

Parent Information Center of Delaware



Due Process Complaint

What can I do if I believe my child's school violated my child's right to a Free Appropriate Public Education (FAPE)?

Under the *Individuals with Disabilities Education Act or IDEA*, parents have a number of rights or procedural safeguards. If you believe that your child's school is out of compliance with State special education regulations and federal special law, you have the right to file a **Due Process Complaint** with the DE Dept. of Education.

A Due Process Complaint alleges that a violation occurred related to the identification, evaluation, educational placement or provision of a free appropriate public education (FAPE) of a child.

The alleged violation must have occurred within two years of the date the parent or school knew or should have known about the allegation. A complaint includes:

- The name of the person or organization filing the complaint*
- Information about the individual child*
- Description and relevant facts of problem or alleged violation*
- Proposed resolution to the problem*

DE Dept. of Education Responsibilities:

After receiving a Due Process Complaint, the following action will occur:

- A three (3) member hearing panel will be appointed and the parties involved notified.
- The complainant will be provided information about low cost legal assistance, the availability of mediation and a copy of procedural safeguards.
- The panel chairperson will contact the parties to discuss scheduling the hearing.

Before a **Due Process Hearing** occurs, the parties will have an opportunity to resolve the complaint through a resolution meeting unless the parties agree in writing to waive the meeting or to use mediation instead.



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Due Process Hearing: During the due process hearing, the panel will receive testimony from witnesses and receive documents and any other relevant evidence. During the hearing, any testimony must be presented under oath or affirmation. After the hearing, the panel must issue a written decision containing findings of fact and conclusions of law. The hearing panel's decision about whether a child received a free appropriate public education must be based on substantive grounds.

Due Process Hearing Panel Qualifications: Each hearing panel must consist of three (3) members appointed by the Secretary of Education on a rotating basis and include: a Delaware attorney licensed to practice in the State; an educator knowledgeable about special education; and a lay person with a demonstrated interest in the education of children with disabilities and approved by the Governor's Advisory Council for Exceptional Citizens (GACEC).

Resolution Process: Within 15 days of receiving notice of a parent's Due Process Complaint, the school district must convene a resolution meeting (unless both parties agree in writing to waive the meeting or to use mediation instead). This meeting is between the parents and relevant members of the IEP team. It provides the parents an opportunity to discuss the complaint and gives the school district a chance to resolve the complaint. If the school district has not resolved the complaint to the satisfaction of the parent within 30 days of the receipt of the complaint, the Due Process Hearing may occur and the 45 day timeline for issuing a final decision begins.

Due Process Hearing Timeline: The hearing panel must conduct the hearing and issue a final decision within 45 days of the end of the resolution period.

Although parents may represent themselves at a Due Process Hearing, it is wise to hire an attorney who is trained in special education law.

NOTE: A Due Process Complaint form and information about Complaint procedures is available from the DE Dept. of Education (302) 735-4210 or <http://www.doe.k12.de.us/> (http://www.doe.k12.de.us/infosuites/students_family/specialed/procsafe.shtml). Although the form is not required, it is a helpful guide for writing your complaint.

Before filing a complaint with the DE Dept. of Education, you should review your actions to date to be sure that you have information from meetings, email exchanges or discussions that support your claim of a school's violation. *Carefully review the DE Special Education Regulations.* It is also important to try to resolve issues before they reach such a point of contention. Have you clearly expressed your concerns about what you believe the school has or has not done that violates your child's right to a free appropriate public education? Have you offered solutions?

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