Part B/C

Dispute Resolution | Due Process

# OVERVIEW

In 2016, OSEP began providing differentiated monitoring and support (DMS) to States as part of its Results Driven Accountability ([RDA](https://www2.ed.gov/about/offices/list/osers/osep/rda/index.html)) system under Parts B and C of the Individuals with Disabilities Education Act (IDEA). Under RDA, OSEP made a shift from monitoring based solely on compliance with IDEA requirements to monitoring and support focused on both compliance and improving results for infants, toddlers, children, and youth with disabilities referred to and/or served under the IDEA (collectively referred to as children with disabilities). OSEP differentiates its approach for each State based on the State’s unique strengths, challenges, and needs. Beginning in Federal fiscal year (FFY) 2021, Part B and Part C programs in States will be monitored by OSEP in a five-year cycle. OSEP will monitor all States[[1]](#footnote-2) on their general supervision systems. OSEP will continue to provide support and technical assistance that is differentiated based on each State’s unique strengths, challenges, and needs.

# IMPLEMENTATION

OSEP’s monitoring of each State will be conducted in three (3) phases:

1. ***Phase 1: Document Request and Protocol Interviews*:**  The OSEP monitoring team will begin working with the State to prepare for the Phase 2 visit. Phase 1 will occur 5 months prior to the Phase 2 on-site/virtual visit. The OSEP monitoring team will review all publicly available information prior to working with the State.
   1. **5 months prior to the Phase 2** visit OSEP will send a document request for relevant information we have not found in our initial research. Please refer to the suggested documents listed below for an initial list of the information we are seeking.
   2. **4 months prior to the Phase 2** visit OSEP will conduct targeted interviews with State staff on the component-specific protocols.[[2]](#footnote-3)
2. ***Phase 2: On-site/Virtual Visit through issuing of the Monitoring Report*:**  Based on information collected during the Phase 1 work, OSEP will develop an agenda for the on-site/virtual visit focusing on the issues that require further exploration, deeper looks or additional discussions.
3. ***Phase 3: Follow-up and Close-out*:**  In the year following the on-site visit, the OSEP State Lead will work with the State to ensure correction of any remaining outstanding findings, provide technical assistance, and support, and discuss progress in improving identified results areas.

#### The protocols are developed and organized in the following way—

Question: Overarching area and question related to the monitoring component.

General Information: A listing of statements about what the State would need to effectively answer the question.

Possible Follow-up Questions: Questions designed to more closely examine areas addressed by the General Information. The questions included within this section identify areas that may be explored and are examples of what can but may not necessarily be asked; OSEP may ask additional questions that are not listed to ensure understanding.

Areas (or issues) for Follow-up: Issues which could: 1) result in findings of noncompliance if verified, or areas of concern that may not rise to the level of a finding of noncompliance but require follow-up; 2) lead to a finding of noncompliance if the State does not have a process or procedure to meet the applicable IDEA Requirement(s); or 3) be areas that suggest the need for technical assistance or further discussion.

# Due Process Complaints:

# Does the State have policies, procedures, and practices that are reasonably designed to implement the due process complaint requirements of IDEA?

Component Definition: DISPUTE RESOLUTION—A system required under IDEA and designed as part of a State’s general supervisory responsibility to ensure implementation of IDEA’s dispute resolution procedures (i.e., State complaints, mediation, and due process complaints and due process hearings, including the resolution process required under Part B), consistent with IDEA requirements.

# Suggested Documents to Review (not exhaustive):

* Procedural safeguards notice
* Model forms for due process complaints, if available, may be found on the State’s website
* Policies and procedures related to due process
* If available on the State website, State educational agency (SEA)/Lead Agency (LA) due process hearing decisions
* Any supplemental guides or Q & A Documents the State has developed to provide guidance to its stakeholders related to dispute resolution activities
* Evidence of training provided to hearing officers and mediators
* Description of how the due process system is established in the State
  + One-tier system: Hearing is conducted by the SEA/LA.
  + Two-tier system: Responsibility for conducting the hearing rests with the local educational agency (LEA)/early intervention service (EIS) providers. The aggrieved party has the right to appeal the LEA’s/EIS provider’s decision to the SEA/LA where there is a right of appeal to the State.
* Any memorandums of agreement or contracts with the entity responsible for conducting the hearings
* The State’s IDEA section 618 dispute resolution data (for a minimum of 3 years’ data)

# Due Process Hearings

## Notes:

##### **Under Part B of IDEA**, States may choose to have a one-tier due process system or a two-tier due process system. This option is also available to Part C programs that adopt the Part B due process procedures. If the State has adopted a one-tier due process hearing system, the SEA is responsible for conducting the due process hearing. If the State has adopted a two-tier due process hearing system, the public agency directly responsible for the education of the child is responsible for conducting the due process hearing, and a party aggrieved by the decision has the right to appeal to the SEA/LA.

##### **Under Part C of the IDEA, the LA** must adopt and make available to parties either: (a) the Part C due process hearing procedures under Section 639 of the Act through [34 C.F.R. §303.430(d)(1)](https://www.ecfr.gov/cgi-bin/text-idx?SID=9d96271805f235923224c598755f0e54&mc=true&node=se34.2.303_1430&rgn=div8) and [§§303.435 through 303.438](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&n=sp34.2.303.e&r=SUBPART&ty=HTML) or (b) the Part B due process hearing procedures under Section 615 of the Act through [34 C.F.R. §303.430(d)(2)](https://www.ecfr.gov/cgi-bin/text-idx?SID=9d96271805f235923224c598755f0e54&mc=true&node=se34.2.303_1430&rgn=div8) and [§§303.440 through 303.449](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&n=sp34.2.303.e&r=SUBPART&ty=HTML). The different timeline requirements included in these two options are addressed in section F of this document. LAs indicate to OSEP whether they have adopted for resolution of IDEA Part C matters their Part B or Part C due process hearing procedures in their Annual Performance Report (APR) or 618 EMAPS dispute resolution data.

##### The following States implement a two-tier due process system (current as of December 2020):

|  |  |
| --- | --- |
| Part B | Part C |
| Kansas | Nevada |
| Kentucky | Ohio |
| Nevada | Oklahoma |
| New York |  |
| North Carolina |  |
| Ohio |  |
| Oklahoma |  |
| South Carolina |  |

# Overarching Questions (details start on page 5)

## [How does the State ensure that parties are informed of the due process complaint requirements, including access to the State’s model Due Process Complaint form?](#_How_does_the) (Model form only required for Part B) [34 C.F.R. §§ 300.508](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1508&rgn=div8) and [300.509](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1509&rgn=div8); [34 C.F.R §§ 303.441](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1441) and [303.421](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR0b42dee73576d72/section-303.421)

## [How does the State ensure that hearing officers have the necessary knowledge and ability to conduct due process hearings and issue written decisions?](#_How_does_the_1) [34 C.F.R. § 300.511](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1511&rgn=div8); [34 C.F.R §§ 303.435](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E#303.434) and [303.443](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1443)

## [How does the State ensure the impartiality of the due process hearing officers?](#_How_does_the_2) [34 C.F.R. § 300.511](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1511&rgn=div8); [34 C.F.R §§ 303.435](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E#303.434) and [303.443](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1443); [Question C-15 of the IDEA Part B Dispute Resolution Q&A](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (July 2013)

## [How does the State ensure that LEA/EIS providers properly implement the resolution process?](#_How_does_the_3) (Resolution meetings) [34 C.F.R. § 300.510](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1510&rgn=div8); [34 C.F.R § 303.442](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1442)

## [How does the State ensure that written due process hearing decisions are issued within required timelines?](#_How_does_the_4) [34 C.F.R. §§ 300.510](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1510&rgn=div8), [300.515](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1515&rgn=div8), and [300.532](https://www.ecfr.gov/cgi-bin/text-idx?SID=9b52c6546ab40635617fd051e9d7d6d3&mc=true&node=se34.2.300_1532&rgn=div8); [34 C.F.R §§ 303.430](https://www.ecfr.gov/cgi-bin/text-idx?SID=9d96271805f235923224c598755f0e54&mc=true&node=se34.2.303_1430&rgn=div8) and [303.437](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1437)

## [How does the State ensure that expedited due process hearings are implemented consistently with IDEA requirements?](#_How_does_the_5) [34 C.F.R. § 300.532](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1532&rgn=div8) [Questions E-6 and E-7 of the IDEA Part B Dispute Resolution Q&A](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (July 2013)

## [How does the State ensure the implementation of due process hearing officer decisions?](#_How_does_the_6) [34 C.F.R. §§ 300.149](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1149&rgn=div8) and [300.600](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1600&rgn=div8); [34 C.F.R. §§ 303.120](https://www.ecfr.gov/cgi-bin/text-idx?SID=289ad0d93926b8b560b9cb265762eb4b&mc=true&node=se34.2.303_1120&rgn=div8) and [303.700](https://www.ecfr.gov/cgi-bin/text-idx?SID=289ad0d93926b8b560b9cb265762eb4b&mc=true&node=se34.2.303_1700&rgn=div8); [Question C-26 of the IDEA Part B Dispute Resolution Q&A](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (July 2013)

## [How does the State use information from due process hearing decisions in its general supervision system?](#_How_does_the_7) [34 C.F.R. § 300.600](https://www.ecfr.gov/cgi-bin/text-idx?SID=6ad6f6f74ab7bc054cba5a69d19d535c&mc=true&node=se34.2.300_1600&rgn=div8); [34 C.F.R. § 303.700](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1700)

## How does the State ensure that parties are informed of the due process complaint requirements, including access to the State’s model Due Process Complaint form? (Model form only required for Part B) [34 C.F.R. §§ 300.508](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1508&rgn=div8) and [300.509](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1509&rgn=div8); [34 C.F.R §§ 303.441](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1441) and [303.421](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR0b42dee73576d72/section-303.421)

### General Information

**Applicable to Part B Only**

* The State must have a model Due Process Complaint form.
* The State forms need to include the necessary elements for a Due Process Complaint:
  + The name of the child,
  + The address of the residence of the child,
  + The name of the school the child is attending,
  + In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)(2)), available contact information for the child, and the name of the school the child is attending;
  + Description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts related to the problem, and
  + A proposed resolution of the problem to the extent known and available to the party at the time.
* States cannot require any party (e.g., parents, LEA/EIS providers or otherwise) to use the model form.
* Within five days of receipt of notification from a party that a due process complaint is insufficient, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the minimum requirements and must immediately notify the parties in writing of that determination.
* The State needs to ensure that the model due process complaint form is publicly available and accessible by widely disseminating it to parents and other stakeholders.

**Applicable to State LAs that have adopted the Part C Due Process Procedures**

* The State must have a means for filing a due process complaint.

### Possible Follow-up Questions

**Applicable to All:**

* How does the State ensure that parents are informed of their right to file a due process hearing through its policy and procedures regarding the prior written and procedural safeguards notice?
* What guidance is provided on the minimal requirements for a due process complaint to request a due process hearing?
* How does the State ensure that its LEAs/EIS providers have a process in place to respond to and support a parent who wishes to file a due process complaint, but is unable to read or write?
* Does the State permit complaints requesting due process hearings to be filed electronically?
  + If so, please describe how parents are made aware that they can file a due process complaint to request a due process hearing electronically.

**Applicable to Part B Only**

* How can stakeholders access the model form?
  + Is the model form posted on the State’s website?
  + Is the model form included within the Procedural Safeguards notice?
  + Is the model form provided through outreach to stakeholder advocacy groups (e.g., PTI Centers, P & A Agencies, disability organizations)?
* How does the State assist parent’s whose native language is not English - Is the form available in multiple languages? If not, what assistance is available to parents in completing the form if English is not their native language?
* Does the State require aggrieved parties to use a model form to file a Due Process Complaint?
* Is there any language on the State’s model form or related guidance that indicates that the form is required to be used to file a Due Process Complaint?
* If the State includes data elements not required by IDEA, does the State clearly identify those elements as optional?
* If the State includes additional “optional elements,” what action does the SEA take if the complainant does not include the requested information that is optional?

### Areas (or issues) for Follow-up

**Applicable to All:**

* The State delays resolution of due process complaints because optional content is missing.
* The State delays or dismisses due process complaints that name the SEA/LA as a party.

**Applicable to Part B Only**

* The State does not have a model form.
* The model form does not include all required elements.
* The State requires the use of its model form.
* The State has additional content requirements (e.g., disability, name of attorney, date of last individualized education program (IEP) meeting, any information not required by the regulations) and these matters are not identified as optional information on the model form.

### Notes

## How does the State ensure that hearing officers have the necessary knowledge and ability to conduct due process hearings and issue written decisions? [34 C.F.R. § 300.511](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1511&rgn=div8); [34 C.F.R §§ 303.435](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E#303.434) and [303.443](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1443)

**Applicable to All**

### General Information

* The State provides opportunities for hearing officers to receive training on IDEA.
* The State must ensure that the hearing officers possess the knowledge and demonstrate the ability to understand and apply IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts.
* The State must ensure that the hearing officers possess the knowledge and demonstrate the ability to conduct hearings and write decisions consistent with IDEA.

### Possible Follow-up Questions

* Which entity employs the hearing officers that handle due process complaints?
* What is the State’s process for identifying hearing officer training needs?
* How does the State arrange for training to meet the needs of hearing officers?
* What is the State’s process for hiring hearing officers who meet the basic requirements?

### Areas (or issues) for Follow-up

* The State is not taking any active steps to identify hearing officer training needs.
* The State is not taking any active steps to ensure that hearing officers have the knowledge of, and ability to understand and apply, IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts.
* The State is not taking any active steps to ensure that hearing officers have the knowledge and ability to conduct hearings and write decisions consistent with IDEA.

### Notes

## How does the State ensure the impartiality of the due process hearing officers? [34 C.F.R. § 300.511](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1511&rgn=div8); [34 C.F.R §§ 303.435](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E#303.434) and [303.443](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1443); [Question C-15 of the IDEA Part B Dispute Resolution Q&A](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (July 2013)

**Applicable to All**

### General Information

* The State has policies that ensure hearing officers are not employees of the SEA/LA.
* The State ensures that the hearing officer is not an LEA/EIS provider that is involved in the education or early intervention services or care of the child, infant or toddler.
* Payment by the SEA/LA of a hearing officer does not automatically make the hearing officer an employee of the SEA/LA.
* The State has policies that ensure a hearing officer does not have a personal or professional interest that conflicts with the officer’s objectivity in the hearing.

### Possible Follow-up Questions

* What are the State’s procedures for ensuring that hearing officers are impartial in hearings?
* How does the State address allegations that a hearing officer was not impartial?
* Are there examples from the hearing officer training conducted or any documentation that demonstrates that impartiality requirements were discussed in training?

### Areas (or issues) for Follow-up

* The State does not have any procedures which ensure that its hearing officers are impartial.
* The State does not have any process or procedure to address allegations related to a hearing officer’s impartiality.
* The State is not able to provide information from its hearing officer training materials that demonstrates that they discussed the hearing officer impartiality requirements.
* The State employs hearing officers that are employees of the SEA/LA.

### Notes

## How does the State ensure that LEA/EIS providers properly implement the resolution process? (Resolution meetings) [34 C.F.R. § 300.510](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1510&rgn=div8); [34 C.F.R § 303.442](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1442)

**Applicable to Part B and to State Part C LAs that have** **adopted Part B Procedures**

### General Information

* The resolution period is 30 days from the receipt of the parent’s due process complaint, but this period may be adjusted if:
  + Both parties agree in writing to waive the resolution meeting;
  + After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible (going straight to hearing); or
  + Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later a party withdraws from the mediation process.
* The State must ensure resolution meetings are held within 15 days of the other party receiving notice of the due process complaint. The State has a process for reviewing LEA/LA data on resolution meetings, including timelines.
* If the LEA/LA fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
* If the LEA/LA is unable to obtain the participation of the parent in the resolution meeting, after making reasonable efforts, at the conclusion of the 30-day resolution period, the LEA/LA may request that a hearing officer dismiss the parent’s due process complaint.
* Convening resolution meetings under Part B of IDEA is an LEA’s responsibility. The State must ensure resolution meetings are held in a timely manner.
* If a Part C program has adopted the Part B due process hearing procedures, the LA is responsible for convening resolution meetings in a timely manner.
* Resolution meetings must include a representative of the public agency who has decision-making authority on behalf of that agency.
* Resolution meetings may not include LEA/LA attorneys if the parent is not accompanied by an attorney.
* If a resolution meeting did not occur, the State must have documentation that both parties agreed in writing to waive the resolution meeting or agreed to use mediation.

### Possible Follow-up Questions

* How does the SEA/LA ensure that the LEA/LA is tracking the 15-day timeline to hold the resolution meeting?
* How does the SEA/LA ensure that the LEA/LA track the 30-day resolution process timeline?
* Have there been any complaints about how LEAs/LAs are implementing resolution meeting requirements? And if so, how has the State responded or resolved those complaints?
* How does the State ensure the LEA/LA includes a public agency representative with decision-making authority in the resolution meeting?
* What happens if a resolution meeting has not been scheduled by the end of the 15-day timeline?
* What happens if a resolution meeting has not been scheduled by the end of the 30-day timeline?
* What training has been offered or what procedures have been put into place to make sure that LEAs/LAs are properly implementing the resolution process?
* How does the State work with its LEAs/LAs to improve resolution meeting timeliness and outcomes, when applicable?
* Does the State impose sanctions/enforcement actions on LEAs that are not holding resolution meetings or resolving due process complaints a timely manner?
* Given that resolution meetings are an LEA responsibility for Part B programs, what type of communication exists between LEAs and the SEA with respect to the implementation of resolution meetings?

### Areas (or issues) for Follow-up

* The State does not have any resolution meeting and/or resolution process requirements in place.
* The State does not have a process to monitor LEAs’/LAs’ compliance with resolution meeting and/or resolution process requirements.
* The State’s dispute resolution data shows discrepancies in the number of due process hearing requests and resolution meetings. (Review IDEA section 618 dispute resolution data for evidence of more resolution meetings than due process complaints filed, or if there were multiple due process hearings with no resolution meetings held.)
* The State does not have a process to monitor or track LEAs’/LAs’ compliance with resolution meeting and/or resolution process timeline requirements.

### Notes

## How does the State ensure that written due process hearing decisions are issued within required timelines? [34 C.F.R. §§ 300.510](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1510&rgn=div8), [300.515](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1515&rgn=div8), and [300.532](https://www.ecfr.gov/cgi-bin/text-idx?SID=9b52c6546ab40635617fd051e9d7d6d3&mc=true&node=se34.2.300_1532&rgn=div8); [34 C.F.R §§ 303.430](https://www.ecfr.gov/cgi-bin/text-idx?SID=9d96271805f235923224c598755f0e54&mc=true&node=se34.2.303_1430&rgn=div8) and [303.437](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1437)

### General Information

**Applicable to All**

* A hearing officer may grant specific extensions of time, at the request of either party.
* The State must ensure that the extension is for a specific period of time.
* The State must track the length of any extensions granted.

**Applicable to Part B and to Part C State LAs that have adopted Part B Due Process Procedures**

* The 45-day period for issuing a final decision after a due process hearing held on a due process complaint starts the day after one of the following events:

1. Both parties agree in writing to waive the resolution meeting;
2. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
3. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

* The State maintains a process to track the 30-day resolution period and any adjustments made to that period.
* If a Part C program adopts the Part B due process procedures, the LA may adopt a 30- or 45-day timeline for the resolution of due process complaints and must specify in its written policies and procedures the specific timeline it has adopted.

**Applicable to State Part C LAs that have adopted the Part C Due Process Procedures**

* For Part C programs that adopt the Part C procedures each LA must ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.

### Possible Follow-up Questions

* What are the circumstances that would warrant an extension?
* How does the State ensure that the extension is for a specific period of time (not open-ended)?
* What steps does the State take if a due process hearing decision is late?
* Does the State have any additional limitations or criteria for extensions?
* How is the length of the extension recorded?
* How does the State track due process hearing extensions?
* If the State finds that a hearing officer is inappropriately extending timelines, what action is taken?

**Applicable to States with two-tier due process systems**

* What are the State’s procedures for ensuring the 45-day (or 30-day [Part C]) timeline for the due process hearing in a State with a two-tier Due Process system begins on the correct date?
* What oversight does the SEA/LA have regarding Tier One activities? How does the SEA ensure that the hearing officer decisions are issued within timelines or appropriately extended timelines?
* Describe the State’s process for conducting an impartial review of the hearing officer’s decision.
* How does the second-tier review system ensure that a decision meets the 30-day timeline (unless extended by a hearing officer) and that a copy of the decision is mailed to each party?
* How do parties appeal a Tier One decision to the SEA/LA? How long do they have to appeal the decision? How and when are parties notified of their right to appeal a decision to the SEA/LA?
* What documentation does the SEA/LA receive (and from whom) when a decision is appealed to the SEA/LA? (i.e., is the parent, the LEA, or the hearing officer, required to send the information?)
* How and when are State review officers (SROs) assigned to an appeal at Tier Two?
* What training are SROs provided?
* What oversight does the SEA/LA exercise over the Tier Two process (timelines, etc.)?
* How does the SEA/LA ensure that SRO decisions are issued within timelines or appropriately extended timelines?

### Areas (or issues) for Follow-up

* The State does not have a system in place to ensure that the timeline is measured properly.
* The State has additional steps in the resolution process that could cause delays in the timeline.
* The State extends timelines without a hearing officer’s approval at the request of a party.
* The State does not mail or provide a copy of the decision to each party.
* The State does not have a process in place to track extensions.
* The timeline is extended for administrative convenience, i.e., unilaterally extended by the hearing officer or to accommodate the hearing officer’s schedule.
* The State cannot document the reasons for extensions.

**Applicable to States with two-tier due process systems**

* The State does not have a clear appeals process in place that includes the required activities.
* It is unclear how parents are notified of the right to appeal.
* The State does not have a mechanism in place for ensuring the appeal timelines are met.

### Notes

## How does the State ensure that expedited due process hearings are implemented consistently with IDEA requirements? [34 C.F.R. § 300.532](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1532&rgn=div8) [Questions E-6 and E-7 of the IDEA Part B Dispute Resolution Q&A](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (July 2013)

## Only Applicable to Part B

### General Information

* IDEA affords an opportunity for expedited due process hearings on discipline-related matters.
* Expedited due process hearing procedures have shorter timelines, with no extensions to the timelines.
  + The resolution period is 15 days,
  + The resolution meeting must be held within 7 days of receiving notice of the parent’s due process complaint,
  + The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the parent’s due process complaint,
  + The expedited due process hearing must occur within 20 school days of the date the due process complaint requesting a due process hearing is filed,
  + The hearing officer’s decision must be made within 10 school days after the hearing, and
  + Hearing officers may not grant extensions of the timelines that apply to expedited due process hearings.
* Parties may not challenge the sufficiency of expedited due process complaints.

### Possible Follow-up Questions

* For expedited due process hearing procedures, how does the State ensure that the required timelines are met?
* What is the process for requesting an expedited due process hearing?
* How are the relevant timelines calculated and tracked?
* Under what circumstances are extensions permitted in expedited due process hearings?
* Does a State allow expedited due process complaints to cover issues other than disciplinary matters?

### Areas (or issues) for Follow-up

* Both the 15-day resolution period and the 20-school-day timeline for the hearing begin from the date the due process complaint requesting a due process hearing is filed.
* The State allows extensions for expedited due process hearings.
* The State allows parties to challenge the sufficiency of expedited due process complaints.
* The State provides expedited due process hearings for matters unrelated to discipline and includes those in its expedited due process complaint data.

### Notes

## How does the State ensure the implementation of due process hearing officer decisions? [34 C.F.R. §§ 300.149](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1149&rgn=div8) and [300.600](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1600&rgn=div8); [34 C.F.R. §§ 303.120](https://www.ecfr.gov/cgi-bin/text-idx?SID=289ad0d93926b8b560b9cb265762eb4b&mc=true&node=se34.2.303_1120&rgn=div8) and [303.700](https://www.ecfr.gov/cgi-bin/text-idx?SID=289ad0d93926b8b560b9cb265762eb4b&mc=true&node=se34.2.303_1700&rgn=div8); [Question C-26 of the IDEA Part B Dispute Resolution Q&A](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (July 2013)

### General Information

**Applicable to All**

* Personally identifiable information (PII) must be redacted from information provided to the public.
* The State must have a process to ensure LEAs/LAs implement the actions within the timeline ordered by the hearing officer.

**Applicable to Part B and to Part C State LAs that have adopted Part B Due Process Procedures**

* Findings and decisions must be made available to the public.

### Possible Follow-up Questions

* How does the State ensure that a hearing officer’s decision has been implemented?
* What evidence does the State review to substantiate implementation of the hearing officer’s decision?
* Does the State impose sanctions/enforcement actions on public agencies that cannot demonstrate timely implementation of hearing officers’ decisions?
* If the State receives a State complaint alleging that a hearing officer’s decision has not been implemented, how does the State investigate the complaint?
* How does the State make its findings and decisions available to the public?
* If the State is using its website to share the due process hearing decisions, how frequently is it updated?

### Areas (or issues) for Follow-up

**Applicable to All**

* After the hearing officer’s decision is issued, the State does not follow up with the LEA/LA or EIS provider.
* The State does not have a mechanism to ensure that the hearing officer’s decision has been implemented.

**Applicable to Part B and to Part C State LAs that have adopted Part B Due Process Procedures**

* Findings and decisions are not made available to the public or are not made available in a timely manner.
* The State does not adequately redact PII.

### Notes

## How does the State use information from due process hearing decisions in its general supervision system? [34 C.F.R. § 300.600](https://www.ecfr.gov/cgi-bin/text-idx?SID=6ad6f6f74ab7bc054cba5a69d19d535c&mc=true&node=se34.2.300_1600&rgn=div8); [34 C.F.R. § 303.700](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1700)

**Applicable to All**

### General Information

* The State has methods of regularly reviewing issues raised in due process hearing decisions to compare to other monitoring information.
* As part of its general supervision system, the State has methods to track the issues identified in due process hearing decisions to determine if patterns or trends exist.
* The State has a process for reviewing due process hearing decisions for the purpose of identifying hearing officer training needs and any noncompliance identified by the hearing officer (one-tier), or State reviewing officer (two-tier), against an LEA/EIS provider.

### Possible Follow-up Questions

* How does the State incorporate information from due process hearing decisions in its oversight or monitoring of LEAs/EIS programs and providers?
* How does the State determine whether an issue in a due process hearing complaint may warrant broader guidance throughout the LEA/EIS provider or State?
* How does the State evaluate the effectiveness of any guidance that may result from due process hearing decisions?
* How does the State determine whether similar situations are resolved consistent with past decisions or guidance?
* What actions does the State take if the decision identifies any procedural and/or substantive violations of IDEA in a specific LEA or EIS providers?

### Areas (or issues) for Follow-up

* The State does not review due process hearing decisions to determine possible patterns or trends.
* The State is not taking any active steps to review due process hearing decisions as a part of its oversight responsibilities.
* The State does not incorporate issues identified in due process hearing decisions in its monitoring activities or in future guidance.
* The State does not have a system in place to ensure that issues identified in due process hearing decisions are addressed consistently among LEAs/EIS providers.

### Notes

# **Related Requirements**

IDEA Part B Regulations:

* **[34 C.F.R. § 300.11](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-A/subject-group-ECFR0ec59c730ac278e/section-300.11" \o "Link to 34 C.F.R. § 300.11) [Day; business day; school day]**
* [**34 C.F.R. § 300.149**](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-B/subject-group-ECFRf3191dc58290c0e/section-300.149) **[SEA responsibility for general supervision]**
* [**34 C.F.R. § 300.150**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1150&rgn=div8) **[SEA implementation of procedural safeguards]**
* [**34 C.F.R. § 300.504**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1504&rgn=div8) **[Procedural safeguards notice]**
* [**34 C.F.R. § 300.505**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1505&rgn=div8) **[Electronic mail]**
* [**34 C.F.R. § 300.507**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1507&rgn=div8) **[Filing a due process complaint]**
* [**34 C.F.R. § 300.508**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1508&rgn=div8) **[Due process complaint]**
* [**34 C.F.R. § 300.509**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1509&rgn=div8) **[Model forms]**
* [**34 C.F.R. § 300.510**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1510&rgn=div8) **[Resolution process]**
* [**34 C.F.R. § 300.511**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1511&rgn=div8) **[Impartial due process hearing]**
* [**34 C.F.R. § 300.512**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1512&rgn=div8) **[Hearing rights]**
* [**34 C.F.R. § 300.513**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1513&rgn=div8) **[Hearing decisions]**
* [**34 C.F.R. § 300.514**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1514&rgn=div8) **[Finality of decision; appeal; impartial review]**
* [**34 C.F.R. § 300.515**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1515&rgn=div8) **[Timelines and convenience of hearings and reviews]**
* [**34 C.F.R. § 300.532**](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1532&rgn=div8) **[Appeal]**
* [**34 C.F.R. § 300.600**](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-F/subject-group-ECFR76957f34acb3422/section-300.600) **[State monitoring and enforcement]**

IDEA Part C Regulations:

* **[34 C.F.R. § 303.421](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR0b42dee73576d72/section-303.421" \o "Link to 34 C.F.R. § 303.421 )** [**Prior Written Notice and Procedural Safeguards Notice**]
* [**34 C.F.R. § 303.430**](https://www.ecfr.gov/cgi-bin/text-idx?SID=9d96271805f235923224c598755f0e54&mc=true&node=se34.2.303_1430&rgn=div8) **[State Dispute Resolution Options]**
* [**34 C.F.R. § 303.435**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1435) **[Appointment of an impartial due process hearing officer]**
* [**34 C.F.R. § 303.436**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1436) **[Parental rights in due process hearing proceedings]**
* [**34 C.F.R. § 303.437**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1437)**[Convenience of hearings and timelines]**
* [**34 C.F.R. § 303.440**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1440) **[Filing a Due Process Complaint]**
* [**34 C.F.R. § 303.441**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1441) **[Due Process Complaint]**
* [**34 C.F.R. § 303.442**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1442) **[Resolution Process]**
* [**34 C.F.R. § 303.443**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1443) **[Impartial Due Process Hearing]**
* [**34 C.F.R. § 303.444**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1444) **[Hearing rights]**
* [**34 C.F.R. § 303.445**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1445) **[Hearing Decisions]**
* [**34 C.F.R. § 303.446**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1446) **[Finality of Decision: Appeal: Impartial]**
* [**34 C.F.R. § 303.447**](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1447) **[Timeless and Convenience of Hearings and Reviews]**

1. The State educational agency (SEA) is responsible for implementing Part B of the IDEA and the State lead agency (LA) is responsible for implementing Part C of the IDEA in the State. Both the SEA and LA respectively must exercise general supervision over the programs and activities used to implement IDEA requirements in the State (regardless of whether Federal IDEA funds are provided to such programs and activities). [20 U.S.C. Sections 1416(a)(3)](https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1416), [1435(a)(10)](https://sites.ed.gov/idea/statute-chapter-33/subchapter-iii/1435), [1437(a)(1)](https://sites.ed.gov/idea/statute-chapter-33/subchapter-iii/1437) and [1442](https://sites.ed.gov/idea/statute-chapter-33/subchapter-iii/1442) and [34 C.F.R. §§ 303.120(a)](https://www.ecfr.gov/cgi-bin/text-idx?SID=e6c33b333d6456a438dbd2feb0f64cf9&mc=true&node=se34.2.303_1120&rgn=div8) and [303.700(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=e6c33b333d6456a438dbd2feb0f64cf9&mc=true&node=se34.2.303_1700&rgn=div8) for IDEA Part C. [20 U.S.C. Sections 1412(a)(11)](https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1412) and [1416(a)(3)](https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1416) and [34 C.F.R. §§ 300.149](https://www.ecfr.gov/cgi-bin/text-idx?SID=36a281a95887586543a75d7188cd4f21&mc=true&node=se34.2.300_1149&rgn=div8) and [300.600](https://www.ecfr.gov/cgi-bin/text-idx?SID=36a281a95887586543a75d7188cd4f21&mc=true&node=se34.2.300_1600&rgn=div8) for IDEA Part B. [↑](#footnote-ref-2)
2. OSEP’s monitoring protocols identify a framework of applicable IDEA statutory and regulatory requirements. They are intended neither as questionnaires nor as forms for States to complete. Rather, OSEP will conduct its IDEA monitoring based on State-specific circumstances and the conversation with States will be guided by both the information provided by the State and information that is publicly available to help OSEP determine how States are implementing IDEA requirements and where there may be a need for additional technical assistance or other support. [↑](#footnote-ref-3)