

Due Process Under Special Education Law During the COVID-19 Pandemic

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Issue

Summarize the State Department of Education's [guidance](#) ("SDE guidance") to school districts regarding due process requirements under the federal Individuals with Disabilities and Education Act (IDEA) ([20 U.S.C. 1400, et seq.](#)) during school closures due to the COVID-19 pandemic.

The Office of Legislative Research is not authorized to issue legal opinions, and this report should not be considered one.

Summary

This report provides a brief overview of IDEA special education due process requirements and summarizes how the SDE guidance for public school districts addresses the following requirements during the COVID-19 public health emergency: SDE handling of complaints and hearing requests, pre-hearing conferences, resolution sessions, due process hearings and deadline extensions, mediations, and 60-day state complaints.

Since state special education law must conform with IDEA, this report cites both state and federal law.

Background: Due Process Requirements in Special Education Law

Under IDEA, each public school district must provide free and appropriate public education (commonly referred to as FAPE) to every student with learning disabilities ([34 C.F.R. § 300.1](#)). When a school district and the parents of a special education student disagree on the educational services to be provided to the student in his or her individualized education program (IEP), and the disagreement cannot be resolved through mediation or other less formal means, parents have the right to have a formal hearing ([CGS § 10-76h\(a\)](#)). The hearing is a key part of parents' due process under IDEA when the disagreement cannot otherwise be resolved. The impartial officer presiding over the hearing has broad authority when making a ruling to confirm, modify, or reject any identification, evaluation, or placement of the student in question ([CGS § 10-76h\(d\)](#)).

IDEA does not address how due process should be provided when public schools are closed for an extended period of time because of an exceptional circumstance, such as a pandemic. Therefore, the U.S. Department of Education (DOE) issued [guidance](#) in March saying that if school districts provide educational opportunities to the general student population during a school closure, then they must also ensure that students with disabilities have equal access to the same opportunities including FAPE.

SDE Due Process Guidance

In Connecticut, school districts are providing remote learning opportunities to all students after the governor's executive order cancelling in-school classes through the end of the 2019-20 school year due to the COVID-19 pandemic. In light of that, SDE is advising that in-person due process hearings should not take place, yet school districts still have the full-responsibility of meeting the requirements of IDEA. On April 6, 2020, SDE issued due process [guidance](#) to all school superintendents to inform school districts and families about "conflict resolution options in special education matters as provided for under [IDEA] and state special education statutes."

***Department of Education
Guidance on Due Process
Hearings:***

"Considering this public health emergency, [the department] is confident that parents and school districts and their respective legal representatives... will, more often than not, jointly request extensions of time requirements."

Specifically, SDE's guidance addresses the following special education due process requirements during the COVID-19 public health emergency: the state's handling of complaints and hearing requests, pre-hearing conferences, resolution sessions, due process hearings and deadline extensions, mediations, and 60-day state complaints.

Handling of Complaints and Hearing Requests

SDE's guidance document notes how various aspects of its Bureau of Special Education (BSE) are functioning during the pandemic restrictions:

1. the due process unit is primarily operating remotely and continues to accept requests for due process hearings from parents of students with disabilities;
2. parents and school districts are asked to communicate with BSE electronically, if possible;
3. school districts are expected to continue to have an administrator to monitor receipt of hearing requests and to communicate with families and the BSE; and
4. schools and family attorneys should contact their hearing officer to address possible postponement of already scheduled hearings.

Pre-Hearing Conferences

The guidance states that in most cases, the telephone prehearing conferences will continue to be scheduled and held. During these conferences, hearing officers are directed to encourage parties to resolve the outstanding disputes. Hearing officers would strive to do this under normal conditions.

The guidance also states the officers will alert the parties to "their right to consider withdrawing requests for due process hearings and refile later when hearings can be conducted in person," taking into account the statute of limitations on hearing requests. There is a two-year statute of limitations on requests for due process hearings ([CGS § 10-76h\(a\)\(4\)](#) and [34 C.F.R. § 300.507](#)).

Resolution Sessions

By federal law, a school district must schedule a resolution session within 15 days of receiving notice of a request for a due process hearing. Under IDEA, the parties have the option to mutually agree to waive the session ([34 C.F.R. § 300.510](#)). SDE's guidance notes that when the parties choose to move forward with the session, "the feasibility of holding the session telephonically or via internet-based platforms should be explored."

Due Process Hearings

Among other things, SDE's guidance states that all statutory or regulatory deadlines related to due process can be extended by up to 90 days under the authority granted the education commissioner in [Executive Order 7M](#) (§ 3). BSE has communicated the commissioner's deadline extension to all hearing officers and requested that they give favorable consideration to requests for extensions for due process hearings.

State law allows impartial hearing officers 45 days following the commencement of the IDEA-required hearing to issue a written decision ([CGS § 10-76h\(b\)](#)). The hearing officers cannot be an employee of SDE, a local or regional board of education, or any agency involved in the education of the student in question ([CGS § 10-76h\(c\)](#) and [34 C.F.R. § 300.511\(c\)](#)). Hearings are formal proceedings with each side calling and cross-examining witnesses and submitting documents and other evidence; thus, they can take more than one day ([34 C.F.R. § 300.181\(m\), \(n\), & \(q\)](#)).

The state guidance states that “in-person due process hearing sessions will not be possible to convene effectively consistent with the . . . COVID-19-related restrictions.” The BSE further says it will work with hearing officers, attorneys, advocates, and families to conduct the hearings virtually. But the guidance also warns that conducting hearings remotely may not be feasible for the following reasons:

1. school district staff may not have access to the necessary documents and paperwork;
2. demands on parents’ time, including supervising children at home while either working from home or going to work; and
3. difficulty with (a) cross-examining witnesses and (b) reviewing the evidence and documents that each side submits.

SDE’s guidance sums up the concerns about due process hearings as follows: “Given the timeliness, but also considering this public health emergency, the BSE is confident that parents and school districts and their respective legal representatives... will, more often than not, jointly request extensions of time requirements.”

Independent Education Evaluations (IEE)

Under IDEA and state law, the hearing officer designated to preside over a hearing can request a qualified individual to conduct an independent education evaluation (IEE) of the student in question to be paid for by the school district ([CGS § 10-76h\(c\)\(3\)](#) and [34 C.F.R. § 300.502\(d\)](#)). SDE’s guidance notes that under federal law a school district must respond to an IEE request “without unnecessary delay.” But it continues that the COVID-19 emergency presents “an exceptional circumstance that may make it necessary for a school district to delay its response to a request for a publicly funded IEE.”

Mediations

Upon the request of both parties, voluntary mediation is an option under special education law for resolving complaints. The education commissioner appoints a mediator, who attempts to resolve the issues in a manner acceptable to both parties. If the mediation is unsuccessful, either party can

choose to move forward with a hearing ([CGS § 10-76h\(f\)](#) and [34 C.F.R. § 300.506](#)). The recent guidance states that BSE will continue to accept requests for mediation during the COVID-19 emergency and is exploring the feasibility of conducting mediations remotely. BSE says it will issue further guidance on the remote process at a later date.

60-Day State Complaints

Under special education law, parents may file “60-day state complaints” at the state level regarding special education services for their child. If any part of the complaint is also part of a due process hearing, that part of the complaint will be set aside until the conclusion of the hearing. Aspects of the complaint that are not in the due process hearing must be addressed under the 60-day deadline ([34 C.F.R. § 300.152](#)).

SDE’s recent guidance indicates that (1) the bureau will continue to process 60-day complaints and (2) state investigators will consider a school district’s request for time extensions where the district demonstrates that it cannot access staff or necessary records to respond to the complaint or otherwise cannot participate due to the pandemic emergency.

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