

What are the timelines for an expedited due process complaint?

In certain discipline cases, an expedited due process hearing must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing. Unless the parents and the school district agree in writing to waive the resolution meeting or agree to use mediation, a resolution meeting must occur within 7 calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

What if a due process hearing decision is not implemented?

The parent may file a State Complaint with the WVDE, OFPS. The WVDE, OFPS will conduct an investigation through the complaint process. A letter of findings will be issued within 60 calendar days of receipt of the parent's written complaint.

What if the parent disagrees with the decision?

A decision made in a due process hearing is final unless a party aggrieved by the decision brings a civil action.

For additional information:

West Virginia Department of Education
Office of Federal Programs & Support
Building 6, Suite 700
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
Phone: 304.558.7805
800.642.8541



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West Virginia DEPARTMENT OF
EDUCATION

**Due Process
Hearings**
for Special Education

October 2020

West Virginia Department of Education

Foreword

Laws and regulations help safeguard the partnerships between parents of students with exceptionalities and educators in the special education process. Throughout the identification, evaluation and placement processes, parents participate by making referrals, providing input and consent for evaluation and initial placement and serving as important members of the Eligibility Committee (EC) and the Individualized Education Program (IEP) Team. When parents and educators disagree, a due process complaint may be filed to resolve the disputes. Once a due process hearing has concluded, the hearing officer issues a decision which explains whether any laws or policies have been violated and orders remedies to correct any violations.



W. Clayton Burch
West Virginia Superintendent of Schools

Introduction

Special education laws and regulations ensure that all students with exceptionalities have available a Free Appropriate Public Education (FAPE). The West Virginia Department of Education (WVDE), Office of Federal Programs & Support (OFPS), is required to receive due process complaints regarding the identification, evaluation, educational placement and/or provision of FAPE for exceptional students. Due process complaints and hearings are important procedural safeguards for parents and are required by federal law. This brochure describes the special education due process procedures available to parents and students with exceptionalities. The WVDE has a toll-free number to discuss the choices available in resolving concerns.

800-642-8541 (V/TDD)

Who may file a due process complaint?

A parent, an adult student with an exceptionality, a school district or an attorney representing a party may file a due process complaint regarding the school district's proposal or refusal to initiate or change the identification, evaluation, educational placement and/or the provision of FAPE to the student.

How do I file a due process complaint?

A due process complaint must be initiated within two years of the date the parent or district knew or should have known of the disputed decision or alleged action that forms the basis for the complaint.

A due process complaint must be in writing and contain the signature of the parent/adult student, his or her attorney or the school district representative. The request must be sent to the other party named in the due process complaint and to the WVDE at the following address:

West Virginia Department of Education
Office of Federal Programs & Support
Building 6, Suite 700
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330

A form for filing a due process complaint is available at the OFPS's website at <https://wvde.us/special-education/policies-and-compliance/monitoring-and-compliance/>. The form is not required, but the request must contain all of the following information:

- the name of the student;
- the address of the student's residence;
- the name of the school the student is attending;
- available contact information in the case of a homeless student;
- a description of the nature of the student's problem, including facts relating to the proposed or refused initiation or change; and
- a proposed resolution of the problem to the extent known and available to the parent or the school district at the time.

How is a due process complaint assigned and scheduled?

Upon receipt of a due process complaint, the WVDE, OFPS, will complete the following activities:

- select the hearing officer on a rotating basis, and
- notify the hearing officer of the assignment.

After assignment, the hearing officer will complete the following activities:

- schedule the hearing with both parties, and
- make final decisions regarding the location and scheduling of the hearing, including extensions and any other procedures within the authority of the due process hearing officer.

What is the timeline for a due process complaint?

When a parent, an adult student, or his or her attorney files a due process complaint, a resolution meeting shall be held within 15 calendar days. A due process hearing will be scheduled if no resolution is reached within 30 days of receipt of the complaint. The 45 day hearing timelines commence at this point.

A resolution meeting need not be held if both parties agree in writing to waive the resolution meeting or both parties agree to participate in mediation. If the school district files the complaint, a resolution meeting is not required.