing</b>	<p>The parent or the district provides the original due process hearing request to the other party and provides a copy to OSPI, Administrative Resources Section. Hearing request forms are available at: <a href="http://www.k12.wa.us/ProfPractices/adminresources/forms.aspx">http://www.k12.wa.us/ProfPractices/adminresources/forms.aspx</a></p> <p>(The party requesting the hearing should keep proof of delivery of the hearing request provided to the other party and to OSPI.)</p>
<b>Within 1-2 business days</b>	OSPI assigns cause number, noting that the hearing is expedited, and forwards a copy of the hearing request to OAH. Upon receipt, OAH appoints an ALJ and sends a Scheduling Notice. The Scheduling Notice will set a date/time for an initial pre-hearing conference. OAH also provides the parties with information about mediation and provides a list of information about low cost legal representation.
<b>Within 7-10 days</b>	<p>The ALJ holds a pre-hearing conference to:</p> <ul style="list-style-type: none"> <li>• Review the parties' rights and procedures for the hearing, and evidentiary requirements;</li> <li>• Determine the status of any resolution session, mediation, or settlement process;</li> <li>• Identify issues to be resolved at hearing;</li> </ul>

	<ul style="list-style-type: none"> <li>• Establish the date(s) and expected length of hearing;</li> <li>• Set a briefing schedule (if necessary); and,</li> <li>• Determine whether the hearing will be closed or open to the public.</li> </ul>
<b>Within 7 days</b>	Unless the parents and the district agree in writing to waive the resolution meeting or agree to use mediation to resolve the problem, a resolution meeting must occur within seven days of the district and OSPI receiving notice of the due process request. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the parent's due process request.
<b>Within 20 school days</b>	The due process hearing on discipline must be completed.
<b>Within 10 school days after hearing</b>	The ALJ issues the written findings of fact and decision within 10 school days after the close of the hearing.