

*A due process complaint is the most formal method of resolving disagreements between parents and schools.*

## Due Process Complaint

A special education due process hearing is a formal review conducted by a trained, impartial Hearing Officer appointed by the Vermont Agency of Education. Due Process complaints may be filed with the agency regarding special education and Section 504 issues.

If informal advocacy, negotiation or mediation fails to resolve a disagreement, both parents and schools have the right to file a due process complaint. This is a summary of due process procedures in Vermont; check the state's Special Education Regulations for a complete explanation and instructions.



### How do I file a due process complaint?

To file a complaint, you must fill out state forms describing your disagreement with the school and provide contact information for your family.

You may file a complaint regarding your child's identifications (as a child with a disability), evaluation, educational placement, or provision of a free appropriate public education (FAPE), or Section 504.

You may hire an attorney to represent you in a due process complaint or you may choose to represent yourself. Keep in mind that the school will retain an attorney regardless of what you choose to do.

If you are filing the complaint yourself, please be sure to fill out the forms completely. It's very important to be as thorough as possible in filling out the forms because the school district has the right to challenge the adequacy of the information you provide. If the hearing officer agrees with the school district's challenge, you may have the opportunity to add the needed information, but this will affect the timeline for scheduling a hearing.

You will be asked to provide the following information about your complaint:

- The nature of the problem with the school, including any facts to support that a problem occurred.
- A description of how the problem might be resolved
- The actions the school has taken to address the problem, if any.

Be prepared to move forward with your complaint soon after you file it, as the process moves quickly. Focus on the issues that have had an impact on your child's ability to receive meaningful educational benefit. For complaints about Individual Education Program (IEP) non-compliance issues, filing an administrative complaint might be a simpler route to take.

You are required to send the complaint forms and any additional information to:

Secretary of Education  
Agency of Education  
219 North Main Street, Suite 402  
Barre, VT 05641

You must also send copies of the forms and attachments to the special education director or superintendent of your school district. You do not need to use a specific form to file the complaint, but the Agency has a model form on its website which can be useful to make sure you include all of the necessary information.

### **How long do I have to file a due process complaint?**

You can request a due process hearing within two years from the date on which the problem occurred. If you weren't informed of your rights or the school district led you to believe it had resolved the problem, the two-year timeline may not apply.

### **Who can file a due process complaint?**

To file on behalf of a student, you must be the parent or legal guardian, or the student's educational surrogate parent. If you are a student, you can file on your own if you are 18 years old and your own guardian, or under 18 and emancipated.

### **What will happen after I send my complaint to the Secretary of Education?**

The Agency of Education's legal administrator will contact you and the school to set up an initial conference call. This call will happen within four days of the Agency's receiving your complaint. If represented by an attorney, you and the school will have to determine your attorney's availability to participate in the call.

### **What can I expect on the initial conference call?**

A hearing officer will describe the options you and the school have before a due process hearing takes place. These options include participating in a resolution session meeting or mediation to resolve the disagreement.

A resolution session is a meeting attended by you and relevant members of the IEP team to discuss your complaint and give the school the opportunity to resolve the disagreement.

If you and the school agree to a resolution session meeting, the hearing officer will schedule a date, time and location for this meeting to occur. You and the school will have 30 days to resolve the complaint through a resolution session. The hearing officer will inform you of the date on which the resolution session period ends.

If you choose to use mediation instead, the hearing officer will contact the Agency's legal administrator to set up mediation. For more information, please see Vermont Family Network's fact sheet on mediation.

### **How does the resolution process work?**

The resolution session must take place within 15 days after the Secretary receives your due process complaint. You and relevant members of the IEP team, and others as appropriate, are required to participate in the meeting. You and the school will decide which members of the IEP team should attend, but there must be a school representative who can make decisions on behalf of the school district.

Unless you bring an attorney to the meeting, the school district's attorney may not attend the resolution session.

If an agreement is reached during the resolution session, you and the school are required to produce a written agreement that is legally binding in state or district court. You and the school have the right to void this agreement within three business days of signing the document.

#### **Can I waive my right to a resolution session?**

You and the school may waive your right to a resolution session meeting. If this happens, the 45-day due process timeline will start sooner. The hearing officer will then ask you and the school to sign a document confirming your decision to waive the meeting and schedule dates for activities needed to move forward with the hearing.

It's important to note that the hearing officer could dismiss your due process complaint if you refuse mediation or a resolution session meeting, or if you refuse to sign a waiver that you do not want to participate in a resolution session. Both parties may agree in writing to waive the resolution meeting and reject mediation, though it can be very helpful to try one or the other.

#### **What happens if the school challenges the information contained in my complaint?**

The school has the right to challenge the adequacy of the information you provided in your due process complaint. This is called challenging the "sufficiency of the complaint." The school has 15 days to contest the information contained in your complaint, and it must notify you and the hearing officer in writing.

The hearing officer has up to five days to decide whether your complaint meets the requirements of the law. You and the school will be notified in writing of this decision.

If the hearing officer decides that your complaint is not sufficient, the complaint will not move forward unless you and the school agree in writing to an amendment if the hearing officer decides to allow an amendment.

#### **What can parents do to prepare for a pre-hearing conference?**

A pre-hearing conference is a face-to-face meeting with the hearing officer, you, and the school representatives. The purpose of the conference is to talk about specific information that will be discussed at the due process hearing.

Up to three days before the conference, you must give the hearing officer and the school a detailed written description of the issues to be addressed at the hearing, including any violations of the special education process.

Up to one day before the conference, the school is required to provide you and the hearing officer with a written statement regarding their defense against your due process complaint.

You will also need to prepare

- A list of witnesses and a summary of the testimony you expect them to give.
- A written statement of the facts concerning your due process complaint.

The school will need to prepare a binder containing relevant sections of your child's educational records it will introduce at the hearing.

After the pre-hearing conference, the hearing officer will issue a pre-hearing order that clearly identifies the issue to be addressed during the hearing and other rulings and decisions related to your complaint.

#### **Is there other information that we will be required to share before the hearing?**

Up to five business days before the hearing takes place, you must send all your evidence, any additions to your witness list, and/or any additions to your main exhibits to the school.



Vermont  
Family  
Network

We are happy to hear that our materials are appreciated and used by others. To order copies of this fact sheet, or to learn more about VFN's materials and services, please contact us at:

1 800-800-4005

Published  
September 2014

The school must send you the same information, and you and the school can agree to share all information with the hearing officer.

### **What happens if we reach an agreement with the school before the hearing takes place?**

The school must inform the hearing officer in writing of the agreement, including a written statement signed by you and the school and a request to cancel the hearing. In addition, the letter must request that the hearing be dismissed "with prejudice." This means that you cannot file a new due process complaint about the same issue (involving the same time period).

### **What will happen after the hearing is completed?**

The hearing officer must issue a decision regarding your due process complaint within 45 days, unless the hearing officer grants a time extension. This 45-day timeline will begin after the date a resolution session meeting takes place, mediation occurs, or you and the school agree not to participate in either meeting.

### **Do I have the right to appeal the hearing officer's decision?**

Parents have the right to appeal an unfavorable due process decision. You must file your appeal with the Vermont State Court in the district where you live or with the United States District Court. You have 90 days from the date you receive the decision in which to file your appeal.

### **Do parents have other due process rights?**

You have the right to:

- Have the hearing open to the public
- Have a hearing that is scheduled at a convenient time and place
- Have your child, attorney, advocate, expert witnesses or others present during the hearing
- Present evidence and ask questions of the school's witnesses

- Receive a transcript of the hearing
- Request reimbursement of attorney's fees and costs if you win your due process hearing.

### **What can I do to prepare for a due process hearing?**

If possible, you should discuss your complaint with an attorney before moving forward. You will need to decide whether you will hire an attorney to represent you or if you will represent yourself at the hearing. Here are a few suggestions about the kinds of information you will need to gather and review in preparing for a due process hearing.

- Educational records, including letters, report cards, homework, class work, attendance and discipline records if relevant, evaluations and IEPs.
- Other relevant records, such as reports from doctors, medical records, telephone calls and emails between you and the school, and private evaluations.
- The Individual with Disabilities Education Act and Vermont Special Education Regulations.
- Names of potential witnesses to testify at the hearing.

### **Resources**

[Consortium for Appropriate Dispute Resolution in Special Education \(CADRE\)](#)

Encouraging the use of mediation and other collaborative strategies to resolve disagreements.

541-686-5060

[Vermont Agency of Education](#)

Help for families navigating the education system.

802-479-1030

[Vermont Legal Aid: Disability Law Project](#)

Counsel and advice, brief service, and full representation to eligible clients and their family members.

800-889-2047