
FOR YOUR INFORMATION

News for School Clients

New Rules for Special Education Due Process Hearings

On July 1, 2005, new changes to the Individuals with Disabilities Education Act (IDEA) went into effect, increasing school district responsibilities related to parental requests for a due process hearing, while providing an additional opportunity to resolve disputes. The IDEA has a provision that allows either a parent or a school district to file a request for a due process hearing when there is a dispute related to the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) for a child with a disability. The new changes include additional timelines that must be monitored and activities that must be completed by districts when such a request is made. Although the changes apply to both parents and school districts, most requests for a due process hearing are filed by the parents. Therefore, this discussion will assume the request was filed by a parent and discuss the school district's obligations.

Previously, when a parent disagreed with an action proposed by the school district or the district's refusal to initiate an action requested by the parent, the parent was to file a request for a due process hearing with the Department of Public Instruction (DPI). Now, the parent is required to file a due process hearing request (also known as a due process complaint notice) directly with the school district and file a copy with the DPI. In fact, under the new law, if the

parent does not send the complaint notice to the school, there can be no hearing. In practical terms, however, the DPI is currently transmitting parent requests to the school district when it receives the complaint from a parent and permitting the parent to proceed.

New timelines are now established by the date the school district receives a request for a due process hearing. First, within 10 calendar days the district must file a response with the parent. The response must address the issues raised in the complaint by the parents and provide an explanation of why the district proposed or refused to take the action raised in the complaint; a description of other options considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment or report used as a basis for the district's action or inaction; and a description of factors relevant to the district's decision.

Second, a "Resolution Session" must be scheduled and convened within 15 calendar days of receiving the parent's notice requesting a hearing. The purpose of this meeting is to provide a forum for the parents to discuss their complaint. This new requirement provides a 30-day resolution period, during which the parties may attempt to resolve the complaint without a hearing. If the parties agree to discuss a possible

resolution during this 30-day period, the 45-day timeline for holding and completing the hearing does not commence until after this initial 30-day period. The convening of a Resolution Session may be waived, but only if both parties agree in writing. Attendance at the Resolution Session is mandatory absent such an agreement. The participants at the Resolution Session are to include the parent(s), a school representative with authority to make decisions, and relevant member(s) of the individualized education program (IEP) team who have specific knowledge of the facts identified in the complaint.

If a Resolution Session is conducted, the district may not be represented by an attorney at the session unless the parents bring an attorney. If a resolution to all or part of the issues is reached, a legally binding written settlement agreement must be signed by the parties describing the parties' agreement. However, either party has three (3) days after it is signed to void the agreement.

Third, the school district now has the opportunity to challenge the sufficiency of the complaint in terms of the information the complaint provides about the problem. The complaint must contain information related to the following: the name of the child; description of the problem and of the facts relating to the problem, including when the problem occurred; and a proposed

resolution. This information is considered necessary for the district to respond to the allegations in the complaint, to attempt to resolve the complaint, or to prepare adequately for a hearing.

The district has 15 calendar days from receipt of the complaint within which to file an objection with the assigned administrative law judge (ALJ) and assert that the complaint is insufficient. The ALJ, then, must issue a decision within five (5) calendar days on whether the complaint meets the requirements for such a notice. If the complaint is found to be insufficient, the parent must refile the request for a hearing, and all required processes, including notices, and timelines start over. Under certain conditions, the ALJ may permit the parent to amend his or her complaint, but the timeline would still start over. The parties still have the option to enter into mediation to resolve the dispute and the Resolution Session and mediation are not mutually exclusive, such that both may occur.

The new changes in the IDEA will require districts to review their board policies and special education procedures, revising them to reflect the new rules. For instance, it would be beneficial to determine a central point in the district for receiving and responding to parental complaints. This will include identifying a position and location for receiving complaints and revised parental rights statements.

*If you have any questions regarding this topic, please call either of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.
David E. Rohrer 608-286-7249 / Joanne Harmon Curry 608-286-7248*

Disclaimer: Lathrop & Clark LLP provides this material for information about legal issues and not to give legal advice. However, material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Lathrop & Clark LLP recommends the use of legal counsel on specific matters.