



STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION



TO: Superintendents of Schools
Directors of Special Education and Pupil Services

FROM: Bryan Klimkiewicz, Special Education Division Director

DATE: April 6, 2020

SUBJECT: Due Process Activities under IDEA during the COVID-19 Pandemic

This is a working document, which may be updated frequently due to the rapidly changing response to this pandemic emergency and ongoing Federal guidance updates.

Introduction

Consistent with the directives of Commissioner Cardona and Governor Lamont, the Connecticut State Department of Education (CSDE) recognizes that there is a current public health emergency due to the COVID-19 pandemic. The focus of educational efforts should be on providing continued educational opportunities for all of our learners, given that school classroom closures are likely to be for an extended period of time. In keeping with state and federal directives issued in response to COVID-19 during this period of school closure, it is appropriate for the CSDE to provide guidance to educators and families regarding the implementation of conflict resolution options in special education matters as provided for under the Individuals with Disabilities Education Act (IDEA) and state special education statutes.

The CSDE does not issue this guidance in isolation. The state's Judicial Branch has implemented unprecedented measures to protect the public, the bar, employees and judges including closure of some courthouses, suspension of jury service, and non-critical court operations and associated requirements including time limitations, in recognition of the present public health emergency declaration and executive orders issued by the Governor.

Due Process Requests

The Bureau of Special Education (BSE), Due Process Unit continues to be operational. However, for the most part, staff are working remotely. For this reason, parents and school districts are asked to communicate with the BSE electronically, where possible. The BSE will continue, per usual practice, to receive requests for due process hearings from parents of students with disabilities and school districts. The BSE will assign requests for due process hearings a state hearing case number, will assign hearing requests to a hearing officer when a request is received, and will notify the parties of the assignment. The BSE expects that school districts will ensure that an administrator is available to monitor receipt of requests for due process hearings and related communications from the BSE and parents, to the extent the school district is able to within its available resources, and in keeping with state and federal public health directives.

As allowed per the Governor's Executive Order 7M, Commissioner Cardona has deemed it necessary to permit an extension, by up to 90 days, for all state statutory and regulatory time requirements related to special education due process activities. The BSE has communicated the Commissioner's determination related to exercising this authority based upon the executive order with the state panel of hearing officers, and has directed the hearing officers to give favorable

Due Process Activities during the COVID-19 Pandemic April 6, 2020

consideration to parties' requests for extensions of time in due process hearings. School and family attorneys should contact the assigned hearing officer to address scheduled proceedings.

In most cases, telephonic prehearing conferences will continue to be scheduled and held. During these conferences, hearing officers will encourage the parties to engage in direct efforts with one another to resolve disputes and will alert them to their right to consider withdrawing requests for due process hearings and refiling later when hearings can be conducted in person, taking into consideration statute of limitations considerations.

The IDEA requires a school district to schedule a resolution session within 15 days of receiving notice of a request for a due process hearing. Parties may agree to waive this requirement. Where parties do not agree to waive the requirement to hold a resolution session, the feasibility of holding the session telephonically or via Internet-based platforms should be explored.

In-person due process hearing sessions will not be possible to convene effectively consistent with the present state and federal COVID-19 related restrictions in place. The BSE will continue to work with hearing officers, counsel, advocates, and families to consider ways to conduct these hearings virtually in a meaningful way. At this time, conducting hearing sessions remotely may not be feasible for many reasons. These reasons include: school district staff may not have access to documentary evidence, demands on parents' time, including supervising children at home while either working from home or going to work, and difficulty of cross-examination of witnesses and review of documentary evidence for both parties. Given the timelines, but also considering this public health emergency, the BSE is confident that parents and school districts and their respective legal representatives will act in a way that reflects an understanding of these unprecedented circumstances facing schools and families and will, more often than not, jointly request extensions of time requirements.

Regarding Independent Education Evaluations (IEE), under the IDEA, a school district must respond to a request for an IEE *without unnecessary delay*. The BSE views the circumstances presented by the COVID-19 threat to public health and the current directives that have been put in place to present 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

Mediation is a voluntary process. The BSE will continue to accept requests for mediation where both parties submit the request. The BSE is currently exploring the feasibility of conducting proceedings remotely and will provide further guidance at a later date.

60-Day State Complaints

The BSE will continue to process state complaints that meet federal requirements. BSE complaint investigators will consider a school district's request for an extension of time in individual cases where the school district demonstrates it cannot access records or staff needed to respond to a complaint inquiry due to the present national pandemic or otherwise cannot participate in the investigation. The BSE recognizes that the circumstances presented by the COVID-19 threat to public health may be an *exceptional circumstance*, which would allow the 60-day complaint investigation timeline to be extended under the IDEA where it has been demonstrated, in individual complaint investigations, that the school district cannot participate in the investigation.

Due Process Activities during the COVID-19 Pandemic April 6, 2020

Where a complaint report has been issued and the school district has a pending obligation to complete corrective action, timelines to complete such required corrective actions will be, where necessary, extended during this period of school closures due to COVID-19.

Next Steps

At this time, the federal government has not waived the federal requirements under the IDEA. Until and unless the United States Department of Education ultimately provides flexibilities under federal law, school districts should make every effort to adhere to IDEA requirements, including due process conflict resolution mandated timelines, to the maximum extent possible. As the next steps to protect public health and safety unfold, the BSE is committed to providing ongoing guidance to support school districts and families.