

Due process complaint

The information contained in this fact sheet is a summary of due process procedures in Vermont. Please check our state's Special Education Regulations for a complete explanation of what you need to do to file a due process complaint.

A due process complaint is the most formal method of resolving disagreements between parents and schools.

If informal advocacy, negotiation, and mediation fail to resolve your disagreement, both parents and schools have the right to file a due process complaint.

In August 2006, the Vermont Department of Education's new due process system went into effect. The new system shortens the time it takes to complete a due process hearing.

How do I file a due process complaint?
To file a complaint, you must fill out state forms describing your disagreement with the school and provide contact information about your family. You may file a complaint regarding your child's identification (as a child with a disability), evaluation, educational placement, or free appropriate public education (FAPE). You may hire an attorney to represent you in a due process complaint or you may choose to represent yourself (called pro se).

If you are filing the complaint yourself, please be sure to fill out the forms completely. It's very important to be as thorough as possible in filling out the forms because the school district has the right to challenge the adequacy of the information you provide. If the hearing officer agrees with the school district's challenge, you may have the opportunity to add the needed information, but this will affect the timeline for scheduling a hearing.

On the forms, you will be asked to provide the following information about your complaint: 1) the nature of the problem with the school, including any facts to support that a problem occurred; 2) a description of how the problem might be resolved; and 3) the actions the school has taken to address the problem. Be prepared to move forward with your complaint soon after you file it.

You are required to send the complaint forms and any additional information to the Commissioner of Education, Vermont Department of Education, 120 State Street, Montpelier, VT 05620-2501. You must also send the forms and attachments to the special education director or superintendent of your school district.

How long do I have to file a due process complaint?
You can request a due process hearing within two years from the date on which the problem occurred. If you weren't informed of your rights or the school district led you to believe it had resolved the problem, the two year timeline may not apply.

What will happen after I send my complaint to the Commissioner of Education?
The Department of Education legal administrator will contact you and the school to set up an initial conference call. This call will happen within four days of the Department's receiving your complaint. If represented by an attorney, you and the school will have to determine your attorney's availability to participate in the call. (Make sure to provide dates and times you are available when completing the due process forms.)

What can I expect on the initial conference call?
A hearing officer will describe the options you and the school have before a due process hearing takes place. These options include participating in a resolution session meeting or mediation to resolve the disagreement.

A resolution session is a meeting attended by you and relevant members of the IEP team to discuss your complaint and give the school the opportunity to resolve the disagreement.

If you and the school agree to a resolution session meeting, the hearing officer will schedule a date, time, and location for this meeting to occur. You and the school will have 30 days to resolve the complaint through a resolution session. The hearing officer will inform you of the date on which the resolution session period ends.

If you choose to use mediation instead, the hearing officer will contact the Department's legal administrator to set up mediation.

How does the resolution session process work?
The resolution session must take place within 15 days after the Commissioner receives your due process complaint. You and relevant members of the IEP Team, and others as appropriate, are required to participate in the meeting. With the school, you will decide which members of the IEP Team should attend, including a school representative who can make decisions on behalf of the school district. Unless you bring an attorney to the meeting, the school district's attorney may not attend the resolution session.

If an agreement is reached during the resolution session, you and the school are required to produce a written agreement that is legally binding in state or district court. You and the school have the right to void this agreement within three business days of signing the document.

Can I waive my right to a resolution session?
You and the school may waive your right to a resolution session meeting. If this happens, the 45 day due process timeline will start sooner. The hearing officer will ask you and the school to sign a document confirming your decision to waive the meeting and schedule dates for activities needed to move forward with the hearing.

It's important to note that the hearing officer could dismiss your due process complaint if you refuse mediation or a resolution session meeting, or if you refuse to sign a waiver that you do not want to participate in a resolution session.

Is the school required to provide parents with written notice regarding a due process complaint?
Schools are required to provide written notice to parents when they propose or refuse to take an action that a parent requests. The Department of Education developed special education form 7 for this purpose.

If your school did not give you written notice, it must do so within 10 days of receiving a copy of your due process complaint.

What happens if the school challenges the information contained in my complaint?
The school has the right to challenge the adequacy of the information you provided in your due

process complaint. This is called challenging the “sufficiency of the complaint.” The school has 15 days to contest the information contained in your complaint, and it must notify you and the hearing officer in writing.

The hearing officer has up to 5 days to decide whether your complaint meets the requirements of the law. You and the school will be notified in writing of this decision.

If the hearing officer decides that your complaint is not sufficient, the complaint will not move forward unless you and the school agree in writing to an amendment or the hearing officer decides to allow an amendment.

What can parents do to prepare for a pre-hearing conference?

A pre-hearing conference is a face-to-face meeting with the hearing officer, you, and the school. The purpose of the conference is to talk about specific information that will be discussed at the due process hearing.

Up to three days before the conference, you must give the hearing officer and the school a detailed written description of the issues to be addressed at the hearing, including any violations of the special education process.

Up to one day before the conference, the school is required to provide you and the hearing officer with a written statement regarding their defense against your due process complaint.

You will also need to prepare

- a list of witnesses and a summary of the testimony you expect them to give
- a written statement of the facts concerning your due process complaint.

The school will need to prepare a binder containing relevant sections of your child’s educational records it will introduce at the hearing.

After the pre-hearing conference, the hearing officer will issue a pre-hearing order that clearly identifies the issue to be addressed during the hearing and other rulings and decisions related to your complaint.

Is there other information that we will be required to share before the hearing?

Up to five business days before the hearing takes place, you must send all your evidence, any additions to your witness list, and/or any additions to your main exhibits to the school. The school must send you the same information, and you and the school can agree to share all information with the hearing officer.

What happens if we reach an agreement with the school before the hearing takes place?

The school must inform the hearing officer in writing of the agreement, including a written statement signed by you and the school and a request to cancel the hearing. In addition, the letter must request that the hearing be dismissed “with prejudice.” This means that you cannot file a new due process complaint about the same issue and that the hearing officer’s decision is final.

What will happen after the hearing is completed?

The hearing officer must issue a decision regarding your due process complaint within 45 days, unless the hearing officer grants a time extension. This 45 day timeline will begin after the date a resolution session meeting takes place, mediation occurs, or you and the school agree not to participate in either meeting.

Do I have the right to appeal the hearing officer’s decision?

Parents have the right to appeal an unfavorable due process decision. You must file your appeal with the Vermont State Court in the district where you live or with the United States District Court. You have 90 days from the date you receive the decision in which to file your appeal.

Do parents have other due process rights?

You have the right to

- have the hearing open to the public
- have a hearing that is scheduled at convenient time and place
- have your child, lawyer, advocate, or others present during the hearing
- present evidence, ask questions, and have witnesses present
- receive a transcript of the hearing
- request reimbursement of attorney’s fees and costs if you win your due process hearing

What can I do to prepare for a due process hearing?

If possible, you should discuss your complaint with an attorney before moving forward. You will need to decide whether you will hire an attorney to represent you or represent yourself at the hearing. Here are a few suggestions about the kinds of information you will need to gather and review in preparing for a due process hearing.

- educational records, including letters, report cards, homework, class work, attendance and discipline records, evaluations, and IEPs
- other relevant records, such as reports from doctors, medical records, telephone calls and emails between you and the school, and private evaluations
- the Individuals with Disabilities Education Improvement Act and Vermont Special Education Regulations
- names of potential witnesses to testify at the hearing

The information in this fact sheet comes from the Department of Education's memo, dated September 28, 2006, Vermont's New Special Education Due Process System.

Resources

For help understanding your rights, contact any of the following resources. Also available from VPIC are additional fact sheets describing parents' rights to disagree and the Individualized Education Program (IEP).

Vermont Family Network
help for families navigating the education system
(802) 876-5315 • 1-800-800-4005
info@vtfn.org • www.vtfn.org

Vermont Department of Education
help with special education issues for schools and families
(802) 828-5114 (v/tty)
www.state.vt.us/educ/

Disability Law Project
legal support for special education services
(800) 747-5022 Burlington/Champlain Valley
(800) 789-4195 Central Vermont
(800) 769-7459 Addison/Rutland/Bennington Area
(800) 769-6728 Northeast Kingdom
(800) 769-9164 Windham/Windsor Area
(800) 889-2047 Statewide
All phones (v/tty).



To order copies of this fact sheet, or to learn more about VFN's materials and services, contact the Vermont Family Network
600 Blair Park,
Suite 240,
Williston, VT 05495
1-800-800-4005

You can also contact us via e-mail at info@vtfn.org. And don't forget to visit our website at www.vtfn.org.

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