

160-4-7-.12 DISPUTE RESOLUTION.

(1) **COMPLAINT PROCESS.** An organization or individual, including an organization or individual from another state, may file a signed, written complaint regarding allegations of substance. The complaint shall include a statement that the LEA has violated requirements of the IDEA and the facts on which the statement is based, the signature and contact information for the complainant, and, if alleging violations with respect to a specific child, the name and address of the residence of the child, the name of the school the child is attending, in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending, a description of the nature of the problem, including facts relating to the problem, and a proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed. [34 C.F.R. § 300.151(a); 34 C.F.R. § 300.153(a) & (b)]

(a) The complaint must allege a violation that occurred not more than one year prior to the date the complaint is received. [34 C.F.R. § 300.153]

(b) The party filing the complaint must forward a copy of the complaint to the LEA at the same time the party files the complaint with the GaDOE. [34 C.F.R. § 300.153(d)]

(c) The complaint shall be reviewed and investigated as necessary and appropriate action taken within 60 calendar days of its receipt by the GaDOE.

(d) If a written complaint is received that is also the subject of an impartial due process hearing or contains multiple issues, some of which are a part of an impartial due process hearing, the portions of the complaint that are not a part of that hearing shall be resolved, following the time limits and procedures described in this rule. The portions of the complaint which are also the subject of an impartial due process hearing shall be set aside pending the conclusion of the hearing. [34 C.F.R. § 300.152(c)(1)]

(e) If a written complaint is received which contains issues previously decided in an impartial due process hearing involving the same parties, the hearing decision is binding on that issue, and the complainant shall be so informed by the GaDOE. However, a complaint alleging a LEA's failure to implement an impartial due process hearing decision shall be resolved, following the time limit and procedures described in this rule. [34 C.F.R. § 300.152(c)(2) – (3)]

(f) Through activities of the GaDOE and the LEAs, the state complaint procedures will be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. [See 34 C.F.R. § 300.151(a)(2)]

(g) The complaint procedure is as follows.

1. Complaints from any organization or individual shall be signed and addressed in writing to:

Director, Division for Special Education Services
Georgia Department of Education
1870 Twin Towers East
Atlanta, Georgia 30334-5010

2. The party filing the complaint must forward a copy of the complaint to the LEA serving the child at the same time the party files the complaint with the State. The complaint should be forwarded to the Superintendent or the Special Education Director of the LEA.

3. The complaint shall include a statement that the State or LEA has violated a requirement of Part B of IDEA and the facts on which the statement is based, the signature and contact information for the complainant, and, if alleging violations with respect to a specific child, the name and address of the residence of the child, the name of the school the child is attending, in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending, a description of the nature of the problem of the child, including facts relating to the problem, and a proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed. [34 § C.F.R. § 300.153(b)]

4. The Divisions for Special Education Services and Supports shall address the issue with the LEA in writing and request a response within 10 business days from the public agency directly involved.

(i) The LEA involved shall respond directly in writing and shall describe any explanation and/or actions relevant to the allegations.

(ii) Copies of all correspondence shall be sent to the parties involved that include the complainant, the GaDOE and the LEA. In some cases, where the parent of the child is not the complainant, the parent shall also receive copies of all correspondence and the complainant may only receive copies of information that include personally identifiable information if the parent has provided consent to release such information.

5. The parent who files the complaint and the LEA shall have the opportunity to voluntarily engage in mediation to resolve the issues within the complaint. [34 C.F.R. § 300.152(a)(3)(ii)]

6. Upon receipt of the first State complaint from a parent in a school year, the LEA involved shall provide the parent with a copy of procedural safeguards available to the parents of a child with a disability. [34 C.F.R. § 300.504(a)(2)]

7. The Divisions For Special Education Supports And Services shall review the LEA's response and a decision may then be made that no further action is required. If, however, the issue is not fully resolved, complaint investigators from the Divisions For Special Education Supports And Services shall be assigned to carry out an independent investigation, including an on-site visit, if necessary, to clarify the issue. [34 C.F.R. § 300.152(a)(1)]

8. The on-site complaint team shall gather information to determine whether there has been a violation of state rules and/or Part B of the IDEA. The on-site review may include examination of records, interviews and classroom visits.

9. The Divisions For Special Education Supports And Services shall give the complainant the opportunity to submit additional information, either orally or in writing, regarding the allegations in the complaint. [34 C.F.R. § 300.152(a)(2)]

10. The Divisions For Special Education Supports And Services shall review all relevant information and make an independent determination as to whether the LEA is violating a requirement of Part B of the IDEA. [34 C.F.R. § 300.152(a)(4)]

11. The Divisions For Special Education Supports And Services shall issue a written decision to the LEA and the complainant that addresses each allegation in the complaint and includes findings of fact and conclusions and the reasons for the final decision. [34 C.F.R. § 300.152(a)(5)]

(i) The Divisions For Special Education Supports And Services shall include in the decision the steps necessary to resolve the complaint, including technical assistance activities, negotiations, and corrective actions to achieve compliance. [34 C.F.R. § 300.152(b)(2)] This letter of notification shall include specific requirements and timelines that shall be met in order to continue to receive IDEA federal funds or state special education funds.

(ii) If the complaint findings indicate a failure to provide appropriate services, the complaint resolution process will address how the LEA is to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and to the future provision of services for all students with disabilities. [34 C.F.R. § 300.151(b)]

(iii) GaDOE must not make any final determination that a LEA is not eligible for assistance under part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 C.F.R. § 76.401(d). [34 C.F.R. § 300.155] GaDOE's hearing process can be found in Rule 160-5-2-.02 Withholding of Funds from Local Units of Administration.

12. An extension of the 60 calendar-day time limit for resolution may be made by the GaDOE only when exceptional circumstances exist with respect to a particular complaint or if the parent or other complainant and the LEA involved agree to extend the time to

engage in mediation, or to engage in other alternative means of dispute resolution. [34 C.F.R. § 300.152(b)]

(h) **Complaints - Private Schools.** Complaints that a LEA has failed to meet the requirements regarding children who are parentally-placed in private schools must be filed under the complaint procedures outlined above. Complaints regarding child find are to be filed with the LEA in which the private school is located and a copy forwarded to the GaDOE. [34 C.F.R. § 300.140]

(2) MEDIATION PROCESS. Each LEA shall ensure that procedures are established and implemented to allow parties to disputes involving any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to resolve such disputes through a mediation process.

(a) The mediation process shall be available on request of either party to resolve disputes.

(b) Mediation shall be available and offered upon each receipt of a complaint or a due process hearing request.

(c) The procedures shall ensure that the mediation process:

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. [34 C.F.R. § 300.506 (b)(1)(i) – (iii)]

(d) A LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet at a time and location convenient to the parents with a disinterested party who is under contract with an appropriate alternative dispute resolution entity, a parent training and information center or a community parent resource center in the State established under section 671 or 672 of IDEA, who would explain the benefits of and encourage the use of the mediation process to the parents. [34 C.F.R. § 300.506(b)(2)]

(e) The GaDOE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators shall be selected on a random, rotational or other impartial basis. [34 C.F.R. § 300.506(b)(3)(i) – (ii)]

1. An individual who serves as a mediator may not be an employee of the GaDOE or the LEA that is involved in the education or care of the child; and

2. Mediators must not have a personal or professional interest that conflicts with the person's objectivity.

(i) A person who otherwise qualifies as a mediator is not an employee of a LEA or State agency solely because he or she is paid by the GaDOE to serve as a mediator. [34 C.F.R. § 300.506(c)]

(f) The State shall bear the cost of the mediation process. [34 C.F.R. § 300.506(b)(4)]

(g) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. [34 C.F.R. § 300.506(b)(5)]

(h) If the parties resolve a dispute through the mediation process, they shall execute a legally binding agreement that sets forth the resolution and states that:

1. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings; and

2. Is signed by both the parent and a representative of the LEA with the authority to bind the LEA.

3. The written signed mediation agreement is enforceable in any state court of competent jurisdiction, in a district court of the United States or through the State Complaint Process.

[34 CFR 300.506(b)(6) – (7); § 300.537]

(3) IMPARTIAL DUE PROCESS HEARINGS. The impartial due process hearing is designed to provide a parent or LEA an avenue for resolving differences with regard to the identification, evaluation, placement or provision of a (FAPE) to a child with a disability.

(a) The due process hearing request must allege a violation that occurred not more than two years before the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process hearing request. [34 C.F.R. § 300.507(a)(2)]

1. The timeline does not apply to a parent if the parent was prevented from filing a due process complaint due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or

2. The school district's withholding of information from the parent that was required to be provided to the parent [34 C.F.R. § 300.511(f)]

(b) Due process hearings are provided at no cost to either party; however each party is responsible for his, her, or its costs associated with hiring legal counsel or expert witnesses unless a court awards the recovery of such costs to the prevailing party

(c) The LEA must inform the parents of low-cost or no cost legal and other relevant services available if the parent requests the information or whenever a due process request is received by the LEA. [34 C.F.R. § 300.507(b)]

(d) Due Process Request Procedures are as follows:

1. The party filing a due process hearing request must provide a copy to the other party and the state. When the party filing a due process hearing request is not the LEA, the party must provide a copy to the LEA's Superintendent at the same time it provides it to the State.

2. Either party, or the attorney representing either party, may file the due process hearing request.

3. The state and the parties shall keep the content of the due process request confidential. [34 C.F.R. § 300.508(a)(1) – (2)]

4. The content of the complaint must include:

(i) The name of the child;

(ii) The address of the residence of the child;

(iii) The name of the school and the LEA the child is attending;

(I) For a homeless child, the contact information for the child and the name of the school and LEA the child is attending;

(iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change in the identification, evaluation, placement or provision of a free appropriate public education (FAPE) including the facts relating to the problem;

(v) A proposed resolution to the problem to the extent known and available to the party at the time. [34 C.F.R. § 300.508(b)(1) – (6)]

5. A hearing may not occur until the party or the attorney representing the party files a request that meets the requirements stated above. [34 C.F.R. § 300.508(c)]

6. The request for the due process hearing must be deemed sufficient unless the receiving party notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process request that the receiving party does not believe the request meets the requirements above. [34 C.F.R. § 300.508(d)(1)]

(i) Within five days of receipt of notification of alleged insufficiency, the administrative law judge or hearing officer must make a determination on the face of the due process request of whether it meets the requirements and must immediately notify the parties in writing of that determination. [34 C.F.R. § 300.508(d)(2)]

7. A party may amend its due process request only if:

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process request through mediation or a resolution meeting; or

(ii) The administrative law judge or hearing officer grants permission not later than five days prior to the beginning of the hearing. [34 C.F.R. § 300.508(d)(3)(i) – (ii)]

(iii) If an amended due process hearing request is appropriately filed, the timelines for the resolution meeting and the resolution period begin again. [34 C.F.R. § 300.508(d)(4)]

8. LEA response to a due process hearing request.

(i) If the LEA has not sent prior written notice regarding the subject matter of the due process hearing request to the parent, the LEA must within ten days of receiving the due process hearing request, send to the parent a response that includes:

(I) An explanation of why the LEA proposed or refused to take action; a description of other options that the IEP team considered and the reasons why these options were rejected; a description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; a description of the other factors that are relevant to the LEA's proposed or refused action. [34 C.F.R. § 300.508(e)(1)(i) – (iv)]

9. The LEA response does not preclude the LEA from asserting that the parent's due process request is insufficient. [34 C.F.R. § 300.508(e)(2)]

10. Unless responded to as above, any party receiving a due process hearing request must send to the other party within ten days a response that specifically addresses the issues raised in the due process hearing request. [34 C.F.R. § 300.508(f)]

(e) Resolution process: Within 15 days of receiving a parent's due process hearing request and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and relevant members of the IEP Team who have knowledge of the facts identified in the due process request that:

1. Includes a representative of the LEA who has decision-making authority on behalf of the LEA; and

2. May not include an attorney for the District unless the parent is accompanied by an attorney. [34 C.F.R. § 300.510(a)(1)(i) – (ii)]

3. The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. [34 C.F.R. § 300.510(a)(4)]

4. The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the LEA has the opportunity to resolve the dispute that is the basis of the request for a due process hearing. [34 C.F.R. § 300.510(a)(2)]

5. The resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting; or the parent and the LEA agree to use mediation to attempt to resolve the due process hearing request. [34 C.F.R. § 300.510(a)(3)(i) – (ii)]

(f) The resolution period: If the LEA has not resolved the due process hearing request to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. [34 C.F.R. § 300.510(b)(1)]

1. The failure or refusal of the parent to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held, unless the parties have agreed to waive the resolution meeting or to participate in mediation. [34 C.F.R. § 300.510(b)(3)]

2. 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 Rule 160-4-7-.06(11)(d)) [34 C.F.R. § 300.322(d)], the LEA may at the conclusion of the 30-day resolution period, request that an administrative law judge or hearing officer dismiss the parent's due process hearing request. [34 C.F.R. § 300.510(b)(4)]

3. If the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge or hearing officer to begin the due process hearing timeline. [34 C.F.R. § 300.510(b)(5)]

(g) The timeline for issuing a decision in a due process hearing begins at the expiration of the 30-day resolution period, unless an adjustment to the 30-day resolution period is necessary.

1. The 45-day timeline for the due process hearing starts the day after the administrative law judge or hearing officer has been informed of one of the following events:

(i) Both parties agree in writing to waive the resolution meeting;

(ii) 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;

(iii) If both parties agree in writing to continue the mediation at the end of the resolution period, but later, the parent or LEA withdraws from mediation. [34 C.F.R. § 300.510(c)(1) – (3)]

(h) If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA; [34 C.F.R. § 300.510(d)(1)]

1. The agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States, or through the State Complaint Process. [34 C.F.R. § 300.510(d)(2); § 300.537]

2. If the parties execute an agreement, a party may void the agreement within three business days of the agreement's execution. [34 C.F.R. § 300.510(e)]

(i) The impartial administrative law judge or hearing officer. At a minimum, an administrative law judge or hearing officer:

1. Must not be an employee of the GaDOE or the LEA that is involved in the education or care of the child; [34 C.F.R. § 300.511(c)(1)(i)(A)]

(i) A person who otherwise qualifies to conduct a hearing is not an employee of the GaDOE or its representatives solely because he or she is paid by GaDOE to serve as an administrative law judge or hearing officer. [34 C.F.R. § 300.511(c)(2)]

2. Must not be a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; [34 C.F.R. § 300.511(c)(1)(i)(B)]

3. Must not be previously familiar with the student or the parents/guardian/surrogate unless through previous administrative procedures;

4. Must not be previously personally familiar with the specific program or services of the LEA at issue in the hearing. Information arising solely from previous due process hearings shall not impair an administrative law judge's impartiality, but information or personal knowledge from other sources about the specific LEA or family, including the education or employment of the administrative law judge's family shall impair that particular individual's impartiality in the particular case;

5. When any factor or event may impair or appear to impair the impartiality of the administrative law judge, such factors shall be timely disclosed to all parties.

6. Must possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; [34 C.F.R. § 300.511(c)(1)(ii)]

7. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and [34 C.F.R. § 300.511(c)(1)(iii)]

8. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. [34 C.F.R. § 300.511(c)(1)(iv)]

9. GaDOE or its representatives must keep a list of the persons who serve as administrative law judges or hearing officers. The list must include a statement of the qualifications of each of those persons. [34 C.F.R. § 300.511(c)(2)]

(j) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request, unless the other party agrees otherwise. [34 C.F.R. § 300.511(d)]

(k) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process hearing request 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 request. [34 C.F.R. § 300.511(e)]

1. Exceptions to the timeline. The timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process hearing request; or the LEA's withholding of information from the parent that was required to be provided to the parent.
[34 C.F.R. § 300.511(f)(1) – (2)]

(l) Any party to a due process hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; [34 C.F.R. § 300.512(a)(1)]

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses; [34 C.F.R. § 300.512(a)(2)]

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; [34 C.F.R. § 300.512(a)(3)]

4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; [34 C.F.R. § 300.512(a)(4)]

5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions. [34 C.F.R. § 300.512(a)(5)]

6. Disclosure by each party to the other party at least five business days prior to a hearing all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. [34 C.F.R. § 300.512(b)(1)]

(i) An administrative law judge or hearing officer may bar any party that fails to comply with this disclosure rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party. [34 C.F.R. § 300.512(b)(2)]

7. The calculation of business days under this section for the purposes of disclosure shall be calculated in accordance with the Georgia Civil Practice Act, O.C.G.A. § 9-11-6; O.C.G.A. 1-3-1(d)(3).

8. Obtain a list of all potential witnesses at least five business days before the hearing. If the witness list, due to its length or other factors, does not reasonably disclose the potential witnesses in the hearing, any party or the administrative law judge on his/her own motion may require a party to amend his/her witness list to include only the names of such persons who may actually testify and the general thrust of their testimony.

(m) The parties may agree to settle the matters in dispute at any time whereupon the ALJ, upon written request, shall enter an order dismissing the matter.

1. A party may file a motion for voluntary dismissal at any time, up until five days before the scheduled date of the hearing. No motion for voluntary dismissal shall be considered if filed after that time.

2. Any motion for voluntary dismissal filed pursuant to this subsection shall include a statement of the reason(s) for requesting dismissal.

3. Within five (5) days after service of the motion for voluntary dismissal pursuant to this subsection, the opposing party may file a response to the motion for voluntary dismissal.

4. If the ALJ determines that the motion has been made for good cause, the case shall be dismissed without prejudice and the party shall be authorized to re-file the complaint within the time authorized under the applicable statute(s) of limitations.

5. If the ALJ determines that there is a lack of good cause, and the party fails to appear at any scheduled hearing, or to otherwise prosecute their case, the party's claims will be deemed abandoned and dismissed with prejudice.

(n) The party seeking relief shall bear the burden of persuasion with the evidence at the administrative hearing. The administrative law judge or hearing officer shall retain the

discretion to modify and apply this general principle to conform with the requirements of law and justice in individual cases under unique or unusual circumstances as determined by the administrative law judge or hearing officer.

(0) Parents involved in hearings must be given the right to:

1. Have the child who is the subject of the hearing present;
2. Open the hearing to the public; and
3. Have the record of the hearing and the findings of fact and decisions provided at no cost to parents. [34 C.F.R. § 300.512(c)(1) – (3)]

(p) An administrative law judge or hearing officer's determination of whether a child received FAPE must be based on substantive grounds. [34 C.F.R. § 300.513(a)(1)]

1. In matters alleging a procedural violation, an administrative law judge or hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit. [34 C.F.R. § 300.513(a)(2)(i) – (iii)]

(I) Nothing in this paragraph shall be construed to preclude an administrative law judge or hearing officer from ordering a LEA to comply with procedural requirements. [34 C.F.R. § 300.513(a)(3)]

(q) Nothing in this Rule shall be construed to preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed. [34 C.F.R. § 300.513(c)]

(r) The GaDOE, after deleting any personally identifiable information, must transmit the findings and decisions to the State advisory panel and make those findings and decisions available to the public. [34 C.F.R. § 300.513(d)(1) – (2)]

(s) A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision under the provisions in paragraph (s) below. [34 C.F.R. § 300.514(a)]

(t) The GaDOE must ensure that not later than 45 days after the expiration of the 30-day resolution period or the adjusted resolution time periods that:

1. A final decision is reached in the hearing; and

2. A copy of the decision is mailed to each of the parties. [34 C.F.R. § 300.515(a)(1) – (2)]

3. An administrative law judge or hearing officer may grant specific extensions of time beyond the periods set out in this rule at the request of either party. The hearing officer or administrative law judge must notify the parties in its written order granting the extension of the new date by which the decision shall be provided. [34 C.F.R. § 300.515(c)]

4. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved. [34 C.F.R. § 300.515(d)]

(u) Civil Action. Any party aggrieved by the findings and decision made by an administrative law judge or hearing officer has the right to bring a civil action with respect to the due process hearing request notice requesting a due process hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. [34 C.F.R. § 300.516(a)]

1. The party bringing the action shall have 90 days from the date of the decision of the administrative law judge or hearing officer to file a civil action. [34 C.F.R. § 300.516(b)]

2. In any civil action, the court:

(i) Receives the records of the administrative proceedings directly from the administrative law judge or hearing officer;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate. [34 C.F.R. § 300.516(c)(1) – (3)]

(v) The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy. [34 C.F.R. § 300.516(d)]

(w) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the procedures under IDEA must be exhausted to the same extent as would be required had the action been brought under the IDEA. [34 C.F.R. § 300.516(e)]

(x) Attorneys' fees. In any action or proceeding brought under the due process hearing provisions of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party who is the parent of a child with a disability; or

(y) To a prevailing party who is the GaDOE or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(z) To a prevailing GaDOE or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. [34 C.F.R. § 300.517(a)(1)(i) – (iii)]

(aa) Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under the due process hearing provisions of the IDEA. This does not preclude a public agency from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA. [34 C.F.R. § 300.517(b)(1) – (2)]

(bb) If a court awards reasonable attorneys' fees, they must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph. [34 C.F.R. § 300.517(c)(1)]

(cc) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under the due process hearing provisions of IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

2. The offer is not accepted within 10 days; and

3. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. [34 C.F.R. § 300.517(c)(2)(i)(A) – (C)]

(i) An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. [34 C.F.R. § 300.517(c)(3)]

(dd) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for mediation. [34 C.F.R. § 300.517(c)(2)(ii)]

(ee) A meeting conducted pursuant to the resolution process shall not be considered a meeting convened as a result of an administrative hearing or judicial action, or an

administrative hearing or judicial action, for purposes of this section. [34 C.F.R. § 300.517(c)(2)(iii)(A) – (B)]

(ff) The court may reduce the amount of the attorneys' fees awarded, if the court finds that:

1. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
2. The amount of attorney's fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing the parent did not provide to the LEA the appropriate information in the due process hearing request notice. [34 C.F.R. § 300.517(c)(4)(i) – (iv)]

(gg) The provisions of paragraph (dd) of this section do not apply if the court finds that the State or LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of IDEA. [34 C.F.R. § 300.517(c)(5)]

(hh) Child's status during proceedings. Except as noted in the Rule 160-4-7-.10 Discipline, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing, unless the State or LEA and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. [34 C.F.R. § 300.518(a)]

(ii) If the due process hearing request involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. [34 C.F.R. § 300.518(b)]

(jj) If the due process hearing request involves an application for initial services under this part from a child who is transitioning from Part C (Babies Can't Wait) to Part B and is no longer eligible for Part C services because the child has turned three, the LEA is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the LEA must provide those special education and related services that are not in dispute between the parent and the LEA. [34 C.F.R. § 300.518(c)]

(kk) If the administrative law judge or hearing officer in a due process hearing conducted by the State agrees with the child's parents that a change of placement is

appropriate, that placement must be treated as an agreement between the LEA and the parents. [34 C.F.R. § 300.518(d)]

(4) This rule shall become effective March 31, 2010.

Authority O.C.G.A. § 20-2-152; 20-2-240.

Adopted: March 11, 2010

Effective: March 31, 2010