SELECTED RULES RELATED TO DUE PROCESS COMPLAINTS AND HEARINGS

Iowa Administrative Code chapter 281—41 (Current as of June 5, 2018)

In General

281—41.506(256B,34CFR300) Mediation.

41.506(1) *General.* Each public agency must ensure that procedures are established and implemented to allow parties involved in disputes relating to any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

41.506(2) *Requirements.* The procedures must meet the following requirements:

a. The procedures must ensure that the mediation process:

(1) Is voluntary on the part of the parties;

(2) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

c. State responsibility for mediation.

(1) The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) The SEA must select mediators on a random, rotational, or other impartial basis.

d. The state must bear the cost of the mediation process, including the costs of meetings described in 41.506(2)*"b."*

e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

f. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind the agency.

g. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

h. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court.

41.506(3) *Impartiality of mediator.*

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under rule 281—41.228(256B,34CFR300) solely because the person is paid by the agency

to serve as a mediator.

41.506(4) *Mediation procedures.* A request for mediation filed before the filing of a due process complaint shall be conducted according to the procedures described in rule 281—41.1002(256B,34CFR300).

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a "preappeal conference" as requests for mediation prior to the filing of a due process complaint.

281—41.507(256B,34CFR300) Filing a due process complaint.

41.507(1) *General.*

a. Subject matter of due process complaint. A parent or a public agency may file a due process complaint on any of the matters described in subrule 41.503(1) relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

b. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in subrule 41.511(6) apply to the timeline in this rule.

41.507(2) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency files a due process complaint under this rule.

41.507(3) *Synonymous term.* Whenever the term "request for due process hearing" is used in prior department rules and documents, that term shall be construed to mean "due process complaint."

281—41.508(256B,34CFR300) Due process complaint.

41.508(1) *General.* A due process complaint shall be provided to the department, and a copy shall be provided to each party to the complaint.

41.508(2) *Content of complaint.* The due process complaint required in subrule 41.508(1) must include the following information:

a. The name of the child;

b. The address of the residence of the child;

c. The name of the school the child is attending;

d. In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child and the name of the school the child is attending;

e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

f. A proposed resolution of the problem to the extent known and available to the party at the time.

41.508(3) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subrule 41.508(2).

41.508(4) *Sufficiency of complaint.*

a. General. The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the administrative law judge and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subrule 41.508(2).

b. Determination. Within five days of receipt of notification under 41.508(4)*"a,"* the administrative law judge must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subrule 41.508(2), and must immediately notify the parties in writing of that determination.

c. Amending due process complaint. A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to rule 281—41.510(256B,34CFR300); or

(2) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend at any time not later than five days before the due process hearing begins.

d. Timelines after amendment. If a party files an amended due process complaint, the timelines for the resolution meeting in subrule 41.510(1) and the time period to resolve in 41.510(2) begin again with the filing of the amended due process complaint.

41.508(5) *LEA response to a due process complaint.*

a. General. If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten days of receiving the due process complaint, send to the parent a response that includes the following:

(1) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

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

(3) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the agency's proposed or refused action.

b. Rule of construction. A response by an LEA under 41.508(5)*"a"* shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

41.508(6) *Other party response to a due process complaint.* Except as provided in subrule 41.508(5), the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

281—41.509(256B,34CFR300) Model forms.

41.509(1) *Forms available.* The department shall develop model forms to assist parents and public agencies in filing a due process complaint and to assist parents and other parties in filing a state complaint; however, the department or LEA may not require the use of the model forms.

41.509(2) *Use of forms.* Parents, public agencies, and other parties may use the appropriate model form described in subrule 41.509(1), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in subrule 41.508(2) for filing a due process complaint, or the requirements in subrule 41.153(2) for filing a state complaint.

281—41.510(256B,34CFR300) Resolution process.

41.510(1) *Resolution meeting.*

a. General. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(1) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(2) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

b. Purpose of meeting. The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

c. When meeting not necessary. The meeting described in 41.510(1)*"a"* and *"b"* need not be held if the parent and the LEA agree in writing to waive the meeting, or the parent and the LEA agree to use the mediation process described in rule 281—41.506(256B,34CFR300).

d. Determining relevant members of IEP team. The parent and the LEA determine the relevant members of the IEP team to attend the meeting.

41.510(2) *Resolution period.*

a. General. If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

b. Timeline for decision. Except as provided in subrule 41.510(3), the timeline for issuing a final decision under rule 281—41.515(256B,34CFR300) begins at the expiration of this 30-day period.

c. Failure of parent to participate: delay of timeline. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

d. Failure of parent to participate: dismissal of complaint. If the LEA 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 subrule 41.322(4), the LEA may, at the conclusion of the 30-day period, request that the administrative law judge dismiss the parent's due process complaint.

e. Failure of LEA to hold meeting. If the LEA fails to hold the resolution meeting specified in subrule 41.510(1) 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 the administrative law judge to begin the due process hearing timeline.

41.510(3) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in subrule 41.515(1) starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

c. If all parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process.

41.510(4) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in 41.510(1)*"a"* and *"b,"* the parties must execute a legally binding agreement that is:

a. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

b. Enforceable in any state court of competent jurisdiction or in a district court of the United States, or, by the department, including but not limited to through the state complaint process.

41.510(5) *Agreement review period.* If the parties execute an agreement pursuant to subrule 41.510(4), a party may void the agreement within three business days of the agreement's execution.

281—41.511(256B,34CFR300) Impartial due process hearing.

41.511(1) *General.* Whenever a due process complaint is received under this division, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in this chapter.

41.511(2) *SEA responsible for conducting the due process hearing.* The hearing described in subrule 41.511(1) must be conducted by the department.

41.511(3) *Administrative law judge.*

a. Minimum qualifications. At a minimum, an administrative law judge:

(1) Must not be an employee of the SEA or the LEA that is involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(2) Must possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

(3) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(4) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

b. Rule of construction. A person who otherwise qualifies to conduct a hearing under

41.511(3)*"a"* is not an employee of the agency solely because the person is paid by the agency to serve as an administrative law judge.

c. SEA to maintain list of administrative law judges. The department shall keep a list of the persons who serve as administrative law judges. The list must include a statement of the qualifications of each of those persons.

41.511(4) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under subrule 41.508(2), unless each of the other parties agrees otherwise.

41.511(5) *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on the due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

41.511(6) *Exceptions to the timeline.* The timeline described in subrule 41.511(5) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

a. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

b. The LEA's withholding of information from the parent that was required under this chapter to be provided to the parent.

281—41.512(256B,34CFR300) Hearing rights.

41.512(1) *General.* Any party to a hearing conducted pursuant to the rules of this division and Division XII has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parents, electronic findings of fact and decisions.

41.512(2) *Additional disclosure of information.*

a. At least five business days prior to a hearing conducted pursuant to subrule 41.511(1), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

b. An administrative law judge may bar any party that fails to comply with 41.512(2)*"a"* from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

41.512(3) *Parental rights at hearings.* Parents involved in hearings must be given the right to:

a. Have the child who is the subject of the hearing present;

b. Open the hearing to the public; and

c. Have the record of the hearing and the findings of fact and decisions described in 41.512(1)*"d"* and *"e"* provided at no cost to parents.

281—41.513(256B,34CFR300) Hearing decisions.

41.513(1) *Decision of administrative law judge on the provision of FAPE.*

a. Subject to 41.513(1)*"b,"* an administrative law judge's determination of whether a child received FAPE must be based on substantive grounds.

b. In matters alleging a procedural violation, an administrative law judge may find that a child did not receive FAPE only if the procedural inadequacies:

(1) Impeded the child's right to FAPE;

(2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

(3) Caused a deprivation of educational benefit.

c. Nothing in this subrule shall be construed to preclude an administrative law judge from ordering an LEA to comply with procedural requirements under this division.

41.513(2) Reserved.

41.513(3) *Separate request for a due process hearing.* Nothing in this division shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

41.513(4) *Findings and decision to advisory panel and general public.* The department, after deleting any personally identifiable information, must:

a. Transmit the findings and decisions referred to in 41.512(1)*"e"* to the state advisory panel established under rule 281—41.167(256B,34CFR300); and

b. Make those findings and decisions available to the public.

281—41.514(256B,34CFR300) Finality of decision. A decision made in a hearing conducted pursuant to this division is final, except that any party involved in the hearing may appeal the decision by filing a civil action in state or federal court.

281—41.515(256B,34CFR300) Timelines and convenience of hearings.

41.515(1) *Timeline.* The public agency must ensure that not later than 45 days after the expiration of the 30-day period under subrule 41.510(2), or the adjusted time periods described in subrule 41.510(3):

a. A final decision is reached in the hearing; and

b. A copy of the decision is mailed to each of the parties.

41.515(2) Reserved.

41.515(3) *Extensions of time or continuances.* An administrative law judge may grant specific extensions of time or continuances beyond the periods set out in subrule 41.515(1) at the request of either party.

41.515(4) *Hearing time.* Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

281—41.516(256B,34CFR300) Civil action.

41.516(1) *General.* Any party aggrieved by the findings and decision made under this division has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under this division. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

41.516(2) *Time limitation.* The party bringing the action shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

41.516(3) *Additional requirements.* In any action brought under subrule 41.516(1), the court:

a. Receives the records of the administrative proceedings;

b. Hears additional evidence at the request of a party; and

c. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

41.516(4) *Jurisdiction of United States district courts.* The district courts of the United States have jurisdiction of actions brought under Section 615 of the Act without regard to the amount in controversy.

41.516(5) *Rule of construction.* Nothing in Part B of the Act or this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the Act, the procedures under rules 281—41.507(256B,34CFR300) and 281—41.514(256B,34CFR300) must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.

281—41.517(256B,34CFR300) Attorneys' fees.

41.517(1) *General.* In any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to any of the following:

a. The prevailing party who is the parent of a child with a disability;

b. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

41.517(2) *Prohibition on use of funds.*

a. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the Act and this division.

b. Paragraph 41.517(2)*"a"* does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

41.517(3) *Award of fees.* A court awards reasonable attorneys' fees under Section 615(i)(3) of the Act consistent with the following:

a. Amount of fees. Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. When fees and costs may not be awarded.

(1) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;
2. The offer is not accepted within ten days; and
3. The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(2) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in rule 281—41.506(256B,34CFR300).

(3) A meeting conducted pursuant to rule 281—41.510(256B,34CFR300) shall not be considered either of the following:

1. A meeting convened as a result of an administrative hearing or judicial action; or
2. An administrative hearing or judicial action for purposes of this rule.

c. Exception to offer of settlement subrule. Notwithstanding 41.517(3)*"b"*(1), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

d. Reduction in attorney fees. Except as provided in 41.517(3)*"e,"* the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the Act, if the court finds that:

(1) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(2) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(4) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with rule 281—41.508(256B,34CFR300).

e. Exception to reduction in fees subrule. The provisions of 41.517(3)*"d"* do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the Act.

281—41.518(256B,34CFR300) Child's status during proceedings.

41.518(1) *General.* Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under rule 281—41.507(256B,34CFR300), unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

41.518(2) *Initial admission to public school.* If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

41.518(3) *Transition from Part C to Part B.* If the complaint involves an application for initial services under this chapter from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has reached the age of three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under subrule 41.300(2), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

41.518(4) *Administrative law judge decision.* If the administrative law judge in a due process hearing conducted by the SEA agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of subrule 41.518(1).

41.518(5) *Mediation requested prior to the filing of a due process complaint.* Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in any such mediation conference must remain in his or her current educational placement.

Rules Regarding Appeals Concerning Discipline

281—41.532(256B,34CFR300) Appeal.

41.532(1) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under rules 281—41.530(256B,34CFR300) and 281—41.531(256B,34CFR300), or the manifestation determination under subrule 41.530(5), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to rule 281—41.507(256B,34CFR300) and subrules 41.508(1) and 41.508(2).

41.532(2) *Authority of administrative law judge.*

a. An administrative law judge under rule 281—41.511(256B,34CFR300) hears and makes a determination regarding an appeal under subrule 41.532(1).

b. In making the determination under subrule 41.532(1), the administrative law judge may do either of the following:

(1) Return the child with a disability to the placement from which the child was removed if the administrative law judge determines that the removal was a violation of rule

281—41.530(256B,34CFR300) or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

c. The procedures under 41.532(1) and 41.532(2)*"a"* and *"b"* 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.

41.532(3) *Expedited due process hearing.*

a. Whenever a hearing is requested under subrule 41.532(1), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of rule 281—41.507(256B,34CFR300), subrules 41.508(1) to 41.508(3), and rules 281—41.510(256B,34CFR300) to 281—41.514(256B,34CFR300), except as provided in 41.532(3)*"b"* and *"c."*

b. The department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The administrative law judge must make a determination within 10 school days after the hearing.

c. Unless the parents and LEA agree in writing to waive the resolution meeting described in this paragraph, or agree to use the mediation process described in rule 281—41.506(256B,34CFR300), the procedure is as follows:

(1) A resolution meeting must occur within 7 days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of all parties within 15 days of the receipt of the due process complaint.

d. Reserved.

e. The decisions on expedited due process hearings are appealable consistent with rule 281—41.514(256B,34CFR300).

281—41.533(256B,34CFR300) Placement during appeals and mediations. When an appeal under rule 281—41.532(256B,34CFR300) or a request for mediation under rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

281—41.1000(17A,256B,290) Applicability. In addition to rules in Division VII, this division applies to matters under this chapter brought before administrative law judges or mediators.

281—41.1001(17A,256B,290) Definitions. As used in this chapter:

41.1001(1) *Administrative law judge.* "Administrative law judge" means an individual designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and, if appropriate, oral arguments in the hearing.

41.1001(2) *Appeal.* In Iowa practice and for purposes of these rules, an "appeal" is synonymous with a "due process complaint."

41.1001(3) *Appellant.* "Appellant" means a party that files a due process complaint under this chapter.

41.1001(4) *Appellee.* "Appellee" means a party that opposes the due process complaint filed by the appellant.

41.1001(5) *Party.* "Party" means the appellant, appellee and third parties named or admitted as a party.

281—41.1003(17A,256B) Procedures concerning due process complaints.

41.1003(1) *AEA as a party.* The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal.

41.1003(2) *Individual served by contract with another agency.* In instances where the individual is served through a contract with another agency, the school district of residence of the individual shall be deemed a party.

41.1003(3) *Notice.* The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper officials with the LEA and the AEA of the filing of the due process complaint. The department-assigned administrative law judge may then request that the LEA and AEA transmit all records relevant to the due process complaint. The officials shall, within 20 business days after receipt of the request from the administrative law judge, file with the administrative law judge all records relevant to the decision appealed.

41.1003(4) *Free or low-cost legal services.* The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

41.1003(5) *Written notice.* The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten calendar days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

41.1003(6) *Mediation conference.* The department shall contact the parties to determine whether they wish to participate in a mediation conference under rule 281—41.506(256B,34CFR300). Discussions that occur during the mediation process must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached in mediation. Prior to the start of the mediation, the parties to the mediation conference and the mediator will be required to sign an Agreement to Mediate form containing a confidentiality provision.

41.1003(7) *Dismissal.* The appellant may make a request for dismissal by the administrative law judge at any time. A request or motion to dismiss made by the appellee shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

a. The appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.

b. The issue(s) raised is moot.

c. The individual does not have standing to file a due process complaint under Part B of the Act and this chapter.

d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide.

e. Circumstances are such that no case or controversy exists between the parties.

f. An appeal may be dismissed administratively when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the administrative law judge shall notify the appellant at the last known address and give the appellant an opportunity to give good cause as to why an extended continuance shall be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

281—41.1004(17A,256B) Participants in the hearing.

41.1004(1) *Conducting hearing.* The administrative law judge shall conduct the hearing.

a. Any person serving or designated to serve as an administrative law judge is subject to disqualification for bias, prejudice, interest, or any other cause for which a judge is or may be disqualified.

b. Any party may timely request the disqualification of an administrative law judge after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification whichever is later.

c. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

d. If another administrative law judge is required because the appointed administrative law judge is disqualified or becomes unavailable for any other reason, the director of education shall appoint a substitute administrative law judge from the list of other qualified administrative law judges.

41.1004(2) *Counsel.* Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of individuals with disabilities.

41.1004(3) *Opportunity to be heard—appellant.* The appellant or representative shall have the opportunity to be heard.

41.1004(4) *Opportunity to be heard—appellee.* The appellee or representative shall have the opportunity to be heard.

41.1004(5) *Opportunity to be heard—director.* The director or designee shall have the opportunity to be heard.

41.1004(6) *Opportunity to be heard—third party.* A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the administrative law judge.

281—41.1005(17A,256B) Convening the hearing.

41.1005(1) *Announcements and inquiries by administrative law judge.* At the established time, the administrative law judge shall announce the name and nature of the case and inquire whether the respective parties or their representatives are present.

41.1005(2) *Proceeding with the hearing.* When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the hearing may proceed. When any absent party has been properly notified, the means of notification shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

41.1005(3) *Types of hearing.* The administrative law judge shall establish with the parties that the hearing shall be conducted as one of three types:

a. A hearing based on the stipulated record.

b. An evidentiary hearing.

c. A mixed evidentiary and stipulated record hearing.

41.1005(4) *Evidentiary hearing scheduled.* An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated record or a mixed evidentiary and stipulated record hearing.

41.1005(5) *Educational record part of hearing.* The educational record submitted to the department by the educational agency shall, subject to timely objection by the parties, become part of the record of the hearing.

281—41.1006(17A,256B) Stipulated record hearing.

41.1006(1) *Record hearing is nonevidentiary.* A hearing based on the stipulated record is nonevidentiary in nature. No witnesses shall be heard nor evidence received. The controversy shall be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceeding.

41.1006(2) *Materials to illustrate an argument.* Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

41.1006(3) *One spokesperson per party.* Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

41.1006(4) *Arguments and rebuttal.* The appellant shall present argument first. The appellee then presents argument and rebuttal of the appellant's argument. A third party, at the discretion of the administrative law judge, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

41.1006(5) *Time to present argument.* Appellant and appellee shall have equal time to present their arguments and the appellant's total time shall not be increased by the right of rebuttal. The administrative law judge shall set the time limit for argument.

41.1006(6) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

281—41.1007(17A,256B) Evidentiary hearing.

41.1007(1) *Testimony and other evidence.* An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

41.1007(2) *Appellant statement.* The appellant may begin by giving a short opening statement of a general nature, which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions the appellant believes the evidence shall substantiate.

41.1007(3) *Appellee statement.* The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusions the appellee believes the evidence shall substantiate.

41.1007(4) *Third-party statement.* With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

41.1007(5) *Witness testimony and other evidence.* The appellant may then call witnesses and present other evidence.

41.1007(6) *Witness under oath.* Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "I do solemnly swear or affirm that the testimony or evidence which I am about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

41.1007(7) *Cross-examination by appellee.* The appellee may cross-examine all witnesses and may examine and question all other evidence.

41.1007(8) *Witness testimony and other evidence.* Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

41.1007(9) *Questions by administrative law judge.* The administrative law judge may address questions to each witness at the conclusion of questioning by the appellant and the appellee. Said questioning shall be solely to clarify the record or witness testimony and shall be limited to the issues identified by the parties.

41.1007(10) *Rebuttal witnesses and additional evidence.* At the conclusion of the initial presentation of evidence and at the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

41.1007(11) *Appellant final argument.* The appellant may make a final argument, not to exceed a length of time established by the administrative law judge, in which the evidence presented may be reviewed, the conclusions which the appellant believes most logically follow from the evidence may be outlined and a recommendation of action may be made to the administrative law judge.

41.1007(12) *Appellee final argument.* The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the

conclusions which the appellee believes most logically follow from the evidence may be outlined and a recommendation of action may be made to the administrative law judge.

41.1007(13) *Third-party final argument.* At the discretion of the administrative law judge, a third party directly involved in the original proceeding may make a final argument.

41.1007(14) *Rebuttal of final argument.* At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

41.1007(15) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties within the time period provided by 41.515(1), unless the administrative law judge granted an extension of time or continuance pursuant to 41.515(3). The time for filing briefs may be a ground to extend the time for final decision.

281—41.1008(17A,256B) Mixed evidentiary and stipulated record hearing.

41.1008(1) *Written evidence of portions of record may be used.* A written presentation of the facts or portions of the certified record that are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. No party may later contest such evidence or introduce evidence contrary to that matter which has been stipulated.

41.1008(2) *Conducted as evidentiary hearing.* All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing pursuant to rule 281—41.1007(17A,256B).

281—41.1009(17A,256B) Witnesses.

41.1009(1) *Subpoenas.* The director of education shall have the power to issue, but not to serve, subpoenas for witnesses and to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.1009(2) *Attendance of witness compelled.* Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.1009(3) *Cross-examination.* Witnesses at the hearing shall be subject to cross-examination. An individual whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts. If the individual is not available and cross-examination is necessary for a full and true disclosure of the facts, the administrative law judge may exclude the individual's testimony in written form.

281—41.1010(17A,256B) Rules of evidence.

41.1010(1) *Receiving relevant evidence.* Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence that will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.1010(2) *Acceptable evidence.* Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing is expedited and the interests of the parties are not prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.1010(3) *Documentary evidence.* Documentary evidence may be received in the form of copies

or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.1010(4) *Administrative notice and opportunity to contest.* The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.1010(5) *Discovery.* Discovery procedures applicable to civil actions are available to all parties in due process hearings under this chapter. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. The administrative law judge may exercise such control over discovery, including its nature, scope, frequency, duration, or sequence, as permitted by the Iowa rules of civil procedure, and for such grounds as those rules may provide.

41.1010(6) *Administrative law judge may evaluate evidence.* The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.1010(7) *Decision.* A decision shall be made upon consideration of the whole record or such portions that are supported by and in accordance with reliable, probative and substantial evidence.

281—41.1011(17A,256B) Communications.

41.1011(1) *Restrictions on communications—administrative law judge.* The administrative law judge shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.

41.1011(2) *Restrictions on communications—parties.* Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.1011(3) *Sanctions.* Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.1012(17A,256B) Record.

41.1012(1) *Open hearing.* Parents involved in hearings shall be given the right to open the hearing to the public. The hearing shall be recorded by mechanized means or by certified court reporters. Any party to a hearing or an appeal has the right to obtain a written or, at the option of the parents, electronic, verbatim record of the hearing and obtain written or, at the option of the parents, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions described in this rule must be provided at no cost to parents.

41.1012(2) *Transcripts.* All recordings or notes by certified court reporters of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

41.1012(3) *Hearing record.* The record of a hearing shall be maintained and preserved by the department for at least five years from the date of the decision. The record under this division shall include the following:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.
c. A statement of matters officially noted.
d. All questions and offers of proof, objections and rulings thereof.
e. All proposed findings and exceptions.
f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.1013(17A,256B) Decision and review.

41.1013(1) *Decision.* The administrative law judge, after due consideration of the record and the arguments presented, shall make a decision on the appeal.

41.1013(2) *Basis of decision.* The decision shall be based on the laws of the United States and the state of Iowa and the rules and policies of the department.

41.1013(3) *Time of decision.* The administrative law judge's decision shall be reached and mailed to the parties within the time period specified in 41.515(1), unless an extension of time or continuance has been granted pursuant to 41.515(3).

41.1013(4) *Impartial decision maker.* No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters, nor shall any individual who participates in the making of any decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

281—41.1014(17A,256B) Finality of decision.

41.1014(1) *Decision final.* The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.1014(2) *Notice to department of a civil action.* A party initiating a civil action in state or federal court under rule 281—41.516(256B,34CFR300) shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action.

41.1014(3) *Filing of certified administrative record.* The department shall file a certified copy of the administrative record within 30 days of receiving the informational copy referred to in subrule 41.1014(2).

281—41.1016(17A) Correcting decisions of administrative law judges. An administrative law judge may, on the motion of any party or on the administrative law judge's own motion, correct any error in a decision or order under this chapter that does not substantively alter the administrative law judge's findings of fact, conclusions of law, or ordered relief, including but not limited to clerical errors, errors in grammar or spelling, and errors in the form of legal citation. Any such correction shall be made within 90 days of the date of the order or decision, shall relate back to the date of the order or decision, and shall not extend any applicable statute of limitations.