

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.