

Special Education Rules Implementation Manual

DISPUTE RESOLUTION (GEORGIA RULE [160-4-7-.12](#))

A resolution in a dispute with a local educational agency (LEA)¹ over the rights and services afforded to children with disabilities and their families can be accomplished several different ways. The quickest and most efficient method is to contact the special education administration in the LEA. The special education director can often assist a family in working out the differences with minimal time and conflict. Parents or LEA personnel may also initiate a Facilitated IEP (FIEP) Team meeting with the Georgia Department of Education (GaDOE).

When a resolution cannot be worked out locally, other processes are guaranteed to children with disabilities under the Individuals with Disabilities Education Act (IDEA). These include (1) mediation, (2) formal complaints, and (3) a due process hearing.

DISPUTE PREVENTION/RESOLUTION COMPARISON CHART

Question	Facilitated IEP (FIEP) Team Meeting	Complaint	Mediation	Due Process Hearing	Resolution Session (only upon request for a due process hearing)
Who can initiate the process?	Parent or LEA, but must be voluntary for both parties	Any individual or organization	Parent or LEA, but must be voluntary for both parties	Parent or LEA	LEA schedules the resolution session upon receipt of a due process hearing request unless the parties agree to waive or use mediation
What is the time limit for filing?	At least 7-10 days before scheduled IEP Team Meeting <i>(some exceptions)</i>	One year from the date of the alleged violation	None specified	Two years from when the party knew or should have known of the problem, with limited exceptions	Triggered by a parent's due process hearing request

¹ Local educational agencies include public boards of education or other public authorities legally constituted within Georgia for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, including state charter schools and Georgia Department of Juvenile Justice (DJJ).

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What issues can be resolved?	Any issues that may arise related to the IEP	Alleged violations of IDEA federal regulations and Georgia Department of Education Rules for Special Education	Any matter under the IDEA federal regulations and Georgia Department of Education Rules for Special Education, including matters arising prior to the filing of a due process hearing request (<i>some exceptions</i>)	Any matter relating to the identification, evaluation, educational placement, or provision of free appropriate public education (<i>some exceptions</i>)	Same issues as the due process hearing request
What is the timeline for resolving the issues?	None specified	60 days from receipt of the complaint unless extended for exceptional circumstances	None specified	45 days after the 30-day resolution period (<i>some exceptions</i>)	LEA must convene a resolution session within 15 days of receipt of the due process hearing request unless both parties agree in writing to waive the session or agree to use mediation. The resolution period lasts for not more than 30 days. (<i>some exceptions</i>)
Who resolves the issues?	The IEP Team with the help of an impartial facilitator	Georgia Department of Education/ Division for Special Education	Parent and LEA with a mediator; both parties must agree to the solution in writing; decisions are legally binding	Administrative Law Judge	Parent and the LEA; both parties must agree to the solution in writing; decisions are legally binding

IEP TEAM MEETING FACILITATION

Individualized Education Program (IEP) Team meeting facilitation is all about the student and helping the IEP Team overcome the pressure and anxiety often associated with a contentious meeting. IEP Team Meeting Facilitation is an optional process, not required by the IDEA, that state educational agencies (SEA) or LEAs may provide to parents and schools. A facilitated IEP (FIEP)

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Team meeting is the same as any other IEP Team meeting, except that a facilitator joins the meeting.

The IEP facilitator makes sure that the focus of the Team remains on the best interests of the child. The facilitator is a skilled individual who has received specialized training in the area of conflict prevention and resolution through the IEP Team Meeting Facilitation process. The facilitator's primary goal is to assist team members in the thoughtful, productive construction of a quality IEP. This is achieved by encouraging and directing communication specific to the IEP and assuring that the members of the IEP Team are empowered in their participation and invested in the IEP. The facilitator is not a member of the IEP Team and cannot provide legal advice to any Team member. Rather, the facilitator will help the IEP Team create an agenda, ground rules, and desired outcomes, and address issues during the IEP Team meeting that produce tension within the Team so that the Team is able to find their own solutions. The facilitator will also guide the discussions during the IEP Team meeting by asking student-focused questions.

An FIEP Team Meeting:

- is voluntary, but must be agreed to by the parent and LEA
- is informal
- is helpful to guide communication among the IEP Team
- is free to both the family and the LEA
- is useful to prevent disputes
- has a high success rate
- can be used as often as needed

Procedures for Requesting a Facilitated IEP Team Meeting

Parents or LEA personnel may initiate the Facilitated IEP (FIEP) Team meeting process by completing the IEP Team Meeting Facilitation Request form located on the GaDOE's website.

- Both the parties (LEA and parents or student if 18 years or older) must agree to participate.
- A complete and signed FIEP request form and notice of meeting must be submitted to the GaDOE at least 7-10 days before the scheduled IEP Team meeting.
- Upon approval, a facilitator will be provided at no cost to the parent or LEA.

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- Access to the FIEP Request form and other information regarding facilitated IEP Team meetings is located on the GaDOE's website: <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/IEP-Facilitation.aspx>.

PREPARATION FOR A FACILITATED IEP TEAM MEETING

Making decisions by consensus can take a long time. One of the most important aspects of a successful facilitated IEP Team meeting is the preparation prior to the meeting. The appointed facilitator will call both parties to gather information, issues/concerns, and desired outcomes from each party.

Both parties should gather all documentation needed for the IEP Team meeting and bring it to the meeting. School staff should bring all forms that will or may be needed. Preparation will help expedite the meeting process.

Preparation prior to the meeting includes, but is not limited to:

- The parent sending suggestions for the goal sheets to the school before the meeting;
- The school sending any current evaluation reports to the parent; and
- The parent sending the school any private evaluation reports he or she may have obtained.

As with all IEP Team meetings, the location should provide ample space for the number of adults attending the meeting. IEP facilitators use charts during the meeting and wall space will be needed for the charts.

MEDIATION (SEE [34 C.F.R § 300.506](#) AND GEORGIA RULE [160-4-7-.12](#))

When the parent and the LEA disagree about the education of a child with a disability, either may request mediation. An impartial or neutral person, called a mediator, assists the LEA and the parent in clarifying the problem, exploring interests, discussing options, and reaching a mutually agreeable solution. The mediator does not tell either party how to resolve the dispute, but he or she works with both in the development of their solution. If an agreement is reached, it is documented in writing and signed by all parties. The written agreement is a legally binding agreement and is enforceable in any Georgia court of competent jurisdiction, in a District Court of the United States, or through the formal complaint process. This informal and collaborative approach to problem solving can often foster a positive working relationship between the LEA and the family.

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Mediators are trained in conflict resolution, collaborative problem solving, and effective communication. In addition, mediators for special education are required to have knowledge and experience in the laws impacting the education of children with disabilities. The GaDOE has a set of qualified mediators under contract. When mediation is requested, a mediator will be assigned from that list.

MEDIATION:

- is confidential
- is voluntary
- is informal
- occurs in a short period of time
- is free to both the family and the LEA
- is less burdensome than a due process hearing or a formal complaint
- has a high success rate
- Can result in a legally binding agreement

Procedures for Mediation

- Either the parent and the student or the LEA may request mediation.
- The first step is to ask the other party if they are willing to mediate the disputed issues.
- If a family member is requesting mediation, you may contact the LEA's special education office, and LEA personnel will complete and/or forward the request for mediation and submit it to the GaDOE. A mediation request form is located on the [Mediation Requests](#) web page on the GaDOE website.
- Upon receipt, the GaDOE assigns the request to a mediator.
- The mediator will contact both parties to develop the timeline, set up the meeting location, and begin preparation.
- Mediation will occur at a location, date, and time convenient to both parties.

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- Once parties have agreed to a date, time, and location, participants should be prepared to spend most of the day in mediation.
- If a resolution is reached, the mediator will facilitate the agreement, and all parties will sign the mediation agreement.
- After mediation, both parties are expected to carry out the activities they agreed to during the mediation as outlined in the agreement, which is a legally binding document.
- If mediation is being requested as part of a due process hearing or formal complaint, the mediation will not delay nor deny the right to a due process hearing or the complaint investigation. However, discussions during mediation are confidential and they cannot be used as evidence in any due process hearing or civil proceeding.

Preparing for Mediation

- Be prepared to define the problem and explain any concerns.
- Be prepared to state preferred resolutions.
- Be prepared to share information that will help clarify and resolve the problem.
- Be prepared to listen to the information and the points of view shared by others.
- Be prepared to keep an open mind. (Multiple solutions to a problem are often possible.)
- Be prepared to brainstorm with the other parties involved and to develop a creative solution to the problem.

FORMAL COMPLAINTS (SEE 34 C.F.R. [§§ 300.151-300.153](#) AND GEORGIA RULE [160-4-7-.12](#))

A formal complaint is a written, signed complaint alleging a violation(s) of the IDEA or of Georgia Special Education Rules.

Any organization or individual may file a signed written complaint. The complaint must include:

- A statement that a public agency has violated a requirement of the IDEA or Georgia Special Education Rules;
- The facts on which the statement is based;

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- The signature and contact information for the complainant; and if alleging violations with respect to a specific child, include 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, include 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 of the problem to the extent known and available to the party the time the complaint is filed;
- The complaint must allege a violation that occurred not more than one year prior to the date the complaint is received;
- The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the GaDOE.

Procedures for Filing a Complaint

1. Formal complaints are filed in writing and sent to the LEA and the GaDOE, Division for Special Education Services and Supports (DSESS). A formal complaint form, which may be used to submit a formal complaint, is located on the [Formal Complaint](#) web page on the GaDOE website.
2. In addition to the LEA having the opportunity to present a proposal, the mediation process is also available. Mediation is available at no cost. Mediation is a non-adversarial process conducted by a qualified and impartial mediator who is trained in effective mediation techniques to resolve disputes. If both parties choose to participate in the mediation process, the complaint investigation may still proceed. The timeline for the complaint may be extended if both parties agree to extend the timeline while they participate in mediation. If both parties agree to mediation, a written agreement will be developed and implemented. Mediation is legally binding in a State or District court. If an agreement is reached and the complainant withdraws their complaint, the complaint will be closed. If agreement is not reached or if the complainant does not withdraw their complaint, the complaint investigation will continue, and a decision of compliance will be made by the GaDOE.
3. Upon receipt of the first written complaint, the LEA will provide a copy of procedural safeguards to the parent of a child with a disability.

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4. If both parties indicate on the complaint form or through other means that they are interested in mediation, then the GaDOE will assign a mediator.
5. The LEA must provide a written response to the GaDOE DSESS and also send a copy to the person filing the complaint (with some exceptions). The DSESS requests that the LEA send this response within 10 days of receiving the formal complaint initiation letter. The DSESS will conduct an investigation to confirm details and to get clarification of the issues. The investigation may include interviews with the parties, observations, on-site visits, and other activities as indicated by the nature of the allegation.
6. The DSESS will give the complainant the opportunity to submit additional information in writing about the allegations of the complaint once it has seen the response from the LEA. If both parties reach an agreement and resolve the complaint before the GaDOE investigation is complete, the complainant may withdraw the complaint and the complaint will be closed without making a determination regarding compliance. If both parties go to mediation and reach an agreement and the complainant withdraws the complaint, then the complaint will be closed without a decision regarding compliance. If mediation is used and an agreement is not reached or if the complainant does not withdraw the complaint, then the complaint investigation will continue.
7. Within 60 days of the receipt of the complaint, the DSESS will issue a written decision that addresses each allegation in the complaint and contains findings of fact and determinations of compliance or noncompliance. The timeline may be extended to accommodate for mediation (if both parties agree) or other exceptional circumstances with respect to a particular complaint. When a violation of the law or regulations has occurred, a resolution will be required. The resolution may include technical assistance activities, compensatory services, reimbursement, and other corrective actions to achieve compliance.
8. 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.

Why File a Complaint?

Filing a formal complaint provides an opportunity for anyone to express concerns regarding possible IDEA and state special education rule violations. The process is simple and user friendly. Most individuals who file a complaint are not represented by legal counsel.

DUE PROCESS HEARING (SEE 34 C.F.R. §§ 300.507-300.518 AND SBOE RULE 160-4-7-.12)

When the parent and LEA disagree over the identification, evaluation, placement, or provision of a FAPE, either party may request a due process hearing. An impartial due process hearing is designed to provide an opportunity to resolve differences between concerned parties in the identification, evaluation, placement, or provision of a free appropriate public education for a child with a disability in a court setting. A hearing may be requested by either the LEA or the family.

A 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 request, with some exceptions. The two-year timeline does not apply if the parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA indicating that it had resolved the problem forming the basis of the complaint, or if the LEA withheld information from the parent that was required to be provided to the parent.

Due process hearings are provided at no cost to either party; however, each party is responsible for their costs associated with hiring legal counsel or expert witnesses, if they choose to do so, unless a court awards the recovery of these costs to a prevailing party. The LEA must inform the parents of low cost legal and other relevant services available if the parent requests the information or whenever a due process hearing request is received by the LEA.

Due process hearings are conducted by the Office of State Administrative Hearings (OSAH). Once a request is received by the GaDOE, the GaDOE forwards the request to OSAH and an administrative law judge (ALJ) will be assigned to conduct the due process hearing. OSAH will contact both parties and begin to set up the arrangements for the impartial due process hearing.

A due process hearing must be conducted and the decision issued within 45 days after the ALJ has been informed of one of the following events: (1) both parties agree in writing to waive the resolution meeting; (2) after either the mediation or resolution meeting starts, but before the 30-day resolution period ends, the parties agree in writing that no agreement is possible; or (3) if both parties agree in writing to continue the mediation at the end of the resolution period, but later, the parent or district withdraws from mediation. Extensions to the 45 days for a decision may be granted by the hearing officer at the request of either party.

Requesting an Impartial Due Process Hearing

- The initiating party should inform the other party and the GaDOE of the request for a due process hearing.

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- The filing party is responsible for relaying the hearing request to the GaDOE.
- The request is required to contain the name of the student, the residential address of the student, and the name of the school. It is also helpful to include the LEA in which the student is enrolled with contact information as well as contact information for the family. The request must also contain a description of the problem and a proposed resolution. **The form provided by GaDOE should be used but is not required.** This form is located on the [Due Process Hearing Requests](#) web page of the GaDOE website. A hearing may not occur until the party or the attorney representing the party files a request that meets all of the requirements.
- An LEA may, but is not required to, assist the parent in completing the form as necessary to get a sufficient complaint notice.
- Once received by the GaDOE, immediate contact will be made with the OSAH to assign the case to an ALJ.
- The ALJ will contact the parties and begin to set up the logistics of the hearing.
- An expedited due process hearing may be requested if the request is related to a manifestation determination or placement in an alternative educational setting.

Timeline

A due process hearing must be conducted and the decision issued within 45 days of the request for a hearing. If a resolution meeting or mediation is used, the timeline of 45 days begins at the conclusion of a 30-day resolution period, or earlier if the resolution meeting or mediation does not result in a settlement. Other extensions may be granted by the hearing officer at the request of either party.

An expedited due process hearing must be conducted within 20 school days of the request for a hearing and a decision issued without 10 school days after the hearing. If a resolution session or mediation is used, the timeline of 20 school days begins at the conclusion of the 15-day resolution period.

Responsibilities of LEA Upon Receipt of a Request for a Due Process Hearing

- If the LEA has not provided prior written notice to the requestor regarding the issues in the request, it must, within 10 days, provide such prior written notice.
- If the LEA has provided prior written notice, it must respond to the due process request within 10 days.

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- If the LEA feels that the due process request is insufficient, the LEA must notify the ALJ within 15 days of receiving the request. (The ALJ has 5 days to determine whether the request is sufficient. If sufficient, the timeline moves forward. If not sufficient, the parent must re-file the request.)
- The LEA must convene a resolution meeting within 15 days of receiving a parent's due process hearing request and prior to the initiation of a due process hearing. If the due process hearing request is filed as an expedited request, the LEA must convene a resolution meeting within 7 days of receiving the due process request. 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. This meeting must include a representative of the LEA who has decision-making authority on behalf of the LEA. The resolution meeting may not include an attorney for the LEA unless the parent is accompanied by an attorney. The parent and the LEA determine the relevant members of the IEP Team who will attend the meeting. 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 instead of a resolution meeting to attempt to resolve the due process hearing request.

Responsibilities of the Parent Upon Requesting or Receiving a Request for a Due Process Hearing

- If the parent is the receiving party (not the party making the request), he or she must respond to the LEA within 10 days of receiving notice of a due process request.
- If the parent is the initiating party, he or she must provide sufficient information with the request to allow the LEA to understand why the request is being made. **The form provided by GaDOE should be used but is not required.** This form is located on the [Due Process Hearing Requests](#) web page of the GaDOE website.
- The parent should consider using the resolution meeting or mediation to resolve the differences.

Resolution Meeting

The LEA must offer the option of a resolution meeting within 15 days of receiving a parent's due process hearing request and prior to the initiation of a due process hearing. If the due process hearing request is filed as an expedited request, the LEA must offer the option of a resolution meeting within 7 days of receiving the due process request. The LEA must convene a resolution meeting with the parent and relevant members of the IEP Team who have knowledge of the facts identified in the due process request. This meeting must include a

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representative of the LEA who has decision-making authority on behalf of the LEA. The resolution meeting may not include an attorney for the LEA unless the parent is accompanied by an attorney. The parent and the LEA determine the relevant members of the IEP Team who will attend the meeting. 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 instead of a resolution meeting to attempt to resolve the due process hearing request.

- If agreement is reached, a written settlement agreement will be developed and signed by the LEA and the family.
- An agreement is binding after a 3-day review period in State or District Court or through the formal complaint process.
- The agreement must be executed by the end of the 30-day resolution period or the due process hearing will proceed.
- If no agreement is reached and the parties do not agree to mediate, the timeline for due process hearings (45 days) begins upon notice to the ALJ.

Procedures/Rights for a Hearing

- The hearing will be conducted at a time and place convenient to the parent and the LEA involved and at an impartial location.
- The LEA shall provide the parent information about low cost or no cost legal services.
- Parents have the right to request and obtain copies of all records concerning the child from the LEA five or more business days prior to a hearing.
- Either party may be accompanied and advised by legal counsel or another individual with knowledge or training related to the student about whom the hearing is being conducted.
- Either party may present evidence at the hearing if disclosed to the other party at least five business days prior to the hearing.
- Either party may compel the attendance of witnesses. One party must provide a list of witnesses to the other party at least five business days prior to the hearing.
- Parents have the right to have the child present at the hearing.
- Confidentiality of information shall be maintained even when in a hearing.

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- Parents in a hearing have a right to obtain relief that the ALJ determines appropriate, which may include payment for an independent evaluation, reimbursement for services, amendment of the IEP, change of the placement, or other relief as determined by the ALJ.
- Both parties will receive a copy of the written ALJ decision from the hearing.
- An appeal to a due process hearing must be filed within 90 days in a State or District Court.

Child's Status During the Hearing

- When a hearing has been requested by either party, the child shall remain in his or her current educational placement unless the parent and the LEA agree to an alternate placement. This is commonly referred to as “stay put.”
- If the hearing request is filed as an expedited hearing request, the child shall remain in the interim alternative educational setting pending the decision of the ALJ unless the parent and LEA agree otherwise.
- If the hearing is the result of an initial admission to public school, the child shall be placed, with the consent of the parent, in the school program until completion of the hearing proceedings.
- The current educational placement includes the services provided in the IEP and all related services.
- Other special circumstances may apply, and the Georgia Rule (160-4-7-.18) should be reviewed to determine the student's status pending a due process hearing.

Frequently Asked Questions

Facilitated IEP Team Meetings

1. Who attends a facilitated IEP meeting?

Members of the IEP Team and the facilitator attend the facilitated IEP meeting.

2. Where and when is a facilitated IEP meeting held?

The facilitated IEP Team meeting is scheduled by the LEA, in cooperation with the parent, and held at a time and place that is mutually agreed upon.

3. What happens if we don't reach a consensus at the first meeting?

If a consensus is not reached at the first meeting, another IEP Team meeting may be scheduled by completing another IEP Team Meeting Facilitation Request form. A complete

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and signed FIEP request form and notice of meeting must be submitted to the GaDOE at least 7-10 days before the next scheduled IEP Team meeting.

4. What if we require additional time?

The time for Facilitated IEP Team meetings is limited. If a meeting is scheduled and cannot be finalized, the meeting may be reconvened on another day, with or without a facilitator. There may be rare cases when a second session is needed. Prior to scheduling a second session, the facilitator must contact the GaDOE to explain why a second session is needed and to seek approval. If the parties did not schedule ample time (3 or more hours) for the first meeting, a second session will not be approved.

5. Does the facilitator make decisions?

No. Facilitators are trained in effective communication and ways to address and resolve conflicts. The role of the facilitator is to help IEP Team members develop group norms, an agenda, and desired outcomes for the meeting, guide discussions by asking student-focused questions, and keep the IEP Team on task and the meeting on schedule.

6. Does it cost the school or the parent to participate?

No, IEP facilitation is provided at no cost to parents or LEAs.

7. What are some benefits of IEP Team meeting facilitation?

- May build and improve relationships among IEP Team members
- Team members may feel better heard when a facilitator is involved
- Allows all members of the IEP Team the chance to participate fully
- The IEP Team may work together more effectively and efficiently to create an IEP that benefits the child and is supported by all IEP Team members
- Keeps decision-making with the IEP Team members who know the child best
- Helps resolve disagreements more quickly than other dispute resolution processes

8. If the facilitated IEP Team meeting does not resolve my issues, can I pursue other remedies?

Yes. You have not forfeited your rights to other forms of dispute resolution such as seeking mediation, filing a formal complaint, or requesting a due process hearing. At times, the issues, disagreements, or problems may not be resolved through a facilitated IEP Team meeting.

Mediation

9. Are discussions that occur in mediation confidential?

Yes. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal or District Court. Whether the mediation agreement should include a statement setting out this confidentiality requirement is not specifically addressed by the regulations.

10. Can attorneys participate in special education mediations?

Attorneys are allowed to participate in special education mediations. Most of the time, the presence of attorneys is discussed prior to the actual mediation, so neither party should be surprised. Because mediation is a voluntary process, any party that objects to the presence of an attorney may withdraw from the mediation.

11. What is the role of the mediator?

Once the mediator is assigned, the mediator makes the mediation session arrangements, conducts and facilitates the mediation, writes or assists in writing the agreement reached, assures that all copies are signed and given to both parties, and informs parties of their options if an agreement is not reached. If issues cannot be resolved, the mediator will declare that an impasse has been reached, and the mediation will be terminated. Mediators use a variety of techniques to structure the mediation. The mediator helps the parent and LEA representative(s) clarify the issues in disagreement and find solutions that are satisfactory to both parties.

12. How long does mediation take?

Many mediation sessions have been successfully completed in half a day. The mediator will determine whether progress is being made or whether additional time is needed to reach a resolution.

Formal Complaints

13. May the GaDOE complaint procedures, including the remedies, address the problems of a group of children?

Yes. The GaDOE is required to resolve any legitimate complaint, including a systemic complaint alleging an IDEA violation or state special education rule violation with regard to a group of children with disabilities. If the LEA is not in compliance, it will be required to correct the noncompliance, and the GaDOE will verify correction.

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14. May a complaint be filed with the GaDOE over an alleged violation that occurred more than one year prior to the date of the complaint?

No, the regulations at [34 C.F.R. § 300.153\(c\)](#) and Georgia Rule [160-4-7-.12](#) Dispute Resolution stipulate that a complaint must allege a violation that occurred not more than one year prior to the date the complaint is received.

15. Can an issue that is the subject of a formal complaint also be the subject of a due process complaint requesting a due process hearing?

Yes. An issue in a formal complaint can also be the subject of a due process complaint requesting a due process hearing, as long as the issue relates to a matter regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child, as described in 34 CFR §300.507(a)(1) or to a disciplinary matter as described in 34 CFR §§300.530-300.532. If a due process complaint is filed on an issue that is also the subject of a pending State complaint, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing officer issues a final decision. However, any issue in the State complaint that is not part of the due process action must be resolved using the 60-day time limit and procedures described in 34 C.F.R. § 300.152(a) and (b). [34 C.F.R. § 300.152\(c\)\(1\)](#).

16. May a formal complaint be filed on an issue that was previously decided in a due process hearing?

Under [34 C.F.R. § 300.152\(c\)\(2\)\(i\)](#), if a hearing officer has previously ruled on an issue at a due process hearing involving the same parties, the decision is binding on that issue. If a formal complaint involving the same parties is filed on the same issue that was previously decided by the hearing officer, the GaDOE must inform the complainant that the hearing decision is binding on that issue. 34 CFR §300.152(c)(2)(ii). However, the GaDOE must use its formal complaint resolution procedures to resolve any issue in the complaint that was not decided in the due process hearing. In determining that it will not resolve an issue in a formal complaint because that issue was previously decided in a due process hearing, the GaDOE must ensure that the legal and factual issues are identical. If a due process hearing was dismissed strictly on procedural grounds and the administrative law judge does not make findings or reach a decision on the merits of the issues, the GaDOE is not relieved of its responsibility to resolve those issues if raised in a formal complaint.

17. Is the LEA required to provide a copy of its response to a formal complaint to a third-party complainant?

The LEA is not required to provide a copy of its response and subsequent communications to a third-party complainant. If a complaint is filed by an organization or individual other than

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the parent, parental consent must be obtained before an LEA or SEA may provide personally identifiable information about a child to a non-parent complainant as part of the complaint decision. See [34 C.F.R. § 99.30](#) and [300.622](#)]

18. May the 60-day timeline for findings of compliance or noncompliance by the GaDOE be extended?

Yes. 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 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\(b\)](#).

19. May the filing party withdraw the formal complaint?

Yes. The filing party may submit a request to withdraw the formal complaint to the GaDOE at any time during the 60-day timeline.

20. If the complainant is a party other than the parent, may parties use the mediation process to attempt to resolve the issue(s) in the formal complaint?

The regulations and rules require the GaDOE to offer the parent and the public agency the opportunity to engage in mediation voluntarily to resolve the issues in a GaDOE complaint. The regulations do not require GaDOE to provide mediation when an organization or individual other than the child's parent files a GaDOE complaint.

21. Can I appeal the written decision from the GaDOE that addresses each allegation in the complaint?

All decisions arising from the formal complaint process are final, and there is no appeal or reconsideration process. However, parties may request a due process hearing to address the same allegations that were raised and decided in the formal complaint process if those allegations are related to the identification, evaluation, educational placement or provision of free appropriate public education.

Due Process Hearings

22. What happens if a parent files a due process complaint with the LEA but does not forward a copy of the due process complaint to the GaDOE? When does the timeline for convening a resolution meeting begin?

The filing party is responsible for sending a copy of the due process hearing request to the GaDOE. However, the timeline for convening a resolution meeting begins on the day the LEA receives the request.

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23. If a due process complaint is amended and the 15-day timeline to conduct a resolution meeting starts over, must the LEA conduct another resolution meeting?

Yes. The complaint can be amended only if the parties mutually agree in writing to the amendment and are given the opportunity for a resolution meeting, or the hearing officer grants permission to amend the complaint at any time not later than five days before the due process hearing begins. This process ensures that the parties involved understand and agree on the nature of the complaint before the hearing begins. When a due process complaint is amended, the timelines for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint.