

# OSEP Leadership Conference



Building the Legacy: IDEA 2004



August 28-30, 2006

Washington, D.C.

## Procedural Safeguards:

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### Due Process Procedures and Procedural Safeguards Notice



U.S. Department of  
Education  
Office of Special  
Education Programs

Building the Legacy: *IDEA* 2004



# Introduction

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- Topics for breakout sessions were selected by OSEP because each highlights critical implementation issues under the *IDEA* 2004 Statute and Regulations
- Presentation will track the Topic Briefs (TB page-paragraph)

# Introduction

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## Topic Briefs Referenced:

- A – Procedural Safeguards: Resolution Meetings and Due Process Hearings
- B – Procedural Safeguards: Mediation
- C – State Complaint Procedures
- D – Procedural Safeguards: Surrogate Parents, Notice and Parental Consent

# Key Terms

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## **Due Process Complaint** –

a document filed by a parent or a public agency to initiate an impartial due process hearing on matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child

# Key Terms

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(TBA 2-2)

The party filing *a due process complaint* must provide a copy to the other party and forward a copy to the state educational agency (SEA)

# Key Terms

(TBA 4-4)

**Resolution Meeting** –  
a meeting convened by the local educational agency (LEA), with the parent(s) and other relevant member(s) of the individualized education program (IEP) Team who have specific knowledge of the facts in the parent's due process complaint

# Resolution Meeting (cont.) (TBA 4-4)

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The purpose is for the parent to discuss the due process complaint, and the facts that form its basis so that the LEA has the opportunity to resolve the dispute that forms the basis of the due process complaint

# Key Terms

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(TBB 1-1)

## **Mediation** –

a process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and public agency



# Key Terms

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(TBC 3-5)

## **State Complaint** –

A signed, written document submitted to an SEA by an individual or organization that alleges that a public agency has violated a requirement of Part B of *IDEA*

# Key Issues

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- Timelines for the filing a due process complaint
- Resolution process
- Enforceability of agreements

# Key Issues

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- Confidentiality of mediation discussions
- State complaint procedures
- Content of procedural safeguards notice and when notice must be given

# Due Process Procedures:

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Time Limit for Filing a  
Due Process Complaint

# Public Comments

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- Many commenters supported the time limit for filing a due process complaint
- Commenters asked for clarification concerning State-adopted time limits for submitting a due process complaint

# Final Regulations

(TBA 1-1)

A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the state has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that state law, ...

34 CFR 300.511(e)

# Due Process Procedures:

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## Resolution Process

# Resolution Process in Brief

(TBA 4-4; 4-5)

- Within 15 days of receipt of a due process complaint, the public agency must convene a resolution meeting
- If the dispute is not resolved within 30 days of the public agency's receipt of the due process complaint, the due process hearing timeline begins



# Resolution Process in Brief

(cont) (TBA 4-4)

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- Parties can agree to mediation as an alternative to the resolution process
- Parties can agree to waive the resolution process

# Public Comments

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- Received numerous comments expressing concern about the resolution process and requesting changes in the NPRM to:
  - Ensure the process is effective and not used to delay or deny the right to a due process hearing
  - Clarify requirements for participation in a resolution meeting and consequences

# NPRM

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A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of ...

Proposed 34 CFR 300.508(c)

# Public Comment

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Clarify the relationship between the party's right to raise a sufficiency claim and the requirement to hold a resolution meeting within 15 days of receiving the parent's due process complaint

# Final Regulation

(TBA 2-2)

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of 34 CFR 300.508(b)

34 CFR 300.508(c)

# Due Process Procedures:

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## Timing of the Due Process Hearing

# NPRM

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If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur

Proposed 34 CFR 300.510(b)(1)

# Final Regulation

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(TBA 4-5)

If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur

34 CFR 300.510(b)(1)



# NPRM

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Except where the parties have jointly agreed to waive the resolution process or use mediation. . .the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held

Proposed 34 CFR 300.510(b)(3)

# Public Comment

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The NPRM does not adequately address situations when one or the other party does not participate in the resolution meeting

# Final Regulation

(TBA 4-5)

*If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 34 CFR 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint*

34 CFR 300.510(b)(4)

# Final Regulation

(TBA 4-5)

*If the LEA 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*

34 CFR 300.510(b)(5)

# Public Comment

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There ought to be a way for parties to change the resolution period timeline if they've agreed to waive resolution, or agreed that they've reached a point in their discussions where they know they will not be able to resolve the matter themselves

# Final Regulation

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(TBA 5-6)

*Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in 34 CFR 300.515(a) starts the day after one of the following events:*

# Final Regulation (TBA 5-6)

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- *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 OR*

# Final Regulation (TBA 5-6)

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- *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*

34 CFR 300.510(c)



# Due Process Procedures:

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## Enforceability of Agreements

# NPRM

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Written settlement agreement...is enforceable in any State court of competent jurisdiction or in a district court of the United States

Proposed 34 CFR 300.510(c)(2)

# Public Comments

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- Requested clarification about whether the SEA, a hearing officer, or an administrative law judge has the authority to enforce a written resolution agreement
- Suggested States should be able to enforce a signed settlement agreement through other means, like the State's complaint procedures as well as in State and Federal court

# Final Regulation

(TBA 5-7)

*Notwithstanding 34 CFR 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement,*

# Final Regulation

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(TBA 5-7)

*provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States*

34 CFR 300.537

# Mediation

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# NPRM

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Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings *that arise from that dispute*

Proposed 34 CFR 300.506(b)

# Public Comments

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- Many comments expressing concern about confidentiality of mediation discussions
- Some expressed concern that mediation could be used as discovery for some future dispute



# Final Regulation (TBB 3-6)

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Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this Part

34 CFR 300.506(b)(7)

# State Complaint Procedures

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# State Complaint Procedures

(TBC 2-3)

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SEA must provide the public agency with the opportunity to respond to the complaint filed with the SEA, including at a minimum:

# State Complaint Procedures

(TBC 2-3)

- At the discretion of the public agency, a proposal to resolve the complaint, and
- An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation

# State Complaint Procedures:

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## Time Limit for Filing a State Complaint

# NPRM

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Except for complaints covered under 34 CFR 300.507(a)(2) [i.e., due process complaints], the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.151

Proposed 34 CFR 300.153(c)

# Public Comment

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Some commenters stated that the reference to the due process complaint timeline could create confusion

# Final Regulation

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(TBC 3-6)

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.151

34 CFR 300.153(c)



# State Complaint Procedures:

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## Remedies for Denial of Appropriate Services

# Public Comments

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Commenters were concerned about the removal of references to monetary reimbursement and compensatory services when an SEA finds a failure to provide appropriate services

# Final Regulation

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(TBC 1-2)

In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:

# Final Regulation

(TBC 1-2)

The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement);...

34 CFR 300.151(b)(1)

# Procedural Safeguards Notice:

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## Procedural Safeguards Notice Content

# Procedural Safeguards Notice Content

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- The Department developed a model procedural safeguards notice in accordance with 20 U.S.C. 1417(e)
- 34 CFR 300.504 cross-references amended to identify the specific regulatory provisions that include procedural safeguards that require an explanation

# Procedural Safeguards Notice:

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## Provision of Procedural Safeguards Notice

# Public Comments

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- Comments about when the procedural safeguards notice must be provided to parents, including when a State complaint OR due process complaint is filed
- Concern expressed about paperwork and procedural burdens
- Recommended the notice be given when disciplinary action will be taken



# Final Regulation

(TBD 2-2)

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents...

- Upon initial referral or parent request for evaluation;
- Upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year
- In accordance with the discipline procedures in 34 CFR 300.530(h)...

# IDEA Dispute Resolution Processes

	<b>Mediation</b>	<b>Due Process Complaint</b>	<b>Resolution Meeting</b>	<b>State Complaint</b>
<b>Who can initiate the process?</b>	Parent or LEA/ Public Agency, but must be voluntary for both	Parent or LEA/ Public Agency	LEA schedules upon receipt of a due process complaint unless parties agree to waive or use mediation	Any individual or organization, including those from out of state

# IDEA Dispute Resolution Processes

	<b>Mediation</b>	<b>Due Process Complaint</b>	<b>Resolution Meeting</b>	<b>State Complaint</b>
<b>What is the time limit for filing?</b>	None specified	2 years of when knew or should have known of the problem (or a State law specified timeline) with limited exceptions	Linked to the parent's due process complaint	1 year from date of violation

# IDEA Dispute Resolution Processes

	<b>Mediation</b>	<b>Due Process Complaint</b>	<b>Resolution Meeting</b>	<b>State Complaint</b>
<b>What issues can be resolved?</b>	Any matter under Part 300, including matters arising prior to filing a due process complaint [there are exceptions]	Any matters relating to the identification, evaluation or educational placement or provision of FAPE [there are exceptions]	Linked to the parent's due process complaint	Alleged violations of Part B of <i>IDEA</i> or Part 300

# IDEA Dispute Resolution Processes

	<b>Mediation</b>	<b>Due Process Complaint</b>	<b>Resolution Period</b>	<b>State Complaint</b>
<b>What is the time line for resolving the issues?</b>	None specified	45 days from the end of the 30-day resolution period unless adjustments made to the timeline	30 days from receipt of parent's due process complaint unless parties agree otherwise	60 days from receipt of complaint unless extension permitted

# IDEA Dispute Resolution Processes

	<b>Mediation</b>	<b>Due Process Complaint</b>	<b>Resolution Meeting</b>	<b>State Complaint</b>
<b>Who resolves the issues?</b>	LEA/Public Agency and Parent with a mediator The process is voluntary and both parties must agree to any resolution	Hearing Officer	LEA/Public Agency and Parent	SEA

# Web Resources

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Consortium for Appropriate Dispute  
Resolution in Special Education  
(CADRE)

[www.directionservice.org/cadre](http://www.directionservice.org/cadre)

# Regional Implementation Planning Meetings

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What implementation issues and challenges on this topic should be addressed at the *IDEA* Regional Implementation Planning Meetings?

- January 30 and 31, 2007
  - *Washington, D.C.*
- February 12 and 13, 2007
  - *Los Angeles, California*
- February 15 and 16, 2007
  - *Kansas City, Missouri*



# For More Information

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Please go to

<http://sites.ed.gov/idea>

for resources on *IDEA*  
2004 Final Regulations



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# Procedural Safeguards

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## Implementation Challenges?