



STATE OF NEW JERSEY

DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: May 8, 2024
To: Local Educational Agency Leads, Administrators of Approved Private Schools for Students with Disabilities, Administrative Law Judges
Route To: Directors of Special Education
From: Kathy Ehling, Assistant Commissioner
Division of Educational Services

Expedited Due Process Hearings

Under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, expedited due process hearings are available for disputes regarding the placement of a student with a disability resulting from a disciplinary action, or when a local educational agency (LEA) believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. Expedited due process hearings, which are presided over by Administrative Law Judges (ALJs) within the Office of Administrative Law (OAL), must occur within 20 school days of the date the hearing is requested. The ALJ must issue a final decision within 10 school days after the hearing.

Under the IDEA, and its implementing regulations, expedited due process hearings are available as follows:

- If the parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq., the parent may request an expedited hearing.
- LEAs are reminded that to remove a student with a disability when personnel maintain that it is dangerous for the student to be in the current placement and the parent and LEA cannot agree to an appropriate placement, the LEA shall request an expedited hearing.
- The expedited hearing shall be conducted and completed within 20 school days of receipt of the request by the Office of Special Education (OSE).
- The expedited hearing shall result in a written decision being provided to the parties within 10 school days of the completion of the expedited due process hearing without exceptions or extensions.
- The ALJ may order a change in the placement of the student with a disability to an appropriate interim alternative educational setting (IAES) for not more than 45 calendar days according to 20 U.S.C. § 1415(k) and its implementing regulations at 34 CFR Part 300.

This broadcast reminds parties that requests to adjourn an expedited due process hearing are not permitted. All decisions resulting from expedited due process hearings must be issued within the shortened timeframe described above. Please also note that a decision in an expedited due process hearing may be appealed consistent with 34 CFR §§300.514 and 300.516.

Note that when a due process complaint requesting an expedited due process hearing is filed either by the parent or the LEA, the child must remain in the alternative educational setting chosen by the IEP Team, if applicable, pending the hearing officer's decision or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise (34 CFR §300.533).

Additionally, it is the responsibility of the LEA to file for an expedited due process hearing if it seeks a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than

45 calendar days due to dangerousness. Please also note that a hearing officer has the authority to determine whether the child's removal from his or her placement violated 34 CFR §300.530 (authority of school personnel); whether a child's behavior was a manifestation of his or her disability; and whether maintaining the child's current placement is substantially likely to result in injury to the child or to others.

In determining the appropriate relief, if any, the hearing officer may return the child to the placement from which the child was removed or may order that a child's placement be changed to an appropriate interim alternative educational setting for no more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others in accordance with 34 CFR §300.532(b)(2). These procedures may be repeated if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others (34 CFR §300.532(b)(3)).

For more information regarding due process procedures, please contact the Office of Special Education at (609) 376-9060 or send an email to OSEinfo@doe.nj.gov.

c: Members, State Board of Education
NJDOE Staff
Statewide Parent Advocacy Network
Garden State Coalition of Schools
NJ LEE Group