

CHAPTER 24:05:30
PROCEDURAL SAFEGUARDS

Section

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24:05:30:08.03. Sufficiency of due process complaint. The due process complaint ~~required by~~ filed pursuant to this chapter is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within ~~15~~ fifteen days of receipt of the ~~due process~~ complaint, stating that ~~the receiving party~~ believes the due process complaint does not meet the requirements in § 24:05:30:08.02.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: ~~SDCL 13-37-1.1.~~13-37-1.4.

24:05:30:08.04. Decision of sufficiency of due process complaint. Within five days of receipt of the notification under § 24:05:30:08.03, the hearing officer ~~shall make a determination~~ must determine, on the face of the due process complaint, ~~of~~ whether the due process complaint meets the requirements of § 24:05:30:08.02 ~~and shall~~. Upon making the determination, the hearing officer must immediately notify the parties in writing of that determination.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: ~~SDCL 13-37-1.1.~~ 13-37-1.4.

24:05:30:08.12. ~~Thirty-day Resolution~~ resolution period -- General. If the district has not resolved the due process complaint to the satisfaction of the parent within ~~30~~ thirty days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in § 24:05:30:08.14, the timeline for issuing a final decision in a due process hearing begins at the expiration of the ~~30-day~~ thirty-day resolution period.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above two paragraphs, the failure of the parent filing a due process complaint to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: ~~SDCL 13-37-1.1.~~ 13-37-1.4.

24:05:30:08.13. Dismissal of due process complaint or initiation of hearing. At the conclusion of the thirty-day resolution period, ~~If if~~ the district 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 § 24:05:25:17, the district may ~~, at the conclusion of the 30-day resolution period,~~ request that a hearing officer dismiss the parent's due process complaint.

If the district fails to hold the resolution meeting specified in § 24:05:30:08.09 within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: ~~SDCL 13-37-1.1.~~ 13-37-1.4.

24:05:30:09.04. Impartial due process hearing -- Convenience of hearing. If a due process complaint is received under this chapter, chapter 24:05:26, or chapter 24:05:26.01, the department shall ensure that the parents ~~or~~ and the district involved in the dispute ~~shall have an opportunity for~~ receive an impartial due process hearing, consistent with the procedures in this article. Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

~~The department is responsible for ensuring that a due process hearing is held.~~

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: ~~SDCL 13-37-1.1.~~ 13-37-1.4.

24:05:30:11. Appeal of hearing decision -- Civil action. Any party aggrieved by the decision of the hearing officer under this chapter or chapters 24:05:26 ~~and or~~ 24:05:26.01 may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(i)(2) (January 1, 2024). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has ~~90~~ thirty days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

- (1) Shall review the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part B of the ~~Individuals with Disabilities Education Act~~ IDEA restricts or limits the rights, procedures, and remedies available under the United States Constitution; ~~the Americans with Disabilities Act of 1990 as amended to July 1, 2013~~, 42 U.S.C. § 12101 (January 1, 2024); ~~Title V of the Rehabilitation Act of 1973 as amended to July 1, 2013~~, 29 U.S.C. § 701 et seq. (January 1, 2024); or other federal laws protecting the rights of children with disabilities. However, before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the party must exhaust the procedures ~~under this chapter~~ for filing a due process complaint under this chapter must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 40 SDR 40, effective September 11, 2013.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL ~~13-37-1.1.~~ 13-37-1.4.

24:05:30:13. Time limit for ~~and convenience~~ final decision of hearings. ~~The department shall ensure that~~ The hearing officer shall reach a final decision on the hearing not later than ~~45~~ forty-five calendar days after the expiration of the ~~30-day~~ thirty-day resolution period under § 24:05:30:08.12 or adjusted time period described in § 24:05:30:08.14, ~~a final decision is reached on the hearing and a~~. A copy of the decision ~~is~~ must be mailed or emailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the request of either party. ~~Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.~~

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: ~~SDCL 13-37-1.1.~~ 13-37-1.4.