

FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL EDUCATION DUE PROCESS COMPLAINTS

1. What is a due process complaint?

A due process complaint is a formal complaint regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for a student with a disability or suspected of having a disability, which may result in a due process hearing.

2. Who can file a due process complaint?

A parent or an local education agency (LEA) such as a school district or charter school may file a due process complaint.

3. How do I file a due process complaint?

It is preferred that you file your due process complaint using the *Due Process Hearing Request/Complaint* form, however, any written request that includes all the required information shall initiate the due process complaint process. You may obtain a form by calling or writing to the local education agency responsible for the student's education or the Utah State Office of Education Special Education Services section (801-538-7898). The form is also available on the Utah State Office of Education Special Education website at <http://www.schools.utah.gov/sars/DOCS/law/dphrequest.aspx>.

4. Where do I send my due process complaint?

Your due process complaint must be sent to the local education agency responsible for the student's educational program and to the Utah State Office of Education- Special Education Director. The form may be sent by mail, fax, or hand-delivery. The Utah State Office of Education-Special Education Director does not accept due process complaints by email; the mailing address is PO Box 144200, 250 East 500 South, Salt Lake City, UT 84114-4200; the physical address is 250 East 500 South, Salt Lake City, UT 84114; the fax number is 801-538-7991. When received by the Utah State Office of Education, a written confirmation will be sent within 2 business days.

5. What is the time limit for filing a due process complaint?

A due process complaint must be filed within two (2) years of the date you knew, or should have known, about the alleged action/violation that is the reason for the complaint. There are limited exceptions to this timeline; please refer to the procedural safeguards document you received from the local education agency for additional information.

6. Before having the opportunity for a due process hearing, what steps must be taken to try to resolve the complaint?

Before having the opportunity for a due process hearing there is a 30 day resolution period. This time period allows you and the local education agency time to try to resolve the dispute. Either you or the local education agency may agree to attempt to resolve the dispute using mediation, or the local education agency must schedule a resolution meeting, unless both parties agree in writing to waive the meeting.

For more information regarding the mediation process, please refer to the procedural safeguards document, or the *Frequently Asked Questions about Special Education Mediation*.

7. What is a Resolution Meeting?

The resolution meeting provides an opportunity for you and the local education agency to resolve the disagreement prior to the initiation of a due process hearing by discussing the facts that form the basis of the complaint and possible solutions.

8. Who can attend the Resolution Meeting?

You and the local education agency determine who is appropriate to attend the resolution meeting. You, relevant members of the IEP team, and a local education agency representative who has decision-making authority must attend the resolution meeting. Other participants may include your child, your advocate, or your attorney. However if an attorney accompanies you, the local education agency's attorney may also attend.

9. Do I need to ask for a Resolution Meeting?

No. Whenever a due process complaint is filed by a parent, the local education agency must arrange for a Resolution Meeting unless the parties agree in writing to waive the Resolution Meeting or the parties agree to attempt to resolve the disagreement through mediation.

10. When must the Resolution Meeting be held?

The local education agency is required to hold the resolution meeting within 15 days of receiving the due process complaint from you. If the local education agency fails to hold the resolution meeting within 15 days of receiving your complaint or fails to participate in the meeting, you may contact the assigned Due Process Hearing Officer and request the due process hearing timeline immediately begin.

11. What if I fail to attend the Resolution Meeting?

If the local education agency is unable to obtain your participation at the resolution meeting after reasonable efforts have been made, the local education agency may request that the due process hearing officer dismiss your complaint.

12. How long do we have to try to resolve the disagreement?

Generally, you and the local education agency have 30 days to resolve the disagreement. However, if you and the local education agency agree that progress is being made and you wish to extend the time, it may be permissible to do so.

13. What happens if we do not reach an agreement in the Resolution Meeting?

If you and the local education agency do not come to resolution, you can agree to extend the resolution period and continue to meet to reach a satisfactory resolution. If both parties agree, you can try to resolve the dispute through mediation; or you may proceed to a due process hearing.

14. What happens at a due process hearing?

A due process hearing is conducted by a hearing officer appointed by the Utah State Office of Education who will take evidence from both parties and make a decision about a dispute. For specific information regarding the due process hearing procedures and rights, please refer to the procedural safeguards document.

15. Do I need an attorney?

No; however, because of the legal nature of the proceedings parents often are represented by counsel but may go to a hearing and represent themselves.

16. What is the due process hearing timeline?

If the local education agency has not resolved the due process complaint to your satisfaction within 30 days of receiving the complaint (the resolution period), the due process hearing may occur. The due process hearing officer then has 45 days to conduct the hearing and issue a final decision.

17. What if I want to withdraw my Due Process Complaint?

You may mail, fax, or hand-deliver a signed letter stating that you wish to withdraw your complaint to the Utah State Office of Education- Special Education Director, and the local education agency, as soon as possible. The letter may include information as to why the complaint is being withdrawn.

18. You have not answered all of my questions. Where do I go for help?

First, please refer to the procedural safeguards document given to you by the local education agency or the Utah State Board of Education Special Education Rules, which are available at <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Procedural.aspx>. Other questions you have may be addressed to the appropriate personnel from the local education agency responsible for the student's education, the Utah Parent Center, or the Utah State Office of Education Special Education Department (801-538-7898).