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OFFICE OF DISPUTE RESOLUTION



Special Education Due Process Hearings: A Guide for District of Columbia Parents





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Letter from the Director

Dear Parents and Families,

The Office of Dispute Resolution (ODR) was created to ensure that children with disabilities receive appropriate public education, to which they are entitled under federal and District law. We work directly with students and their families to ensure that they have the resources and support needed to thrive in the District's public schools. Last year alone, ODR served over 300 families across all eight wards of the city to address student needs.

Sometimes parents and school districts have different views on how to serve the needs of a student with a disability. You may be unable to come to an agreement with the school district on the details of the Individualized Education Program (IEP) because you cannot agree on what represents a free appropriate public education (FAPE) for your child.

You have options to resolve your disagreement. You may request a due process hearing, mediation, facilitated resolution meeting, facilitated IEP meeting, or you may file a state complaint. ODR, a program in the Office of the State Superintendent of Education, can help you access these options. We are here to serve as a resource for you.

We hope that this handbook provides information and guidance to help you understand our processes and your available options. Please contact our office with any questions by emailing hearing.office@dc.gov or by calling (202) 698-3819.

Thank you for your commitment to your children and the tireless work you do every day to ensure they receive every available opportunity to succeed.

Sincerely,

Tracey Langley
Director, Office of Dispute Resolution

How to Use this Handbook

This handbook provides an overview of due process hearings, including the timing, sequence, and options available to families at various points along the way. The due process timeline is broken up into two distinct periods: the 30-day resolution period and the 45-day hearing period, totaling 75 days. Additionally, families have opportunities for mediation throughout the process. This handbook contains detailed descriptions of these parts. A glossary is included to help families understand some of the terms used to describe parts of the process. Please review the glossary before reading

about the process. A timeline at the end of the handbook provides a summary of the process and the steps involved.

Please note that the Office of Dispute Resolution (ODR) within the Office of the State Superintendent of Education (OSSE) offers this document for informational purposes only. This document has no legal effect and does not include every law or regulation that may apply to a given factual situation and does not constitute a statement of law or legal advice.

Due Process in Brief

Due process begins with the filing of a due process complaint by a parent on behalf of his or her child. The due process complaint provides a detailed description of a disagreement between the parent and the public school system regarding the appropriate services for the child.

The timeline begins on the day after the school district receives a parent's due process complaint.





Purpose of Due Process

Special Education Due Process in the District of Columbia empowers parents with the tools and resources to ensure their children with disabilities receive the services they need to succeed in school and beyond. The right to due process is rooted in the federal Individuals with Disabilities Education Act (IDEA). IDEA provides students with disabilities the right to a Free Appropriate Public Education (FAPE). The due process procedures managed by ODR help you advocate for your children when there are differences of opinion about the educational services your child should receive.

Individuals with Disabilities Education Act (IDEA)

IDEA is a federal law that requires schools to serve the educational needs of eligible students with disabilities. It governs how states and public agencies provide early intervention, special education, and related services to eligible infants and toddlers (birth to 2 years old), and children and youth (3 to 22 years old) with disabilities.

Not every child with learning and attention issues is eligible for special education services under IDEA. First, a child must be found to have one of the 13 kinds of disabilities that IDEA covers.

They are:

- Autism
- Deaf-blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment (including ADHD)
- Specific learning disability (including dyslexia, dyscalculia and dysgraphia, among others)
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

Under IDEA, students are afforded certain rights that must be accommodated by the public school system. These rights are reflected in the six concepts, or principles, of IDEA. They include:

- 1 Providing a **Free Appropriate Public Education (FAPE)** that meets the needs of the student. FAPE is further defined below.
- 2 Conducting **appropriate evaluation** that uses trained evaluators and the right tools to determine the needs of the student.
- 3 Developing an **Individualized Education Program (IEP)** in collaboration with parents, if a child is determined to have an IDEA-covered disability.
- 4 Facilitating effective **parent and student participation** in decision-making regarding development and implementation of the IEP.
- 5 Providing a student with an IEP of the **Least Restrictive Environment (LRE)** for learning, including placement in general education classrooms whenever possible.
- 6 Facilitating **procedural due process** for solving disagreements between the public school system and parents about the appropriate services for the student.

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act provides students with disabilities the right to a free appropriate public education (FAPE). FAPE is the core principle of IDEA.

- **Free** means that all eligible students with disabilities will be educated at public expense. There is no cost to you, the parent. You do, however, have to pay the same incidental fees as for general education students.
- **Appropriate** means that your child with a disability is entitled to an education that is appropriate for him/her. It will be tailored and planned to meet his/her needs as stated in his/her Individualized Education Program (IEP).

- **Public** refers to the public school system. Children with disabilities, whatever the nature or severity of their disabilities, have the right to be educated under public guidance. Many children will be educated in the public school. In some cases, they might be educated in a private school.
- **Education** must be provided to every eligible child with a disability. If this describes your child, FAPE ensures that s/he will receive a public education that includes the services outlined in his/her IEP. The education should prepare your child for further education, employment, and independent living.



Glossary

Calendar Days Sunday through Saturday, including holidays.

Continuance To postpone a step in a proceeding to a future day.

Cross Examination To question a witness called by the opposing side for the purpose of discrediting the witness's testimony.

Due Process Hearing A proceeding where each party has the opportunity to present their views in a formal legal setting, using witnesses, testimony, documents, and legal arguments that each believes is important for the hearing officer to consider in order to decide the issues in the complaint.

Facilitated IEP Meeting A voluntary process where the parties agree to use an impartial third party to facilitate the IEP meeting.

Facilitated Resolution Meeting A voluntary process where the parties agree to use an impartial third party to facilitate the resolution meeting.

Free Appropriate Public Education (FAPE) FAPE ensures that all children with disabilities have available to them special education and related services designed to meet their unique needs and prepare them for the future, further education, employment, and independent living.

Hearing Officer/Administrative Law Judge An independent hearing examiner who presides at an administrative hearing. A hearing officer has the power to administer oaths, receive evidence, take testimony, and make findings of fact and conclusions of law. A Hearing Officer Determination is a final administrative decision.

Individualized Education Program (IEP) A legal document that spells out a child's educational goals, disabilities, and the services and supports that the school will provide.

Insufficiency The due process complaint is incomplete because it does not list the specific items that are required by law.

Notice to Appear A legal document requiring a person to appear at the hearing on the stated date.

Local Education Agency (LEA) A school district. An entity which operates local public, primary, and secondary schools in the United States.

Office of Dispute Resolution (ODR) The office within OSSE that is responsible for the conduct of special education due process hearings.



Office of the State Superintendent of Education (OSSE) The State Education Agency for the District of Columbia. OSSE is primarily responsible for the supervision of public schools in the District of Columbia.

Parent A natural or adoptive parent of a child, a guardian (but not the District if the child is a ward of the District), a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), or a surrogate parent. A foster parent may act as a parent if:

- The natural parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law.
- The foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under IDEA, and has no interest that conflicts with the interests of the child.

Personally Identifiable Information Information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked to a specific individual, such as date and place of birth, mother's maiden name, etc.

Procedural Safeguards A written description of all the rights parents have under IDEA, so that parents are fully informed about the service actions being proposed, refused, or carried out in relation to the needs of their child.

School The general term used in this booklet when referring to traditional public schools, non-public day schools, residential treatment facilities, public charter school, and Department of Youth Rehabilitation Services (DYRS).

State Complaint A written complaint filed by any individual or organization that claims that any District of Columbia public agency has failed to comply with the Individuals with Disabilities Education Act (IDEA) or the District's laws and regulations regarding special education, including identification, evaluation, and educational placement of the child, or the provision of a free appropriate public education (FAPE) to such child.

Statute of Limitations The statute of limitations sets the time limit for bringing certain kinds of legal action. If too much time has passed, you cannot file a due process complaint.

Void To have no legal force or effect; not legally binding.

Waive To put aside or dismiss from consideration or discussion.



Filing a Due Process Complaint

Due process begins when you file a complaint on behalf of your child to resolve a disagreement between you and the public school system regarding the appropriate services to meet your child's needs.

DEFINITION OF A PARENT

A natural, adoptive, foster, or surrogate parent of a child; a guardian; a person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives; or a person who is legally responsible for the child's welfare.

When to file a due process complaint to request a hearing

If you feel that your child's educational rights are being violated because he or she is not receiving a free appropriate public education (FAPE) or the proper special education services, you have the right to request a due process hearing or mediation. For example, you may request a due process hearing if you:

- Disagree with the results of your child's evaluation regarding his or her eligibility for special education and related services

DID YOU KNOW?

In accordance with the law, a Free Appropriate Public Education (FAPE) must be made available to all children with disabilities between the ages of 3 and 22.

- Think that your child's IEP does not meet his or her special education and related services needs
- Believe the school is not providing the services included in your child's IEP
- Disagree with the school district's placement decision for your child

Who can file a due process complaint?

A parent or the school may file a due process complaint to resolve a disagreement about the special education needs of a student.

Do you need an attorney to file a due process complaint?

Most families get support from an attorney or advocate when filing a due process complaint; however, it is not required. You may complete all of the steps of the process without an attorney or advocate.

TIPS FOR WRITING YOUR DESCRIPTION OF THE PROBLEM

You must be as specific as possible.
You may include:

- Specific time frame, including the day, month, and year
- Names of teachers or any other school personnel involved
- Any documents you gave to the school, any requests you made in writing, and information about when you gave them to the school and to whom
- Any meetings about which you were not notified
- If you were unhappy with a meeting, list specifically which one and why
- What services you asked for, whom you asked, when you asked for them, and why

TIPS FOR WRITING YOUR PROPOSED SOLUTION

List the specific services you think do not benefit your child, and the ones you feel would benefit your child. For example: You may want more instructional hours, tutoring, a different classroom, or a different school. Be as SPECIFIC as possible.

Time period for filing a due process complaint

There is a two-year window from the date of the incident to request a due process hearing. The due process hearing must be requested no more than two years after the date that the parent or the school knew or should have known about the supposed action that forms the basis of the complaint, unless the parent was prevented from requesting the hearing due to:

- Specific misrepresentation by the school that it had resolved the problem forming the basis of the complaint; or
- The school's withholding of information from the parent that was required under the Individuals with Disabilities Education Act (IDEA) to be provided to the parent.

How to file a due process complaint

You can visit osse.dc.gov to download the official form for a due process complaint or you can write your own letter. If you choose to write your own letter, the law requires that you must include:

- The name of the child
- The address of the child's home
- The name of the child's school
- If the child is a homeless child or youth, the child's contact information and the name of the child's school

- A description of the problem (including specific facts about the problem)
- A suggestion on how you feel the problem could be resolved

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

Your child will remain in their regular school program until an agreement is reached or a hearing officer determination is issued. If you and the school agree that an immediate school change is appropriate, the school your child is transferred to will be your child's school until a hearing officer determination is issued.

Sending the Complaint to ODR and to the School

Your due process timeline will begin the day after your complaint is logged by ODR.

The complaint must first be sent to your child's school based on the instructions

DID YOU KNOW?

The school may argue that your complaint is insufficient (incomplete). Make sure you are as specific as possible and include all the necessary information listed under "How to file a due process complaint" (left).

below. Once the complaint is submitted to the school, send a copy of the complaint to the Office of Dispute Resolution (ODR) along with proof that you sent your complaint to the school. For example, proof may include a fax confirmation sheet or a copy of an email.

The complaint must be sent to the school, as follows:

- If your child attends a DCPS school, send your complaint via fax to (202) 442-5115.
- If your child attends a public charter school, the due process complaint must be sent to the principal or director of the public charter school, with a copy to the ODR. You must contact the public charter school directly to find out how to send the complaint to the public charter school. Ask the charter school whether or not you need to send the complaint to DCPS as well.
- If your child is with the Department of Youth Rehabilitation Services (DYRS), the due process complaint must be provided to James Brooks, Program Manager, Office of Education, DYRS, by email at jamesS.brooks@dc.gov or fax at (202) 299-3622. A copy must also be sent to ODR.
- If your complaint is against any other agency, you must contact that agency directly to find out how to file the complaint.

A copy of the complaint must be sent to ODR by hand delivery, fax, or email.

- Hand deliver to 1050 First Street, NE, 4th Floor, Suite 401, Washington, DC 20002
- Fax to (202) 478-2956 between 8:30 a.m. – 5:00 p.m.
- Email to hearing.office@dc.gov

If this procedure is not followed, there may be a delay in the start of the due process hearing timeline.

DID YOU KNOW?

Mediation is an option. You have the option to use mediation before or after filing a due process complaint, instead of a formal due process hearing. Special education mediation is a process that will bring you and the school together with a neutral third party to discuss the issues you listed in your due process complaint, with the goal of resolving the disputes in a binding written agreement. Mediation must be requested before the end of the due process hearing. For more information on mediation, see the section on ODR's Special Education Mediation Program on page 13.



The 30-Day Resolution Period



When a complaint is received, the 30-day resolution period begins. The resolution period is the 30 calendar day period where the school district tries to resolve the issues outlined in the complaint before going to a hearing.

The school's response to a due process complaint

Within 10 calendar days of receiving the due process complaint, the school must send you a response that includes:

- An explanation of why the school proposed or refused to take the action raised in the due process complaint
- A description of other options that the IEP team considered and the reasons why those options were rejected
- A description of each evaluation procedure, assessment, record, or report the school used as the basis for the proposed or refused action

- A description of the other factors that are relevant to the school's actions

The school may not send a response if they have already addressed the issues in your complaint in writing.

A school may still claim that your complaint is insufficient (incomplete), even if they have filed a response. Make sure you include all the necessary information listed under "How to file a due process complaint" when you file your complaint.

As the parent, you may ask the hearing officer to accelerate the case if the school does not hold the resolution meeting within 15 days.



DETERMINATION OF SUFFICIENCY

Make sure your complaint is sufficient (complete). If your due process complaint does not include all the information listed under “How to file a due process complaint” on page 9, the school can make a request to dismiss your complaint because it is insufficient (incomplete). The school must notify the hearing officer within 15 days of receiving the due process complaint. The hearing officer then has five days to decide if your complaint is insufficient (incomplete). If the hearing officer decides your complaint is insufficient (incomplete), you will need to rewrite and resubmit the complaint, and the timeline will start over again once the complaint is resubmitted.

Participating in the resolution meeting

Within 15 calendar days of receiving your due process complaint, the school must meet with you and the members of the IEP team who have specific knowledge of the details in your due process complaint. It is important to note:

- The meeting must include a representative of the school who has decision-making authority for the school
- The school may only bring an attorney if you bring one

The purpose of the meeting is for you and the school to discuss your due process complaint and give the school the opportunity to resolve the issue. The resolution meeting is not necessary if:

- You and the school agree in writing not to have the resolution meeting. (This is called waiving the resolution meeting); or
- You and the school agree to use the mediation process

Any agreement reached during the resolution meeting is legally binding. This means:

- The agreement must be signed by both the parent and the school representative with decision-making authority
- It is enforceable in any state court of competent jurisdiction or a district court of the United States

Either you or the school can cancel (void) the agreement within three (3) business days from when the agreement was signed.

End of the resolution period

If the school has not resolved the complaint to your satisfaction within 30 calendar days, the 45-day hearing period may begin. If you do not respond to the school's request to meet for the resolution meeting within 30 calendar days, your due process complaint may be dismissed.

DID YOU KNOW?

The end of the 30-day resolution period is also the last opportunity to request mediation before the beginning of the 45-day hearing period. For more information on mediation, see the section on ODR's Special Education Mediation Program on page 13.

The Special Education Mediation Program



Before beginning the 30-day resolution period or the 45-day hearing period, you have the option to use mediation. Mediation must be requested before the end of the 45-day hearing period. Special education mediation is a process that will bring you and the school together with a neutral third party to discuss the issues you listed in your due process complaint, with the goal of resolving the disputes in a binding written agreement. If you have filed a due process complaint, at any time during the mediation process, you or the school can end mediation and proceed to the due process hearing.

The mediation option provides an opportunity to resolve your disputes at low financial and emotional costs, as compared to the due process hearing. You may find mediation forms and more details about the process at osse.dc.gov. Mediated agreements are enforceable in court.

Step 1 Requesting mediation and intake pre-mediation

Contact the ODR Mediation Intake Coordinator (202-698-3819) to learn about mediation, schedule the mediation, and find a suitable location. Both the parents and the school must agree to mediation. Within five business days you will receive a letter that includes contact information for your mediator and confirms the date, location, and time.

Step 2 Pre-mediation call with the mediator

A neutral mediator will call the parent and the school separately before the mediation to hear your main issues and desired outcomes, and answer any questions about the mediation.

Step 3 Mediation

The mediator will help family members and school representatives communicate concerns, develop solutions, and create a plan for the future. No outside judge or hearing officer is involved. The parent/guardian and school staff will decide the outcome together. Mediations usually take 2-3 hours.

DID YOU KNOW?

Parents retain all of their rights after mediation. Once an agreement is reached, if any questions/concerns arise, you can call the point of contact on the agreement, return to mediation, or use another dispute resolution option, as needed.

Step 4a Legally binding agreement (if an agreement is reached)

Most mediations result in signed agreements that include action items, timelines, and the name of the responsible person(s). If there is a partial agreement, you may schedule another mediation meeting or use another dispute resolution option.

Step 4b No agreement

If no agreement is reached, you may choose to resolve the disagreement in another way. The mediator will provide you with information about other dispute resolution options. Parents retain all of their rights.

Benefits of Mediation

TIME SAVING You may reach an agreement before going to a due process hearing. Mediation is likely to occur within three weeks.

MONEY SAVING Less money is spent on legal fees if you get a mediated solution first.

VOLUNTARY You can leave at any time if the mediation is not working for you.

CONFIDENTIAL Everything discussed in the mediation is confidential. Anything you talk about in mediation cannot be used against you by another party in a hearing or other legal process, and vice versa.

COLLABORATIVE Participants work on solutions together. Everyone is able to take a more active role.

STRENGTHENS RELATIONSHIPS People tend to be more satisfied and follow through with the terms of mediated agreements because they are developed together with the other party. Relationships are often strengthened during the process of mediation, which is not always possible after a formal process like a due process hearing.

FLEXIBLE MEDIATION helps everyone better understand differing points of view. Parties generate a variety of creative solutions to special education challenges and an atmosphere is created that may allow for the possibility of an apology and better ways for the school and family to communicate. Mediation focuses on creating a plan for the future.

ENFORCEABILITY The mediated agreement is a legally binding agreement. If the school does not comply with the mediated agreement, you may seek enforcement through a court order, request a mediation to resolve it, or file a state complaint.

The 45-Day Hearing Period



Following the 30-day resolution period, and after opportunities for mediation have been exhausted, the 45-day hearing period begins. A due process hearing is an administrative proceeding (like a trial) where a disagreement between the parent and the school is decided by a hearing officer, who presides like a judge.

DEFINITION OF A HEARING OFFICER

A hearing officer is a person contracted by the Office of the State Superintendent of Education (OSSE) to serve as an impartial administrative judge in the due process hearing. This person cannot be an employee of OSSE or of the school involved, nor should they have a self-interest in the outcome of the hearing.

Communicating with the Hearing Officer

Please respond to the hearing officer's emails and/or phone calls. He or she may dismiss your case if you do not respond. When you email the hearing officer, you must copy the school's representative in your email. You may not call a hearing officer to discuss your case without including the school's representative on the call. Communicating with the hearing officer without the school is referred to as *ex parte* communication, which is not permitted.

Parents' and schools' rights in a due process hearing

You have the right to represent yourself at a due process hearing, be represented by an attorney, or bring a non-lawyer advocate to help you.

Either party in the due process hearing has the right to:

- Bring an attorney and other people with specific knowledge or training related to the challenges of children with disabilities. Submit documents and a list of witnesses at least five business days before the hearing, according to instructions provided during the hearing period (this is called a five-day disclosure). Bring copies of documents as evidence.
- Require witnesses to attend the hearing and ask them questions.
- Stop any evidence from being introduced at the hearing that has not been disclosed to you at least five business days before the hearing.
- Get a written or electronic recording of the hearing and the decision, at no cost.

DID YOU KNOW?

You may be eligible for an expedited due process hearing. An expedited hearing is done in a significantly shorter timeline. It must occur within 20 school days after the due process complaint is filed. The Hearing Officer Determination is due within 10 school days after the hearing.

The law authorizes expedited hearings when: A child has been suspended, expelled, or when a child's educational placement has been changed for more than 10 school days per year due to behavior or a violation of student code of conduct, and you as the parent disagree with the actions of the school, or when the school does not hold a meeting to determine if the child's behavior is related to his/her disability, or when the parent disagrees with the school's decision that your child's behavior is not related to his/her disability. The parent does not have to file a motion for an expedited hearing. It is automatic.

In very rare cases the hearing officer may grant an expedited hearing when the physical or emotional health or safety of the child or others is threatened by the delay. If a parent wants an expedited hearing for any of these reasons, the parent must file a motion with the hearing officer. There is no specific timeline for a decision.

Parents' and schools' rights in a due process hearing (continued):

- Have the child who is the subject of the hearing present at the hearing (parental right only)
- Open the hearing to the public. Most parents choose a closed hearing because of privacy concerns (parental right only).

Preparing for the Hearing

1 Pre-Hearing Conference

There will be a pre-hearing conference held by the hearing officer near the start of the 45-Day hearing timeline.

- The hearing officer will contact you with the time and place of your pre-hearing conference.
- During the pre-hearing conference, you will discuss the issues, discuss the outcome you want, and establish the rules of the hearing.
- Following the pre-hearing conference, you will receive a pre-hearing order detailing what you need to do before the date of your hearing.

2 Preparing Your Case

You will need to bring documents and witnesses to the due process hearing to support your case. You are responsible for

gathering evidence and providing it to the hearing officer. Evidence may include:

- Psychological, social, and other educational evaluations (especially those documents that include recommendations from professionals)
- IEPs
- Descriptions of your child's school program
- Testimony from professionals who work with your child that may be important to support your case

3 Making Requests

How to request documents from the school

As the parent, you have the right to inspect, review and obtain copies of all your child's educational records, at no cost.

- The school must comply with your request for documents without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution meeting, and in no case more than 45 days after your request.
- If you request it, the school also must give you a list of your child's educational records and tell you where they are located.

Useful documents may include your child's referral for special education, any requests for evaluations of your child, letters between you and the school, disciplinary/anecdotal reports, phone contact sheets, and results of standardized tests.

At least five business days before a due process hearing, you and the school must give each other copies of the information you will bring to the hearing. The hearing officer will not allow any information at the due process hearing that was not provided by the five-day deadline.

How to request a Notice to Appear

A Notice to Appear is a legal document used to request the appearance of a witness at the hearing, if the person will not appear voluntarily. You may obtain the form to request that a witness attend a hearing by calling ODR at (202) 698-3819 or you can visit OSSE's website at osse.dc.gov.

You must submit the completed form to the hearing officer for his/her signature. It must include the following information:

- The name of your child
- Your name and address
- The case number if known
- Name and address of the witness
- Date and time that the witness is available to testify
- Whether you want the person to appear in person or by phone
- The efforts you made to get the witness to appear voluntarily

- A statement that the witness helps you prove your case

4 Filing Motions

A motion is a request that the hearing officer take a specific action in a case. The most commonly filed motions are:

- **Motion to Continue.** This will extend the hearing timeline. By law, either party may request a continuance and it is up to the hearing officer to decide whether or not to grant it. If the continuance is granted, the hearing officer will notify both parties of the new hearing date and final decision due date.

- **Motion to Dismiss.** You or the school may request to dismiss the complaint if you or the school feels it is no longer necessary to continue with the hearing, or if an agreement has been reached.
- **Motion to Amend.** You may file a motion to amend the complaint if you wish to correct or update your complaint. The hearing timeline will start over if the complaint is amended. You may amend your complaint at any time up to five calendar days before the hearing, with the permission of the hearing officer. After the five-day deadline, you may only amend your complaint if the school agrees.

You may file a motion about many other topics. If you file a motion, be sure to send a copy to the school as well as the hearing officer assigned to your case.

DID YOU KNOW?

You are allowed to request the presence of people to testify about your child at the hearing. Usually you only want to file a Notice to Appear for people who will be helpful to your case, such as a teacher or evaluator who agrees with your opinion or who will support the solution you are requesting. You should file a Notice to Appear with the hearing officer as soon as possible and at least 14 calendar days before the hearing.

The Due Process Hearing

The pre-hearing order will outline the date and time that your hearing will take place. Due process hearings are usually held during normal business hours (8:30 a.m. to 5:00 p.m.). Hearings may be scheduled outside these hours as necessary. All hearings are held at the Office of Dispute Resolution (ODR), 810 1st Street NE, Second Floor, Washington, D.C. 20002.

- When you arrive, you will check in at the front desk and then you will wait to be

called into a conference room, where the hearing will be held.

- At the beginning of the hearing, the hearing officer will turn on a recorder to make a record of the hearing.
- The hearing officer will explain how the hearing will proceed and review the issues.
- The hearing officer will provide an opportunity for you and the school to discuss a settlement off the record or to request a mediator, if desired.
- You and the school will have the opportunity to make an opening statement where you will give a brief summary of your position and the issues you want to discuss.
- You and the school will each have a turn to call your witnesses, as well as ask questions of each other's witnesses (cross-examination).
- At the end of the hearing, you and the school will each be allowed to give a summary of the evidence that supports your point of view (closing statement).

The Hearing Officer Determination

The final decision of the hearing officer is written in a formal document called the Hearing Officer Determination (HOD). The HOD will be provided to you and the school after the hearing. The HOD will include the identity of the parties, what the hearing

officer decided, and appeal rights. It also will include findings of fact and conclusions of law (how the hearing officer reached his/her decision). The HOD will specify what the school system, the parents, and the child are expected to do to carry out the decision.

Make sure that the hearing officer has your current mailing and email addresses. ODR will send the final decision to you by certified mail or email, if you choose.

Case Dismissals

The hearing officer may dismiss your case with prejudice or without prejudice. If the hearing officer dismisses your case with prejudice, you have lost the right to refile the case with ODR. If the hearing officer dismisses your case without prejudice, you can refile your case at ODR.

DID YOU KNOW?

You can appeal the HOD, if you choose. If you are dissatisfied with the outcome of a hearing, you may appeal the HOD within ninety (90) calendar days from the date of the HOD. The appeal may be filed with the United States District Court for the District of Columbia. The district court:

- Receives the record of the administrative proceedings (the due process hearing)
- Hears additional evidence at your request or at the school's request
- Bases its decision on the evidence and grants the solution that the court determines to be appropriate

If you do not file your appeal within 90 days of the final decision, you lose the right to have a higher court review your case.

Due Process Timeline

Opportunities for Mediation

You have the option to use mediation. Special education mediation is a neutral process that will bring you and the school together with a neutral third party to discuss the issues you listed in your due process complaint, with the goal of resolving the dispute in a binding written agreement. You may request mediation:

- Before or after filing a complaint to attempt to resolve the conflict before going to a due process hearing; and
- Instead of a resolution meeting. The mediation must occur within 30 calendar days of your request for mediation.

30-Day Resolution Period



Your complaint must be sent to the Office of Dispute Resolution (ODR) at the Office of the State Superintendent of Education (OSSE) and to the school that the complaint is against. Make sure your complaint includes the name of the child, the child's address, the school your child attends, a detailed description of the problem you are having, and a proposed solution. Otherwise your complaint will be incomplete and will need to be resubmitted.



In their response, the school must provide an explanation of what it did or did not do regarding your complaint.



Your complaint is deemed sufficient (complete) unless the school challenges it within 15 days of receiving the due process complaint. The hearing officer then has five days to decide if your complaint is sufficient (complete). If your complaint is insufficient (incomplete), you will need to rewrite and resubmit it, and the timeline will start all over again.



Within 15 calendar days of receiving your due process complaint, the school must meet with you to try and resolve the issues in your complaint.



If you and the school have come to a mutual agreement on how to resolve the complaint, you may withdraw your complaint with the ODR.

If an agreement has not been reached, you will continue on to the **45-Day Hearing Process**.

45-Day Hearing Process



PRE-HEARING CONFERENCE

You will meet with the hearing officer near the start of the 45-day hearing timeline. During the pre-hearing conference, you will discuss the issues, the outcome you want, and establish the rules of the hearing.



PREPARE FOR HEARING

You will receive a pre-hearing order detailing what you need to do before the date of your hearing. You are responsible for presenting evidence to the hearing officer. Evidence consists of both documents and testimony.



DUE PROCESS HEARING

During the due process hearing, each side will make an opening statement, present evidence (witnesses and documents), and make a closing statement. Each side will have the opportunity to ask questions of the witnesses. An impartial Hearing Officer will preside over the hearing process and will record the proceedings.



HEARING OFFICER DETERMINATION (HOD)

The Hearing Officer Determination (HOD) is the final decision in your case. It will be issued no later than 75 days after the complaint is filed, unless an extension of time has been granted by the hearing officer. The HOD is based only on the evidence that was presented at the hearing. The HOD will be sent to you by certified mail at the address you listed in the complaint or you can choose to receive it via email.



IMPLEMENTATION

The school must follow the order given by the hearing officer within the timeline granted.

Implementation



The school and the parent have the responsibility of making sure the Hearing Officer Determination (HOD) is followed. ODR has the responsibility of making all HODs available to the public. All decisions are available for viewing on OSSE's website. All personally identifiable information is removed from the HOD before it is made public.

The specifics of how the HOD will be implemented vary from case to case, depending on the issues raised in the due process complaint. The HOD may include increased hours on your child's IEP, different accommodations, different classroom placement, etc. Under appropriate circumstances, the HOD may include reimbursement of private school tuition and compensatory education services.

If a binding written statement is reached through mediation, the school and the parent are responsible for making sure the agreement is followed.

DEFINITION OF COMPENSATORY EDUCATION

Compensatory education is generally defined as services owed to children with a disability who have been denied a free appropriate public education (FAPE). Compensatory education may include tutoring, summer services, additional therapy hours, or other measures that make up for violations of the Individuals with Disabilities Education Act (IDEA). Compensatory education is added to the necessary services in the current or future Individualized Education Programs (IEP).

Legal Resources for Families

Free and Low Cost Legal Services

Under federal law, the school must inform a parent of any free or low-cost legal or other relevant services available in the area when the parent requests that information or when the parent files a due process complaint.

The following organizations make free legal services available to parents of students with disabilities. Whether legal services will be provided to any particular parent is dependent upon each organization's policies and procedures and its review of each individual case. The organizations known to the Office of Dispute Resolution for providing free legal services to parents of students with disabilities include:

Advocates for Justice in Education

25 E Street, NW, #3
Washington, DC 20001
(202) 678-8060
(202) 678-8062 (fax)

Children's Law Center

616 H Street, NW
Suite 300
Washington, DC 20001
(202) 467-4900 / Option 3

Those in need of legal assistance can call the main number and press "3" to speak with the helpline attorney. The helpline attorney will conduct an intake with them.

Disability Rights Clinic

American University Washington
College of Law
4300 Nebraska Avenue, NW
Washington, DC 20016
(202) 274-4147

Juvenile Justice and Special Education Law Clinic

UDC David A. Clarke School of Law
4200 Connecticut Avenue, NW
Washington, DC 20008
(202) 274-5073
(202) 274-7314

University Legal Services

Disabilities Rights DC
220 "I" Street, NE
Suite 130
Washington, DC 20002
(202) 547-0198 ext. 135



Office of the State Superintendent of Education
Office of Dispute Resolution
1050 First Street, NE
4th Floor, Suite 401
Washington, DC 20002
(202) 698-3819 | hearing.office@dc.gov

