

## 2018 Kansas Statutes

- 72-3416. Due process meeting; due process requirements; time limitations; access to records; hearing officers.** (a) (1) Except as hereinafter provided, within 15 days of receipt of a due process complaint notice from a parent, the agency shall convene a meeting with the parent and the member or members of the IEP team who have specific knowledge of the facts identified in the complaint, and a representative of the agency who has the authority to make binding decisions on behalf of the agency. This meeting shall not include the agency's attorney unless the parent is accompanied by an attorney.
- (2) At this meeting, the parent of the child shall discuss and explain the complaint, including the facts that form the basis of the complaint and the agency shall be provided the opportunity to resolve the complaint.
- (3) If the meeting of the parties results in a resolution of the complaint, the parties shall execute a written agreement that both the parent and the representative of the agency shall sign and that, at a minimum, includes the following statements:
- (A) The agreed upon resolution of each issue presented in the complaint;
- (B) that each party understands that the agreement is legally binding upon them, unless the party provides written notice to the other party, within three days of signing the agreement, that the party giving notice is voiding the agreement; and
- (C) if not voided, each party understands that the agreement may be enforced in state or federal court.
- (4) If a resolution of the complaint is not reached at the meeting held under this subsection and the agency has not resolved the complaint to the satisfaction of the parent within 30 days of the agency's receipt of the complaint, the due process hearing procedures shall be implemented and all of the applicable timelines for a due process hearing shall commence. All discussions that occurred during the meeting shall be confidential and may not be used as evidence in any subsequent hearing or civil proceeding.
- (5) A meeting shall not be required under this subsection if the parent and the agency agree, in writing, to waive such a meeting, or they agree to use mediation to attempt to resolve the complaint.
- (b) Any due process hearing provided for under this act, shall be held at a time and place reasonably convenient to the parent of the involved child, be a closed hearing unless the parent requests an open hearing and be conducted in accordance with procedural due process rights, including the following:
- (1) The right of the parties to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) the right of the parties to be present at the hearing;
- (3) the right of the parties to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of the issuance of a subpoena;
- (4) the right of the parties to present witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony;
- (5) the right of the parties to prohibit the presentation of any evidence at the hearing which has not been disclosed to the opposite party at least five days prior to the hearing, including any evaluations completed by that date and any recommendations based on such evaluations;
- (6) the right to prohibit the other party from raising, at the due process hearing, any issue that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing;
- (7) the right of the parties to have a written or, at the option of the parent, an electronic, verbatim record of the hearing; and
- (8) the right to a written or, at the option of the parent, an electronic decision, including findings of facts and conclusions.
- (c) Except as provided by subsection (a), each due process hearing, other than an expedited hearing under K.S.A. 72-993, and amendments thereto, shall be held not later than 35 days from the date on which the request therefor is received. The parties shall be notified in writing of the time and place of the hearing at least five days prior thereto. At any reasonable time prior to the hearing, the parent and the counsel or advisor of the involved child shall be given access to all records, tests, reports or clinical evaluations relating to the proposed action.
- (d) (1) Except as otherwise provided in K.S.A. 72-3435, and amendments thereto, during the pendency of any proceedings conducted under this act, unless the agency and parent otherwise agree, the child shall remain in the then-current educational placement of such child.
- (2) If proceedings arise in connection with the initial admission of the child to school, the child shall be placed in the appropriate regular education classroom or program in compliance with K.S.A. 72-3120, and amendments thereto, unless otherwise directed pursuant to K.S.A. 72-3134, and amendments thereto.
- (e) Subject to the provisions of K.S.A. 72-3417, and amendments thereto, the agency shall appoint a hearing officer for the purpose of conducting the hearing. Members of the state board, the secretary for children and families, the secretary of corrections, the commissioner of the juvenile justice authority, and members of any board or agency involved in the education of the child shall not serve as hearing officers. No hearing officer shall be any person responsible for recommending the proposed action upon which the hearing is based, any person having a personal or professional interest which would conflict with objectivity in the hearing, or any person who is an employee of the state board or any agency involved in the education of the child. A person shall not be considered an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. Each agency shall maintain a list of hearing officers. Such list shall include a statement of the qualifications of each hearing officer. Each hearing officer and each state review officer shall be qualified in accordance with standards and requirements established by the state board and shall have satisfactorily completed a training program conducted or approved by the state board.
- (f) (1) Any party to a due process hearing who has grounds to believe that the hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice or a conflict of interest may file a written request for the hearing officer to disqualify such officer and have another hearing officer appointed by the state board. Any such written request shall state the grounds for the request and the facts upon which the request is based.
- (2) If a request for disqualification is filed, the hearing officer shall review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then shall prepare a written order concerning the request and serve the order on the parties to the hearing. If the grounds are found to be insufficient, the hearing officer shall continue to serve as the hearing officer. If the grounds are found to be sufficient, the hearing officer immediately shall notify the state board and request the state board to appoint another hearing officer.
- (g) (1) Except as provided in paragraph (2), the decision of the hearing officer in each due process hearing shall be based on substantive grounds and a determination of whether the child received a free appropriate public education.
- (2) In due process hearings in which procedural violations are alleged, the hearing officer may find that the child did not receive a free appropriate public education only if the hearing officer concludes the procedural violations did occur and those violations:

- (A) Impeded the child's right to a free appropriate public education;
  - (B) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
  - (C) caused a deprivation of educational benefits.
- (3) Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this act.
- (h) Whenever a hearing officer conducts any hearing, such hearing officer shall render a decision on the matter, including findings of fact and conclusions, not later than 10 days after the close of the hearing. The decision shall be written or, at the option of the parent, shall be an electronic decision. Any action of the hearing officer in accordance with this subsection shall be final, subject to appeal and review in accordance with this act.

**History:** L. 1974, ch. 290, § 14; L. 1977, ch. 241, § 2; L. 1978, ch. 286, § 2; L. 1980, ch. 216, § 3; L. 1983, ch. 237, § 1; L. 1986, ch. 318, § 127; L. 1991, ch. 218, § 3; L. 1999, ch. 116, § 20; L. 2005, ch. 171, § 9; L. 2014, ch. 115, § 283; July 1.