

IDEA Special Education Due Process Complaints/ Hearing Requests

**Including Expedited Hearing Requests
A Guide for Parents of Children & Youth
(Ages 3-21)**

This publication is part of a series about IDEA (Individuals with Disabilities Education Act) dispute resolution options. Parent guides in this series include:

IDEA Special Education Mediation
IDEA Special Education Written State Complaints
IDEA Special Education Due Process Complaints/
Hearing Requests
IDEA Special Education Resolution Meetings



This publication describes Due Process Complaints/Hearing Requests generally for Part B of the IDEA. It is not intended to interpret, modify, or replace any procedural safeguards or requirements of federal or state law.

What Is A Due Process Complaint/Hearing Request?

A due process complaint is a written document used to request a due process hearing related to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free, appropriate public education (FAPE) to the child. The complaint may be filed by a parent or public agency (such as your child's school district). This starts a process that may lead to a formal hearing where a hearing officer decides the outcome.

- Due process complaints may also be referred to as “hearing requests.”
- A few examples of when a parent might file a due process complaint include:
 - ◆ You disagree with the results of your child's evaluation regarding his or her eligibility for special education and related services.
 - ◆ You think that the individualized education program (IEP) developed by your child's IEP team doesn't meet his or her special education and related service needs.
 - ◆ You believe the school is not providing the services included in your child's IEP.
 - ◆ You disagree with the school district's placement decision for your child.
- Details on how to file a due process complaint are available from your state educational agency (SEA).

State regulations associated with the IDEA dispute resolution processes vary widely.

Parents and family members are encouraged to contact their state educational agency or a parent center for more information.

Important Things To Know Before Filing A Due Process Complaint/Hearing Request...

- The IDEA requires a due process complaint include at least the following information:
 - ◆ The child's name;
 - ◆ The child's address, or contact information for a homeless child;
 - ◆ The name of the child's school;
 - ◆ A description of the specific problem concerning the child and facts relating to the problem; and
 - ◆ Ideas or suggestions to resolve the matter.
- The parent or school district filing the complaint/hearing request must send a copy to the other party at the same time it is filed with the SEA.
- A complaint/hearing request that doesn't have the required content may be dismissed or returned, which could delay resolution of the matter.

What Happens After I Request A Due Process Hearing?

- Typically, the SEA or hearing office will send a letter to you and the school district with information about what you can expect to happen. This letter often includes:
 - ◆ The name and contact information of the hearing officer assigned to your case;
 - ◆ Due process timelines and important things that happen in the process;

- ◆ Information about the resolution meeting requirement and availability of mediation; and
 - ◆ Information about any free or low-cost legal resources available in the area.
- The school district will have **10 calendar days** to respond to your due process complaint. If the school district filed the complaint, you will have **10 calendar days** to respond to the issues listed in their complaint.
 - The school district must schedule a resolution meeting to take place within **15 calendar days** of receiving your complaint, unless you and the school district agree in writing not to have a resolution meeting, or to use mediation instead. See *IDEA Special Education Resolution Meetings* for more information.
 - If a due process hearing takes place, the hearing officer must mail a copy of the hearing decision to each party no later than **45 calendar days** from the beginning of the hearing timeline or, if the hearing officer granted an extension to the hearing timeline, by the end of that extension.

Questions About Due Process Complaints/Hearing Requests

Is there a time limit for filing a due process complaint/hearing request?

Unless an exception to the time limit applies, the problems you list in your due process complaint must have occurred no more than 2 years before you file the complaint, or from the date you should have known that the problem happened. In some states, the time limit for filing is less than 2 years, so it is important to file your complaint as soon as possible.

Is there a special form that I have to use?

No. Your SEA must make a due process complaint form available but you do not have to use it. Looking at the form and seeing what information it requests may help you organize your thoughts before writing a complaint.

What is the resolution period?

This is the 30 calendar day period that begins after the school district receives a parent's due process complaint. It is during this time that a resolution meeting takes place. Resolution meetings offer parents and school districts an opportunity to resolve issues before going to a hearing.

Where does my child go to school after I file a due process complaint/hearing request?

From the time a due process complaint is filed until it is resolved, your child stays in his or her current educational placement, unless you and the school agree otherwise. This is often referred to as "pendency" or "stay put." If your complaint involves admission to public school for the first time, with your consent, your child must be placed in the public school until everything related to the due process complaint is resolved.

Do I need an attorney to file a due process complaint/hearing request?

No. A parent doesn't need an attorney to file a due process complaint. Because of the legal nature of due process proceedings, parents may choose to hire an attorney. School districts are typically represented by attorneys. Parent centers may be able to help with attorney referrals.

What if I need an interpreter?

It is important that you are able to understand and fully participate in the due process proceedings. Let everyone involved know you need an interpreter. Contact your SEA for more information.

For more information on resolving special education disputes and dispute resolution options available under the IDEA, visit the CADRE Website: directionservice.org/cadre

Questions About Due Process Hearings

What is a due process hearing?

A hearing is a more formal process than other dispute resolution options. It is conducted by a hearing officer who considers the information provided by each side, may ask questions of witnesses, and makes a decision about the dispute. The hearing officer is neutral and knowledgeable about the IDEA.

When and where does the hearing occur?

The due process hearing should occur at a time and place that is reasonably convenient to the parent and child involved. Hearings sometimes take place over several days. They are often held in public buildings with conference rooms with enough space, such as courthouses, town halls, and libraries.

Can a hearing officer make adjustments to the 45 calendar day hearing timeline?

Yes. The hearing officer may grant a specific extension of the hearing timeline at the request of you or the school.

Who is likely to attend the hearing?

Generally, parents and school staff, their attorneys, witnesses, and others whom they invite may attend the due process hearing. In addition, a parent may choose to allow members of the public to observe the hearing.

What happens with the hearing decision?

The SEA has the responsibility to make sure that the hearing officer's decision is followed unless the decision is appealed. The SEA must also share a copy (with personally identifiable information removed) with the state's advisory panel, and make the decision available to the public.

Can I appeal the hearing decision?

Yes. Either party may appeal a due process hearing decision. For information on appeals in your state, check

with your SEA or parent center. It is important to know exactly how much time you have to appeal. In many states, appeals must be filed in a short period of time, such as within 30 or 60 calendar days after the hearing officer's decision.

Do I have a right to a copy of the hearing record?

Yes. Parents have the right to a record of the hearing, the findings of fact, and hearing decision at no cost to them.

What if the school district doesn't follow the hearing officer's decision?

If the school district isn't following the hearing officer's decision, you may choose to file a written state complaint with the SEA, requesting that they enforce the decision. See *IDEA Special Education Written State Complaints* for more information.

Considerations About Due Process Complaints/Hearings

- Due process is considered the most adversarial, least collaborative dispute resolution option, and may damage the working relationship between educators and families.
- Certain issues that might be of concern to a parent, such as who a school district hires, are not appropriate for a due process hearing.
- In a due process hearing, a hearing officer who doesn't know your child makes the decision.
- In mediation or resolution meetings, a solution is reached by you, school staff, and others who know your child best.
- Most due process complaints are resolved without the need for a hearing, often through the use of mediation or at resolution meetings.
- To protect the hearing officer's fairness, the hearing officer is not permitted to talk to either party individually about the due process complaint or hearing.
- The hearing officer's decision is legally binding, even if you disagree with the outcome, unless the decision is appealed.

Expedited Hearing Requests

An expedited hearing may only be requested in certain situations. This special type of due process complaint is used when parents disagree with a school district's discipline-related decision affecting their child's placement.

Parents can also file an expedited hearing request when they disagree with a school district's decision about whether a child's behavior is related to their disability. This decision is called a manifestation determination.

A school district may file an expedited hearing request when it believes that a child's behavior could be dangerous to the child or others.

- Expedited hearing requests must include the same information required for a due process complaint.
- States may have different filing requirements for expedited hearing requests. The procedures may also differ from other due process complaints.

What Happens After I File An Expedited Hearing Request?

- A resolution meeting must occur within 7 calendar days, unless you and the school district both agree in writing not to have a resolution meeting, or to use mediation instead.
- If the dispute is not resolved within 15 calendar days, the hearing timeline proceeds.

- The hearing must be held within 20 school days of the expedited hearing request being filed.
- The hearing officer must issue a decision within 10 school days of the date of the hearing.

!* A Note About Expedited Hearing Timelines *!

It is important to keep in mind expedited timeline differences, especially during or close to times when school is not in session, such as summer vacation and extended breaks.

School day has the same meaning for all children in school, including children with disabilities – meaning days when children are scheduled to attend school.

Calendar day means all of the days on the calendar, including weekends and holidays.

Questions About Expedited Due Process Hearings

See Also Questions About Due Process Complaints/Hearings

Where does my child go to school after I file an expedited hearing request?

Your child must remain in the educational setting chosen by his or her IEP team until the hearing officer issues a decision or the time period for the disciplinary action expires, unless you and the school agree otherwise.

Can a hearing officer extend the expedited hearing timeline?

No. A hearing officer cannot extend the resolution period, hearing date, or the time for issuing a decision for an expedited hearing request.

What happens after the expedited hearing?

As with any due process hearing decision, the SEA must ensure that the hearing officer's decision is followed, unless the decision is appealed. The SEA must also share a copy (with personally identifiable information removed) with the state's advisory panel, and make the decision available to the public.

What if I disagree with the hearing decision?

An expedited hearing decision may be appealed. For information on how to file an appeal in your state, you can check with your SEA or parent center. They will know the important timelines and filing requirements.

Sources Of Important Information

A current list of all parent centers in the nation is available through the Center for Parent Information and Resources (CPIR):

parentcenterhub.org

or call (973) 642-8100



The Center for Appropriate Dispute Resolution in Special Education (CADRE) is the national technical assistance center on dispute resolution:

directionservice.org/cadre

or call (541) 686-5060



Information on the Individuals with Disabilities Education Act (IDEA) is available online:

idea.ed.gov/



To Find A Parent Center In Your Area, Contact:

Region 1 Parent TA Center

NJ Statewide Parent Advocacy Network
35 Halsey St., 4th Floor
Newark, NJ 07102

Tel: (973) 642-8100 Fax: (973) 642-8080

Website: spanadvocacy.org

Region 3 Parent TA Center

Parent to Parent of Georgia
3070 Presidential Pkwy, Suite 130
Atlanta, GA 30340

Tel: (800) 229-2038 Fax: (770) 458-4091

Website: p2pga.org

Region 5 Parent TA Center

PEAK Parent Center
611 N. Weber, Suite 200
Colorado Springs, CO 80903

Tel: (800) 284-0251 Fax: (719) 931-9452

Website: region5ptac.org

Region 2 Parent TA Center

Exceptional Children's Assistance Center
907 Barra Row, Suites 102/103
Davidson, NC 28036

Tel: (704) 892-1321 Fax: (704) 892-5028

Website: ecac-parentcenter.org

Region 4 Parent TA Center

WI Facets
600 W. Virginia St., Ste. 501
Milwaukee, WI 53204

Tel: (877) 374-0511 Fax: (414) 374-4655

Website: wifacets.org

Region 6 Parent TA Center

Matrix Parent Network & Resource Center
94 Galli Drive, Suite C
Novato, CA 94949

Tel: (415) 884-3535 Fax: (415) 884-3555

Website: matrixparents.org

Center for Parent Information and Resources (CPIR)

35 Halsey St., 4th Floor
Newark, NJ 07102

Tel: (973) 642-8100 Fax: (973) 642-8080

Website: parentcenterhub.org

Your Local Parent Center:

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