

Information for Individuals Filing a Due Process Complaint

Office of Federal Programs and Support



West Virginia DEPARTMENT OF
EDUCATION

Attached please find the following information related to filing a due process complaint:

Introduction to Due Process Hearings

Due Process Complaint Request Form

Free and Low Cost Legal Services

Mediation Basics

Please call the West Virginia Department of Education, Office Special Education (OSE) at (304) 558-2696 for further information.

Introduction to Due Process Hearings

The regulations for implementing Part B of the Individuals with Disabilities Education Improvement Act (IDEA), allows a parent or local education agency (LEA) to file a due process complaint on any matter relating to the identification, evaluation or educational placement of a child or the provision of a free appropriate public education (FAPE). A due process complaint must be made in writing and must include the following: 1) the student's name, address and the school the student is attending; 2) in the case of a homeless child or youth, contact information for the student, and the name of the school the student is attending; 3) a specific description of the student's problem relating to the proposed or refused initiation or change, including the facts pertaining to the problem; 4) a proposed resolution of the problem to the extent known and available at the time; and 5) the signature of the individual requesting the due process hearing. A model form to assist parents in filing a due process complaint is attached.

When the West Virginia Department of Education, Office of Special Education (OSE) receives a due process complaint, a hearing officer is assigned and both parties will receive a copy of the assignment memorandum. The local educational agency (LEA) must hold a resolution meeting within 15 calendar days of receipt of the due process complaint. This meeting, called a "resolution session," provides an opportunity for the parties to resolve the dispute that is the basis of the complaint before going to a due process hearing. The resolution session must be held unless the parents and the LEA agree in writing to waive such a meeting or agree to mediation in lieu of the resolution session. The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. If the district has not resolved the dispute to the parent's satisfaction within 30 calendar days of the receipt of the due process complaint, the due process hearing may occur and all timelines for the due process hearing will commence. If resolution is reached, a legally binding agreement will be developed and signed and the agreement will be sent to the OSE and to the assigned hearing officer. Either party may void the agreement within three (3) business days following the date of the agreement. The party must send the other party and the hearing officer a written, signed, and dated statement to this effect. Any other decisions regarding the due process hearing shall be made by the assigned due process hearing officer.

The IDEA requires mediation to be offered as an option for resolving parent concerns, at a minimum, when a due process complaint is filed. The parent and LEA may request mediation at any time prior to filing a due process complaint. If a request for mediation is filed, the mediation will not interfere with the timelines for the hearing. A form and information for requesting mediation can be found at <https://wvde.us/special-education/policies-and-compliance/monitoring-and-compliance/>.

The OSE is required by federal and state regulations to provide information regarding free and low cost legal services within the state to parents involved in due process complaints. A list of agencies that may provide assistance is attached. The OSE does not provide recommendations regarding legal services and does not guarantee the availability of assistance. Please refer questions to the agencies listed. Parents are not required to have an attorney in a hearing. Policy 2419: Regulations for the Education of Exceptional Students gives parents the right to be represented by an attorney. The LEA is usually represented by an attorney.

Policy 2419 and the Procedural Safeguards Available to Parents and Students with Exceptionalities outline the due process complaint procedures and the rights of parties in a due process hearing. Please note that under the IDEA, any documents to be used in the hearing must be disclosed to the other party at least five (5) business days prior to the hearing. You may contact the OSE at (304) 558-2696 to obtain copies of Policy 2419 or the Procedural Safeguards.

The due process hearing officer's written decision will be issued within 45 days after the due process hearing commences unless an extension is granted at the request of a party. The hearing officer's decision is final, unless either party brings a civil action in any state court of competent jurisdiction or in a district court of the United States within 90 days of the issuance of the hearing officer's written decision.

If the decision provides orders to be implemented by the local educational agency (LEA), the OSE will follow up to ensure the decision is implemented. Within 30 days following the issuance of the decision, or based on timelines stated in the decision, the OSE will send a letter to the special education director requesting documentation of implementation. Parents will be given the opportunity to submit information if they believe the decision is not being implemented appropriately. The OSE will review the information and close the case or order further corrective activities. If a case is appealed to civil court, follow-up will be put on hold until the case is resolved.

The IDEA states that courts may award reasonable attorneys' fees to parents of students with disabilities when the parents prevail in a due process hearing initiated under the IDEA and Policy 2419. The fees may be agreed to by the parties or may be awarded by a court. The due process hearing officer does not have the authority to award attorneys' fees.

The OSE hopes this information is useful to parents and LEA's as they enter the special education due process hearing process.

Student	Parent
If known, please state a proposed resolution to the issue(s).	
All due process complaints must be signed by the party requesting the hearing. The complaint must be forwarded to the LEA's special education director at the same time it is mailed to the West Virginia Department of Education, Office of Special Education	

Mail to:
West Virginia Department of Education
Office of Special Education
1900 Kanawha Boulevard East Building
6, Suite 750
Charleston, WV 25305

Due Process Resolution Session Timeline Tracking Form

Resolution Period: Resolution Session

Legal Aid of West Virginia
922 Quarrier Street
4th Floor
Charleston, WV 25301
(304) 342-6814
(304) 344-9687

Mountain State Justice
1031 Quarrier Street
Suite 200
Charleston, WV 25301
(304) 344-5564

Lawyer Information Line

Tuesday Legal Connect operated by the West Virginia State Bar
Toll Free Number 1-800-642-3617 available on Tuesdays from 6:00 p.m. to 8:00 p.m.

Internet Link

The West Virginia Lawyer Referral Service sponsored by the West Virginia State Bar
www.wvlawyerreferral.org

Protection and Advocacy Agency for People With Disabilities

Disability Rights of West Virginia (DRWV). Serves individuals with disabilities.
Litton Building, 4th Floor
1207 Quarrier Street
Charleston, WV 25301-1842
(304) 346-0847 or 1-800-950-5250

Mediation Basics

Mediation is an informal process for resolving disputes regarding the identification, evaluation, placement or the provision of a free appropriate public education of an exceptional student. As an informal process for assisting the parties in discussing their concerns, mediation can result in creative solutions not possible in a state complaint or due process hearing. The goal of mediation is to resolve concerns and to open the lines of communication that will benefit the student, parent and school personnel throughout the school life of the student. Mediation can be a winning situation for all involved.

- » Mediation is voluntary on the part of both parties and both the Local Educational Agency (LEA) and parents must agree to participate. Either party may request mediation.
- » Mediation may be requested without first filing for a due process hearing or it may be requested after filing for a hearing. It may not be used to delay or deny a hearing or any other rights.
- » Parents don't give up any of their rights when they request mediation. They may choose to give up some things as a result of the agreement.
- » The impartial mediator is a person selected by the Office of Special Education (OSE) and trained in mediation and special education law and regulations.
- » The mediator assists parties in discussing their issues and solutions; the mediator does not make a decision or tell people what to do.
- » The OSE pays for the cost of the mediator.
- » Mediation may be filed with the LEA or with the OSE.
- » The OSE will assign a mediator on a rotational basis. The mediator then takes responsibility for scheduling the mediation. The mediator will schedule the session in a timely manner and at a convenient location for the parties.
- » Parties may bring others to the mediation to assist them. Parties are encouraged to keep the number of people involved to a minimum, but those needed to make a decision should be present or available by phone.
- » Discussions during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. All those present at mediation will be asked to sign a confidentiality agreement.
- » If successful, the mediation session will result in a written agreement signed by the parties. The written agreement is copied for the parties and filed with the OSE.
- » Parties who sign mediation agreements are expected to implement them voluntarily. If this does not occur, the parties have the right to request a due process hearing or file a state complaint regarding violations of Policy 2419 or the IDEA.