

72-972a. Due process hearing, initiation of; complaint notice; response to notice. (a) (1) Subject to the requirements in this section, the parent of an exceptional child or the agency responsible for providing services to the child may initiate a due process hearing regarding any problem arising in regard to any matter governed by this act, if:

(A) The problem about which complaint is made occurred not more than two years before the filing of the complaint and the party filing the complaint knew or should have known about the alleged action that forms the basis of the complaint;

(B) the party filing the complaint or the attorney for that party provides to the other party and to the department, a written due process complaint notice that shall remain confidential and include the following information:

(i) The name of the child, the address of the residence of the child (or in the case of a homeless child or youth, available contact information for the child), and the name of the school the child is attending;

(ii) a description of the nature of the problem and the facts that form the basis of the complaint; and

(iii) a proposed resolution of the problem.

(2) A parent or an agency shall not be entitled to a due process hearing until the parent or agency, or their attorney, files a notice that meets the requirements of this subsection.

(b) (1) Any due process complaint notice filed by a parent shall be deemed to be timely even if presented more than two years after the occurrence of the facts giving rise to the complaint, if:

(A) The agency made specific misrepresentations that it had resolved the problem forming the basis of the complaint; or

(B) the agency withheld information from the parent that is required to be given to the parent under this act.

(2) The due process complaint notice required by subsection (a) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party, in writing, within 15 days of receiving the complaint, that the receiving party believes the notice does not meet the requirements.

(3) Within five days of receipt of the notification provided under subsection (a), the hearing officer shall make a determination of whether the notification meets the requirements of subsection (b)(2) and shall immediately notify the parties, in writing, of such determination.

(c) (1) If the complaint is filed by a parent and the agency has not sent a prior written notice to the parent regarding the problem described in the parent's due process complaint notice, the agency, within 10 days of receiving the complaint, shall send to the parent a response that includes:

(A) An explanation of why the agency proposed or refused to take the action raised in the complaint, or an appropriate reply if the problem does not address proposed or refused action by the agency;

(B) a description of other options that the IEP team considered and the reasons why those options were rejected;

(C) a description of each evaluation procedure, assessment, record or report the agency used as the basis for any action it has proposed or refused; and

(D) a description of the factors that are relevant to the agency's proposal or refusal, or in reply to the complaint.

(2) The fact an agency gives notice to a parent pursuant to paragraph (1) shall not preclude such agency from asserting that the parent's due process complaint notice is insufficient.

(d) The non-complaining party, within 10 days of receiving the complaint, shall send to the complaining party a response that specifically addresses the issues raised in the complaint.

(e) (1) A party may amend its due process complaint notice only if:

(A) The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to K.S.A. 72-973, and amendments thereto; or

(B) the hearing officer grants permission, except that such permission shall be granted not less than five days before a due process hearing occurs.

(2) The applicable timeline for a due process hearing shall recommence at the time the party files an amended notice, including the timeline for resolution of the complaint.

(f) (1) Nothing in this section shall be construed to preclude a parent or an agency from filing a separate due process complaint on an issue different from issues presented in a due process complaint already filed.

(2) Upon motion of either party and if deemed appropriate by the due process hearing officer presiding in the initial hearing, the issues raised in the separate complaints may be considered and resolved in the same due process hearing.

History: L. 2005, ch. 171, § 8; July 1.