

CHAPTER 24:05:30
PROCEDURAL SAFEGUARDS

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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.