



/ THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF SPECIAL EDUCATION
ASSISTANT COMMISSIONER
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The IHO may not accept appointment unless he or she is available to make a determination of sufficiency of a due process complaint notice within five days of receiving such a request and to initiate the hearing as follows:

- 1) When a school district files a due process complaint notice, the hearing or prehearing ~~4 business~~ ^{5 business} days must commence within the first 14 days after the date upon which the IHO is appointed; or

- 1) Issue a decision based on the record established to date if the hearing has been completed;
- 2) Continue the hearing building upon the record established to date; or
- 3) Continue the hearing with the development of a new record.

Due Process Hearing Timelines

If a school district files a due process complaint, the IHO's decision must be rendered and mailed or provided electronically to the parties not later than 45 days (30-days for a preschool child) from the day after the public agency's complaint is received by the other party and NYSED.

If a parent files a due process complaint, the decision is due not later than 45 days from the day after one of the following events, whichever shall occur first:

- 1) Both parties agree in writing to waive the resolution meeting;
- 2) 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;
- 3) 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; or
- 4) The expiration of the 30-day resolution period.

In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record. Consistent with the intent of rendering timely decisions, if the new decision date is earlier than the 14th day from the date the IHO closes the record, the earlier date should be the new decision date.

Expedited Hearing Timeline:

An expedited due process hearing occurs according to the following time period, unless the parent and school district agree in writing to waive the resolution meeting or agree to use mediation:

- 1) A resolution meeting occurs within seven days of receiving notice of the due process complaint.
- 2) The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.
- 3) The expedited due process hearing occurs within 20 school days of the date the complaint requesting the hearing is filed.
- 4) The IHO must make a determination within 10 school days after the hearing.

No extension to an expedited impartial hearing timeline may be granted.

Extensions to the Due Process Hearing Timeline

An IHO may grant specific extensions of time beyond the periods required by regulation at the request of either the school district or the parent.

- 1) An IHO may not solicit extension requests.
- 2) An IHO may not grant extensions on his or her own behalf or unilaterally issue extensions for any reason.
- 3) Each extension shall be for no more than 30 days.
- 4) Not more than one extension at a time may be granted.
- 5) The IHO must promptly respond in writing to each request for an extension, setting forth the facts relied upon for each extension granted.
- 6) The reason for each extension must be documented in the record.
- 7) The IHO may render an oral decision to an oral request for an extension if the discussions are conducted on the record, but must subsequently provide that decision in writing and include it as part of the record.
- 8) For each extension granted, the IHO must set a new date for rendering his or her decision (mailing the decision to the parties), notify the parties in writing of such date, and, as required, revise the schedule of remaining hearing dates set forth in any written pre-hearing order issued to ensure that the IHO's decision is issued by the revised decision due date.

The IHO may grant a request for an extension only after fully considering the cumulative impact of the following factors:

- 1) Whether the delay in the hearing will positively contribute to, or adversely affect, the child's educational interest or;
- 2) Whether a party has been afforded a fair opportunity to present its case at the hearing in accordance with the requirements of due process;
- 3) Any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
- 4) Whether there has already been a delay in the proceeding through the actions of one of the parties.

The IHO must promptly respond in writing to each request for an extension setting forth the facts relied upon for each extension granted. The IHO's written response becomes part of the record.

Record Close Date:

An IHO determines when the record in an impartial hearing is closed. A record is closed when all post-hearing submissions are received by the IHO. Regulations require the IHO to notify the parties of the date the record is closed. Once a record is closed, there may be no further extensions to the hearing timelines.

In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record. Consistent with the intent of rendering timely decisions, if the new decision date is earlier than the 14th day from the date the IHO closes the record, the earlier date should be the new decision date.

If there are any questions regarding this memorandum, please contact NYSED's Office of Special Education Due Process Unit at (518) 473-0170.