

## Hearing Timelines under IDEA 2004<sup>1</sup>

### Preliminary Time Period

<b>Filing</b>	<p>Petitioner (“requesting party”) files hearing request with the local Superintendent or Exceptional Children (EC) Program Director and Office of Administrative Hearings. A copy must be sent to the North Carolina Department of Public Instruction (NCDPI) EC Division (<i>Attn. Due Process Coordinator</i>).<sup>2</sup></p> <p><b>The request/petition <u>must</u> include the following necessary components:</b><sup>3</sup></p> <ul style="list-style-type: none"> <li>o The name of the child, child’s address (or contact information in the case of a homeless child) and name of school child is attending;</li> <li>o A description of the nature of the problem of the child relating to a proposal or refusal to initiate or change the child’s identification, evaluation, educational placement, or the provision of a free appropriate public education to the child, or a manifestation determination, including facts relating to such problem; and</li> <li>o A proposed resolution of the problem to the extent known and available to the party at the time.</li> </ul>
<b>Within 1 day of receipt of petition</b>	<p>OAH faxes a copy of the petition to the EC Division’s Consultant for Dispute Resolution. EC Division’s Consultant for Dispute Resolution faxes a copy to the LEA’s EC Program Director. LEA must send a date-stamped copy of the petition that was served by the parent to OAH and to the EC Division. The timeline begins when the LEA receives the petition from the petitioner or the petitioner’s attorney.</p>
<b>Within 7 days of OAH’s receipt of date-stamped petition</b>	<p>(a) OAH appoints an administrative law judge (ALJ) and sends both parties a Notice of Hearing, which includes case number, time, location, and date for the hearing, date for the final decision, and dates for filing a proposed Order on Final Pre-trial Conference with the OAH and for providing stipulations, witness lists, and exhibits to the other party. (See Hearing Time Period on next page.)</p> <p>(b) <b>Local education agency (LEA) faxes Resolution Meeting Form to the NCDPI – Attn. Due Process Coordinator (919) 807-3755 and to OAH at (919) 431-3000.</b></p>
<b>By day 10</b>	<p>(a) If the LEA did not already send prior written notice to parent regarding the subject matter of the hearing request, the LEA shall <b>send parent a response letter</b> that includes:<sup>4</sup></p> <ul style="list-style-type: none"> <li>o An explanation of why the district proposed or refused the action raised in the hearing request;</li> <li>o A description of other options the IEP team considered and why rejected;</li> <li>o A description of each evaluation procedure, etc., used as basis for proposed or refused action;</li> <li>o A description of factors relevant to the district’s proposal or refusal.</li> </ul> <p>(b) Except as provided in (a), the receiving party shall send the requesting party a response that specifically addresses the issues raised in the petition.<sup>5</sup></p> <p>(c) A copy of the response must be sent to the OAH Chief Records Clerk and to the NCDPI Due Process Coordinator.</p>
<b>By day 15</b>	<p><b>Deadline</b> for receiving party (Respondent) to notify ALJ and Petitioner if Respondent believes the due process hearing petition is not sufficient.<sup>6</sup> Respondent should review petition for the necessary components listed above and fax written notification to the OAH and the EC Division that the petition was insufficient because it lacked the necessary components. (The notification should be a <i>Motion For Dismissal For Insufficient Petition</i>, and it should identify the missing components.)</p> <p><b>NOTE:</b> ALJ must determine the sufficiency of the hearing request and inform the parties in writing within <b>5 days</b> from receipt of this notice.<sup>7</sup></p>
<b>By day 15</b>	<p><b>Deadline</b> for conducting resolution session unless parties agree in writing to waive resolution session.<sup>8</sup> Once resolution session is waived, parties choose to mediate or proceed to hearing. LEA must notify DPI and the OAH of the results of the resolution session upon completion of the meeting. If mediation is requested instead of a resolution session, LEA must fax a Mediation Request to the EC Division.</p>
<b>Day 30</b>	<p>LEA must notify DPI and the OAH of the results of additional resolution sessions (if additional resolution sessions are conducted beyond day 15) or of mediation.</p>

**NOTES**

Parties who participate in a resolution session or mediation are given up to 30 days to resolve the issues contained in the petition. 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 petition, the due process hearing must occur unless the ALJ issues an extension of the hearing timelines. The 45-day timeline for issuing a final decision begins at the expiration of this 30-day period.

If parents and the LEA agree to *wave* a resolution meeting and ask for *mediation*, the 45-day timeline for written decisions to be issued begins on day 31 after the LEA received the petition.

The parties may request an extension of the resolution period if they have engaged in mediation prior to the end of the 30-day resolution period and want to continue with mediation with a DPI mediator.

If the parent fails to respond to the invitation or participate in the resolution session, the LEA may request that the hearing officer dismiss the case. If the LEA fails to offer a resolution session, the parent may request that the hearing officer proceed with the hearing.

LEA means the local education agency. All of North Carolina's public school systems, charter schools, and state operated programs are LEAs.

## Hearing Time Period

**Note:** 45-day hearing time period begins:<sup>9</sup>

- (a) upon the Superintendent's or EC Program Director's receipt of petition from petitioner, if a resolution session is waived; (**The hearing is not delayed for mediation.**)
- (b) at the end of 30 days, when participating in resolution session or mediation, unless the Petitioner files an amended hearing request. If the petition is amended, the preliminary time period (*See page 1*) begins again;
- (c) 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;
- (d) 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.

**Expedited Hearings:** the hearing time line (20 school days) begins upon the other party's receipt of the hearing request and shall result in a determination within 10 school days after the hearing.<sup>10</sup>

<p><b>Within 5-7 Days from the beginning of the 45-day timeline, as described above</b></p>	<ul style="list-style-type: none"> <li>(a) The ALJ, who will conduct the hearing, holds pre-hearing conference with both parties at the same time (in person or by conference call) to:                             <ul style="list-style-type: none"> <li>o Determine status of any resolution session, mediation, or settlement process. If no resolution completed:                                     <ul style="list-style-type: none"> <li>▪ Identify issues and get agreement between parties to issues to be resolved at hearing;</li> <li>▪ Establish the date(s) and expected length of hearing;</li> <li>▪ Determine a schedule for the exchange of documents and witness list;</li> <li>▪ Determine whether the hearing will be closed or open to the public; and</li> <li>▪ Review the parties' rights and procedures for the hearing, and evidentiary requirements.</li> <li>▪ Set timeline for discovery and exclude redundant and irrelevant evidence.</li> </ul> </li> <li>o Complete pre-hearing matters, briefing schedule according to pre-hearing order.</li> </ul> </li> <li>(b) The ALJ issues Notice of Hearing and a summary of pre-hearing conference decisions.</li> </ul>
<p><b>At least 5 business days before hearing</b></p>	<p>At least 5 business days before a hearing, each party must disclose to all other parties all documents to be presented as evidence at the hearing (entered into the records as evidence) and evaluations completed by that date, recommendations based on the offering party's evaluations, and witnesses that the party intends to use at the hearing.</p> <p>An ALJ may bar any party that does not comply with this disclosure requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.<sup>12</sup></p>
<p><b>Within 45 days of the beginning of hearing time period</b></p>	<p>Conduct hearing, and issue written decision.<sup>11</sup>                  Extensions to the timeline may be granted at the request of the parties.</p>

<sup>1</sup> Prepared by North Carolina Department of Public Instruction, Exceptional Children Division in collaboration with the North Carolina Office of Administrative Hearings. This chart was adapted from a chart developed by the Oregon Department of Education, Office of Student Learning & Partnerships, Dispute Resolution Section.

<sup>2</sup> North Carolina General Statutes, Article 9, § 115C- 109.6(b).

<sup>3</sup> 34 CFR § 300.508(b)(1-6).

<sup>4</sup> 34 CFR § 300.508(e)(1-2).

<sup>5</sup> 34 CFR § 300.508(f).

<sup>6</sup> 34 CFR § 300.508(d)(1). If insufficient, the party may amend its hearing request only with the other party's consent (and new opportunity for resolution session). If so, the preliminary time period starts over again. The hearing officer may grant permission without the other party's consent (only at a time not later than 5 days before the hearing.)

34 CFR § 300.508(d)(3).

<sup>7</sup> 34 CFR § 300.508(d)(2).

<sup>8</sup> 34 CFR § 300.510(a)(1-4).

<sup>9</sup> 34 CFR §§ 300.510(c), 300.515. An ALJ may grant specific extensions of time beyond this time period at the request of either party. 34 CFR 300.511(c).

<sup>10</sup> 34 CFR § 300.532(c)(2).

<sup>11</sup> 34 CFR § 300.510(b)(2).

<sup>12</sup> 34 CFR § 300.512(b)(2).

**Note:** IDEA 2004 uses the term "complaint" to indicate a request for a due process hearing. The terms "hearing request" and "petition" are also used in this document to indicate a request for a due process hearing."

<b>Expedited Hearing Timelines</b>	
<b>Expedited Hearing Request</b>	
<p>The <b>parent</b> or adult student <b>may request an expedited hearing</b> when he/she disagrees with any decision regarding placement for the student with a disability for a violation of the school's code of conduct, for inflicting serious bodily injury, or with a manifestation determination.</p> <p>An <b>LEA may request an expedited hearing</b> when it believes that maintaining the current placement of the student is substantially likely to result in injury to the child or others. The procedures for due process hearings (Page 2) are in effect with the following exceptions.</p>	
<b>Placement during hearing</b>	When an expedited hearing is requested by the parent or the LEA, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in the disciplinary action, or whichever occurs first, unless the parent and the SEA or LEA agree otherwise.
<b>Filing</b>	The hearing time line begins upon the Superintendent's receipt of the hearing request. A copy must be faxed to the OAH and the Exceptional Children Division, Atten: DPI Due Process Coordinator. The LEA must send a date-stamped copy of the petition to the OAH and to the EC Division within one day of receipt.
<b>Response letter to petitioner</b>	A written response to the issues is <u>not required</u> because of the short timeline.
<b>Resolution meeting</b>	Unless the parties agree in writing to waive the resolution meeting or agree to use mediation, a resolution meeting must be held within <b>7 days</b> of the LEA's receipt of the petition.
<b>Resolution period ends</b>	<b>15 days</b> from the LEA's receipt of the petition.
<b>Within 20 school days</b>	Hearing must be conducted within <b>20 school days</b> (from day 1 of hearing timeline). Extensions of the timeline are not allowed.
<b>Within 10 school days</b>	A final written order must be issued within <b>10 school days</b> after close of the hearing.

In Letter to Cox, dated June 22, 2012, the Office of Special Education Programs responded to a questions about how State educational agencies (SEAs) are expected to meet the hearing timelines when school is not in session during summer months and an expedited due process hearing is requested. The response stated:

Section 615(k)(4)(B) of IDEA and 34 CFR §300.532(c) are clear that the timeline for an expedited due process hearing is determined by school days. A school day is defined under 34 CFR §300.11(c)(1) as any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. 34 CFR §300.11(c)(2). Therefore, when an expedited due process hearing is requested under 34 CFR §300.532(a), the State or LEA responsible for arranging the expedited due process hearing must count any day that children are in attendance at summer school for instructional purposes as a "school day" under 34 CFR §300.11(c). This requirement applies to (LEAs) that operate summer school programs for both students with, and students without, disabilities.

Further, the *Analysis of Comments and Changes* section of the August 14, 2006, final IDEA, Part B regulations states, under 34 CFR §300.11(c), “consistent with this requirement, days on which [extended school year] ESY services are provided cannot be counted as a *school day* because ESY services are provided only to children with disabilities.”<sup>1</sup> When an expedited due process hearing is requested under 34 CFR §300.532(a), the State or LEA responsible for arranging the expedited due process hearing **would not be required to count any day that children are receiving ESY services as a “school day”** under 34 CFR §300.11(c).

However, if a due process hearing is requested under 34 CFR §§300.507-300.516, when school is not in session, the SEA is required to meet the timelines in 34 CFR §300.515(a).

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<sup>1</sup> See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, *Analysis of Comments and Changes*, 71 Fed. Reg. 46540, 46552 (August 14, 2006)).