

SPECIAL EDUCATION DUE PROCESS HEARING TOOLKIT



*A Guide for Helping Parents in
Virginia Understand the Special
Education Due Process Complaint
System*

Since 1978, PEATC has provided tools and information to empower Virginia's students with disabilities (birth - age 22) and their families and help them navigate the special education process. PEATC promotes respectful, collaborative partnerships between parents, schools, professionals, and the community to increase the success of students with disabilities. As Virginia's **Parent Training & Information Center (PTI)**, we talk to many families who are struggling to navigate the special education system. Navigating the dispute resolution system within special education can be especially difficult.

This toolkit, adapted in part from the Center for Appropriate Dispute Resolution's (CADRE) **IDEA Special Education Due Process Complaints/Hearing Requests Parent's Guide** and the Virginia Department of Education's (VDOE) **Parents Guide to Special Education Dispute Resolution**, has been created to help families, and the professionals that support them, understand one of Virginia's dispute resolution processes: the due process complaint system. This toolkit is not all-inclusive; you can review the **Parents' Guide** for more information or contact the VDOE Office of Dispute Resolution and Administrative Services (ODRAS). There may be legal or other terms in the toolkit you are unfamiliar with. **Check out the glossary** at the end of this document for help in understanding some of these terms.

RULES

The due process complaint system is the most **complex, lengthy, and costly** dispute resolution option. For this reason, it is important to consider it as a last resort if other options have not been successful or are not practical or reasonable.

PEATC is not a legal services agency and cannot provide legal advice. If you are considering filing for a due process hearing, we recommend that you consult with an attorney.

This Guide was reviewed for accuracy by VDOE's Office of Dispute Resolution and Administrative Services. We thank them for their time and effort.

LAWS

IF YOU FEEL UNSURE ABOUT WHETHER TO PURSUE A DUE PROCESS HEARING, YOU CAN:

Visit our website: www.peatc.org to review our Due Process fact sheet, you can review the VDOE [Parent's Guide to Special Education Dispute Resolution](#), or the [Regulations Governing Special Education Programs](#).

REGULATIONS

Think about why you feel that due process is your best option and how it can help address your concerns.

Think about the solution you are looking for. Remember that positive and collaborative relationships between families and schools are an important part of your child's success.

Contact us to talk the situation through and get guidance on possible next steps:
Call 800-869-6782 | Email partners@peatc.org

PEATC is here to help. So, if you have questions, please don't hesitate to reach out. We have bilingual staff to support our Spanish-speaking families.

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What You Need to Know about the Special Education Due Process Complaint/Hearing System

WHAT IS A DUE PROCESS COMPLAINT?

A due process complaint requesting a hearing is a **formal procedure** used to **resolve disagreements** about the identification, evaluation, or education of a child with a disability or the provision of a free appropriate public education (FAPE) to that child.

A Supreme Court of Virginia **impartial trained hearing officer** trained by the Virginia Department of Education hears the case. Hearing officers are lawyers. They do not work for the **VDOE**.

Like a court hearing, both sides call witnesses, give evidence, and make legal arguments that support their case. The hearing is usually held in a conference room or may be held virtually at a **mutually agreed time and location** and is **recorded**. A decision will be issued based on the evidence and the law.

TO WHOM DOES DUE PROCESS APPLY?

This process applies to **students who have an Individualized Education Program (IEP)** under Part B of the Individuals with Disabilities Education Act (IDEA) or who should have an IEP and have not been identified or found eligible yet.

If your child is receiving early intervention services under IDEA Part C, dispute resolution is handled by the Virginia Department of Behavioral Health and Developmental Services Office of Early Intervention.

WHEN SHOULD I CONSIDER DUE PROCESS?

- ✓ **When** you feel that you are not making progress with your IEP team and are unable to move forward.
- ✓ **When** you have tried other options to solve the problems, such as a facilitated IEP meeting or mediation and these have not been successful.
- ✓ **When** both sides will not change their positions and you do not think that other dispute resolution options would be effective.

- ✓ **When** the allegations are substantive vs. procedural violations; the latter would be more appropriate for a written special education complaint (See PEATC [Complaint Toolkit](#) for more information about that process.)
- ✓ **When** you believe that the only way for your issues to be heard or resolved is through a formal legal process.

WHO CAN REQUEST DUE PROCESS?

The **parents or the school division** can request a due process hearing. It is rare for the school division to file for due process. An example of when the school division might do so is if there is a disagreement about a request for an independent educational evaluation (IEE).

HOW DO I REQUEST DUE PROCESS?

A due process request must be made **in writing** and can be made on the VDOE [Due Process Request Form](#) but is not required to be. It must be sent to the Virginia Department of Education (VDOE) **Office of Dispute Resolution and Administrative Services (ODRAS)** and the school division at the same time. Make sure to include all required information or the request may be dismissed by the hearing officer as insufficient under the law. (See glossary for a definition of legal sufficiency).

IS THERE A DEADLINE TO REQUEST A DUE PROCESS HEARING?

A request for a due process hearing must be filed within **2 years of the date** that the parent (or school) knew or should have known about the action/issue being disputed. **An exception to the 2-year deadline** will be made if **(1)** the parent was prevented from requesting the hearing because the school division said the issue had been resolved (and it had not) or **(2)** the school division withheld information from the parent required under federal special education law and regulations. If you believe one of these exceptions applies, you should provide this information in the written due process request. The hearing officer will decide whether the events at issue are within the relevant time frame.

DO I NEED TO HIRE A LAWYER?

You do not have to hire an attorney. However, the school division will almost certainly have an attorney representing them. Therefore, you should strongly consider **hiring someone with specialized knowledge** of special education. There are **low-cost and free legal resources** available to parents and the school division must tell parents about these.

Virginia allows **non-attorney advocates** to help parents at due process hearings. If you choose to have an advocate represent you, be sure this individual knows special education law and regulations as well as the due process system and its rules.

You **can represent yourself**. This is called “**pro se**” representation. While allowable, think very carefully through this decision. When acting pro se, **you are required to perform all the work that a lawyer would perform**. This includes understanding and being able to analyze the law, presenting legal arguments, responding to information requests, questioning witnesses, and more.

Preparing for a due process hearing is **complicated and time-consuming**. Without excellent preparation, the chance of success will likely be lower. Even if you have a lawyer, it is important to be familiar with the law and regulations to determine what testimony and exhibits are needed. While not as formal as a court hearing, legal practices, like subpoenas, motions, orders, and expert testimony are still used where appropriate.

ON WHAT ISSUES CAN I FILE FOR A DUE PROCESS HEARING?

Identification. Does the child have a disability under IDEA and if so, what is the nature or severity of the disability and how does it affect their educational performance?

Evaluation. Assessments are used to determine student performance. Areas of disagreement may include the appropriateness of evaluation procedures, consent to evaluations, denial of an independent educational evaluation (IEE), refusal to conduct a reevaluation, etc.

Educational Placement and Services. This includes issues related to placement in the least restrictive environment (where the child receives their services); the type of school environment appropriate to the child; the special education and related services, including supplementary aids and supports needed by the child to benefit from special education.

Provision of a Free Appropriate Public Education

(FAPE): FAPE is defined as special education and related services for children with disabilities, ages 2 to 21 inclusive, that are at no cost to the family, meet the standards of the Virginia Board of Education, include an appropriate preschool, elementary, school, middle or high school education, and are provided under an IEP that meets the requirements of special education laws and regulations.

When thinking about a due process complaint, remember that the **IEP is the cornerstone of FAPE**. It is the written plan for a child with a disability developed by the IEP team that details the individual educational needs of the child and what special education and related services are needed to meet those needs. It must be carried out as written. FAPE also means that an IEP should be drafted in such a way that it is “reasonably calculated to enable a child to make progress in light of the child’s circumstances.”





As you think about the concerns you have about your child's educational services and the possibility of requesting a due process hearing, it may help to review these areas and think about where your concerns fall within them.

WHAT SHOULD I CONSIDER BEFORE FILING FOR A DUE PROCESS HEARING?

- ✓ Due process hearings are the most **adversarial** (confrontational) of the dispute resolution processes. Going through this process can result in relationships between the parents and school staff being damaged if they are not already. It can take a lot of time to repair those relationships.
- ✓ Due process hearings are **time-consuming**; there is no quick fix. They can be very **costly**, including potential attorneys and expert witness fees. You may not recover all your costs even if you win at the hearing.
- ✓ Unlike during mediation or a resolution session, where the parties work together to come up with a mutually agreeable solution, the **decision in a due process hearing is made solely by the hearing officer** who does not know your child.

- ✓ You cannot speak to the hearing officer unless the school division representatives are also present. This is called **ex-parte communication** and is not allowed except with rare exceptions.
- ✓ The hearing officer's decision is **legally binding for you and the school division**. However, either side can appeal the decision to federal or state court.

CAN I WITHDRAW A DUE PROCESS HEARING REQUEST?

You can change your mind for any reason, at any time before the hearing, and ask the hearing officer to dismiss the due process hearing request. If you plan to refile the request, you may want to ask the Hearing Officer to dismiss it "without prejudice". This means you can file again. If the hearing officer dismisses the case "with prejudice", you will not be able to file that specific case again.

WHAT IF I HAVE ALREADY FILED A SPECIAL EDUCATION COMPLAINT OR REQUESTED MEDIATION?

The parents and school division can agree to extend the due process resolution period if they are going through mediation during the resolution period before the hearing. If a mediation agreement resolves the due process issues before the hearing, the party who filed the due process complaint can advise the hearing officer that they wish to withdraw the complaint and the hearing officer will dismiss the case.

If a special education **complaint issue** becomes part of a due process hearing before ODRAS issues a Letter of Findings, the **complaint will be put on hold** until the due process hearing is over. Once the due process hearing is finished then the portions of the complaint addressed by the hearing officer will be dismissed and the due process decision will be binding. If the hearing does not resolve the complaint issue, then ODRAS will restart the complaint investigation (when the due process is dismissed or a final decision is issued) and issue a Letter of Findings (LOF).

WHAT HAPPENS TO MY CHILD'S PLACEMENT DURING DUE PROCESS PROCEEDINGS?

After a due process hearing request is filed (and is determined sufficient), your child will remain in the current or last agreed-upon placement, called the **"stay put"** placement. At any time during the process, the parents and school can agree to make changes to the IEP and/or the child's placement.

If the student had a weapon or drugs or is considered a danger to themselves or others, the school division may remove the student immediately to another placement without parental consent. The parents can file for an expedited due process hearing to challenge that placement. (See section on **expedited hearings** and Virginia regulation 8VAC20-81-160(C)(5))

WHO PARTICIPATES IN THE HEARING?

- ✓ The parents and their attorney or advocate (if represented),
- ✓ Potentially the student,
- ✓ School representatives,
- ✓ The school board's attorney,
- ✓ Expert and other witnesses,
- ✓ A court reporter who makes a transcript of the hearing, and
- ✓ The hearing officer.

The hearing officer will ask the parent(s) to choose whether they wish the hearing to be **open to the public**. Even if the hearing is open to the public, the hearing officer may impose restrictions, such as prohibiting the hearing from being live-streamed or limiting the number of people in the room.

WHO IS THE HEARING OFFICER AND WHAT IS THEIR ROLE?

The hearing officer is an **impartial trained lawyer**, on a list of hearing officers trained and maintained by the Executive Secretary of the Supreme Court of Virginia, who will hear the case. Hearing officers who handle due process hearings are also trained by the VDOE but do not work for the VDOE. They do not have any connection or relationship with the parents who filed the due process or with any school division.

The **hearing officer is like a judge**. Their responsibilities are:

- ✓ Ensure that the hearing **complies with state and federal requirements**, including holding at least one pre-hearing conference and ensuring that the hearing is held within the required timelines.
- ✓ **Hear testimony and review evidence** including keeping a record of the hearing process and managing witnesses and the presentation of documents during the hearing.
- ✓ **Issue a written decision** that addresses the following:
 1. Whether the school division gave the parents proper notice of **procedural safeguards**,
 2. Whether the child **has a disability**,
 3. Whether the child **needs special education and related services**, and
 4. Whether the school division is **providing FAPE** to the child.

For more information on hearing officer responsibilities, see Virginia Regulation 8VAC20-210(O).

Timelines for Non-Expedited (Regular) Due Process

(See also, Virginia Regulation 8VAC20-81-210(Q))

WITHIN 5 BUSINESS DAYS of the request for a non-expedited hearing, the school division must obtain the name of a hearing officer from the Supreme Court of Virginia. They must confirm the hearing officer is available and notify VDOE and the other party of the hearing officer's appointment. The hearing officer must set the date, time, and location of the hearing within **5 business days** of appointment.

- After receiving the due process request, the school division must quickly (no time frame provided)
 - o Send the parent a response that addresses the issues or alleged violations unless they have already provided Prior Written Notice on those issues.
 - o Tell the parents about their right to request mediation but that it is voluntary and the school must agree.
 - o Give the parents a copy of the procedural safeguards if they have not already done so. The safeguards only have to be provided for the first due process request in a school year.
 - o Provide the parents with a list of free/low-cost legal advocacy resources.

WITHIN 15 CALENDAR DAYS of receiving the request, the school division can challenge the hearing request by saying that it is insufficient (does not include the required information, for example). The hearing officer may allow the parents to amend (revise) the request if he/she agrees that the request does not meet the requirements or the hearing officer may dismiss the request, in which case the parents can refile if the case has been dismissed "without prejudice." If dismissed "with prejudice" that specific case cannot be refiled.

WITHIN 15 CALENDAR DAYS of receiving the request, the school division must schedule a **Resolution Session**. This session is required unless both parties waive it (agree not to hold the session) or agree to go to mediation. If the parent does not attend the resolution session, the school division can ask the hearing officer to dismiss the hearing request.

- **Within 3 calendar days** of the resolution session, if the parties entered a written resolution agreement, a party can void (cancel) the agreement if they change their mind about the agreement.



THE FIRST 30 CALENDAR DAYS after the request is received is considered the resolution period. The hearing cannot be held during this period, although the resolution meeting or mediation should take place during this time. The parties may also have a pre-hearing conference with the hearing officer during this time. If the parties mutually agree to waive a resolution meeting or conduct a resolution and agree in writing that the case will not settle, they can notify the hearing officer and the resolution period will end early. The resolution meeting can also be extended to allow more time for mediation.

If the school division has requested the due process hearing, there is no requirement that a resolution session be held.

WITHIN 45 CALENDAR DAYS of the end of the resolution period, if the issues in the request have not been resolved, the hearing must occur and the hearing officer must provide the parties a copy of the hearing decision. If the school has requested the hearing and there is no resolution session, the 45-day period may begin immediately unless the parties have agreed to participate in mediation.

The Hearing officer **can only adjust the 45-day calendar hearing timeline** at the request of the parents or the school division and the hearing officer must make a finding that the continuance is for good cause and in the best interests of the student. If the hearing officer granted an extension to the hearing timeline, the decision is due by the end of that extension.

AFTER THE HEARING OFFICER'S DECISION, the decision is final and binding unless it is appealed. Either party can appeal the decision and has 180 days to file in a state circuit court or 90 days to file in federal court. **Be sure to check with your attorney if you have questions about how, when, or where to file an appeal.**

WHAT IS THE PRE-HEARING CONFERENCE?

The pre-hearing conference can be held in person or by conference call, zoom, etc. During the pre-hearing conference, the hearing officer will determine the following:

- ✓ **The issue(s)** to be heard. It is important to clearly identify the issues you want to present so the hearing officer understands exactly what they are deciding on.
- ✓ **The location and time** of the hearing. The location must be convenient for all parties.
- ✓ **When witness lists and exhibits are due.** Usually, all exhibits that each party intends to use as evidence must be disclosed to the other party no later than five business days before the hearing.
- ✓ **Who will go first at the hearing** and which side has the **burden of proof.** This is usually the party that requested the hearing; they have the heavier duty of proving their case against the other party.
- ✓ Whether any witnesses will be allowed to testify by telephone or electronically.
- ✓ Whether the parents want the hearing to be **open or closed** to the public.
- ✓ Whether the parents would like **their child to attend** the hearing.
- ✓ Whether the parties agree **to stipulate certain facts** that are not in dispute. This can include things like the child's name, birthdate, medical diagnosis, dates on which certain documents were signed or when certain events occurred, etc.

*Facts that are agreed to as **stipulations** do not need to be argued at the hearing. This can save time both in preparing for and holding the hearing. By stipulating certain undisputed facts, it is easier to focus on those that are in dispute.*



WHAT IS THE RESOLUTION PERIOD?

The resolution period is a 30-calendar day period that starts after the school division receives the parent's due process complaint. A resolution meeting is held to allow the parties **to try to solve the issues**.

The resolution session is **mandatory** unless both the parents and the school division agree to **waive it**. If the parent does not attend the meeting, the school division can ask the hearing officer to dismiss the due process request.

The **school division's attorney cannot attend** unless the parent's attorney is also there. The parents get to decide.

The parents and school can agree to **participate in mediation** instead of the resolution meeting. They can also agree in writing to **extend the resolution period** beyond 30 days to complete mediation.

If the resolution **session does not take place** within 15 days of the school division's receipt of the due process notice, the parents can ask the hearing officer to start the 45-day timeline. Otherwise, it does not start until the 30-day resolution period is over.

An agreed-upon settlement during the resolution meeting is a **legally binding agreement** enforceable in state or federal court.

WHAT CAN THE HEARING OFFICER DO IN THEIR RULING?

In most circumstances, the hearing officer's written decision is due within **45 calendar days of the date following the completion of the resolution period**.

The hearing officer will send a copy of the decision to the parties and the VDOE. The **decision will state which party prevailed** (i.e., the hearing officer ruled in their favor) on each of the issues raised in the hearing.

The hearing officer can find (decide) for the parents or the school in whole or in part. So, if there is more than one issue, **the ruling on each issue could be different**. If the parents prevail on one or more issues, the hearing officer could for example:

- ✓ Order the school division to implement an educational program.
- ✓ Order the student to be placed in a particular program, placement, or school.
- ✓ Order the school division to conduct an evaluation.
- ✓ Order tuition reimbursement.
- ✓ Award compensatory services.

CAN I GET A COPY OF THE HEARING RECORD?

Parents are entitled to receive a record of the hearing (usually a written transcript, unless the parties agree otherwise), and the Hearing Officer's decision which includes the findings of fact.

WHERE DOES THE DECISION GO?

The hearing decision is **maintained by the VDOE** which must ensure that the decision is followed unless it is under appeal. Redacted copies of the decision (personally identifiable information is removed or blacked out) must be made available to the public and shared with the State Special Education Advisory Committee. Both parties will also get copies of the decision.

CAN I APPEAL THE DUE PROCESS DECISION?

A due process decision, including a decision made during an expedited due process hearing, **can be appealed in state or federal court**. Your attorney can tell you about timeframes and filing requirements. This information can also be found in the state regulations.

You **cannot reargue the case** during an appeal. An appeal points out where the hearing officer's decision in whole or part did not correspond with the facts or the applicable law or regulations. Or, if the hearing officer applies the wrong regulation to the facts, that is also grounds for appeal and is called **an error in law**. You must identify the errors you believe were made by the hearing officer in matters such as procedures, factual findings, or legal conclusions. The judge on appeal has several options on how to proceed, depending on the particular situation.

WHAT IF THE SCHOOL DIVISION DOES NOT CARRY OUT THE DECISION?

If the school division does not implement the hearing officer's decision, the parents can **file a written special education complaint with ODRAS**. ODRAS will follow the complaint investigation procedures (see PEATC Complaint Toolkit) and issue a Letter of Findings to determine whether the school division is out of compliance.

WHAT IS AN EXPEDITED HEARING?

If the due process issue relates to **disciplinary action**, an **expedited** (quicker) due process hearing can be requested. Parents can request an expedited hearing if:

- ✓ They disagree with a manifestation determination that their child's behavior that resulted in a disciplinary action was (or was not) **caused by or had a direct or substantial relationship to the disability**.
- ✓ If they disagree with a manifestation determination that the child's behavior was (or was not) a direct result of a **failure to implement the IEP**.
- ✓ They disagree with a school division's discipline-related decision regarding their child's **educational placement**.

The local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

Content: The same information must be included in a request for an expedited hearing request as for a regular due process hearing request.

Timelines: The timelines are faster for an expedited hearing.

Within 3 business days, the school division must obtain the name of the hearing officer.

Within 7 calendar days, the school division must schedule the resolution session unless the parents and school division agree in writing not to have a resolution session or decide to go to mediation.

The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 days** of the receipt of the due process complaint.

Within 20 school days of the expedited request being filed, the hearing must be held.

Within 10 school days of the hearing date, the hearing officer must issue a decision.

Hearing Officer Decision: In addition to the information described earlier, in an expedited due process hearing related to disciplinary action, the hearing officer's decision **must also address**:

- ✓ Whether the school division adequately proved that the child's behavior had a direct or substantial relationship to the disability; and
- ✓ Whether the behavior was the direct result of the failure of the division to implement the IEP.

If the school is considering a **change in placement** due to disciplinary issues, the hearing officer must determine whether that decision is correct.

Be **specific and factual** (not emotional) in your allegations (what you are saying the school system did wrong).



General Tips On Preparing For A Due Process Hearing

Review and organize all relevant records in date order. This includes letters, emails, test results, video recordings, reports, evaluations, etc. Determine **which records are needed to prove** your case and which are not. You may be asked to provide copies of records you do not think are relevant so be sure you know where all your records are.

Under the Family Educational Rights and Privacy Act (FERPA), **you have a right to see your child's education records**. The school can charge a fee for copying documents unless that would prevent you from being able to review the record. You cannot be charged for a copy of the IEP.

Consult an attorney or advocate with expertise in special education law—either for representation or for guidance and advice on how or whether to proceed.

Make a list of potential witnesses including experts you think could provide testimony that supports your case. This can include school division staff.

Determine if you want to ask the Hearing Officer **to subpoena witnesses and/or documents**. Note that if a **witness or document is not provided in advance** you may not be allowed to present that evidence.

Decide if you want the hearing to be **private or open to the public**. There are pros and cons to each option.

Determine if you need **any accommodations** to effectively participate in the hearing, like an interpreter. Communicate these needs early in the process to allow sufficient time to make arrangements for these accommodations.

Think of questions the school board attorney or the hearing officer might ask and how you or your witnesses would respond.

Think about how to **deal with emotions** during the hearing. It is important to remain **calm and respectful**. You can ask for a break if needed.

Arrive a little before the hearing time so you can organize your paperwork and get ready to participate.

Are You Ready To File For A Due Process Hearing?

There are some steps you can take before filing for due process to make sure you are ready. Completing these activities may help you prepare properly. ***PEATC cannot give legal advice*** and the information below is general guidance, only. We recommend you consult an attorney or contact ODRAS for additional information.

1. LIST YOUR CONCERNS

A

B

C

D

2. HAVE YOU TRIED ANY OF THESE STEPS TO TRY TO RESOLVE THE CONCERNS? *(You do not need to have completed these steps to request a due process hearing, but it may be helpful evidence in the hearing to show that you made efforts to resolve the issue(s).)*

- I have discussed my concern(s) directly with the IEP team, case manager, school counselor, or teacher and have documented these conversations in writing.
- I discussed my concern(s) with the building principal, the school special education coordinator, and/or the school division's special education director.
- I have shared my concerns with the school district. (This can be in meeting notes, emails, calls, letters, and/or prepared written parental input statements for IEP documents.)
- I requested an IEP meeting in writing to discuss my concern(s).
- I have requested mediation and/or attempted other forms of dispute resolution.
- I have the documentation that supports the concern(s) I would like addressed (i.e., progress notes, prior IEPs, incident reports, outside evaluations, or notes from other providers, etc.)
- I have taken other actions to address the concern(s). List below.

A

B

C

3. WHAT WOULD YOU LIKE THE SCHOOL DIVISION TO DO TO RESOLVE THE CONCERN?

A

B

C

4. IF YOU BELIEVE THAT THE SCHOOL DIVISION IS VIOLATING SPECIAL EDUCATION LAW (IDEA) OR VIRGINIA SPECIAL EDUCATION REGULATIONS, DESCRIBE WHAT YOU THINK THE VIOLATIONS ARE.

A

B

C

5. ARE YOU KNOWLEDGEABLE ABOUT THE HEARING PROCESS AND ITS RULES?

This is particularly important if you have not hired an attorney or advocate. *If you have legal representation, then that individual will be knowledgeable of the requirements and processes.*

a. Are you familiar with important terminology (like stipulations, ex-parte communications, hearsay evidence, evidentiary ruling, rebuttal testimony, etc.)? See Glossary.

b. Do you plan to ask the hearing officer to issue subpoenas to require a witness to testify? Some experts may want a subpoena before they agree to testify and some school divisions will not allow school staff to testify unless they are under subpoena, although it is likely that the school will be calling some of the same people as their witnesses.

c. Do you know how to prepare witnesses? You may have both fact witnesses and expert witnesses.

A fact witness has observed or experienced something. For example, they may testify as to what happened at an IEP meeting or testify to a behavior incident they saw. An expert witness is someone with special knowledge and training in a particular area. This could include a speech-language pathologist, a psychologist, an educational diagnostician, etc.

It is important to help your witnesses prepare for their testimony. You cannot tell them what to say but you do want to have an idea of how they are going to testify. You can let them know the evidence you are arguing and how their knowledge of the issues and/or your child can help your case. You will not be able to prepare witnesses that you have subpoenaed from the school division.

Note that your expert witnesses will likely charge a fee to prepare for the hearing and their testimony. This can be very costly. If the hearing officer rules in your favor, you may recover some or all those fees, but it is not guaranteed.

d. Do you have an idea as to how the school's representatives will testify or what other witnesses the school may call?

Everyone is under oath at a due process hearing and must testify truthfully, just like at a trial before a judge. But the school board attorney may instruct their witnesses to answer the questions briefly and not expound or give their opinion. So, even if you think you have a great relationship with a teacher, for example, and you expect them to testify in support of your case, this may not happen. Once you have the school board witness list, you will want to think about what kind of testimony each person might offer and the questions you may want to ask them during cross-examination (your time to try to clarify or dispute their testimony).

e. Are you familiar with how to organize an exhibit book?

This is a notebook that contains numbered tabs with the evidence you are going to present to the hearing officer. Each exhibit is labeled and date stamped. Copies are needed for you, the hearing officer, the school division, and an extra to share with witnesses as needed. The school division will also have exhibit books. Some of the information will be the same for both sides. It may be possible to negotiate with the school division attorney to include all the documents that both sides want into one set of binders which could save time, cost, and effort. If you have an attorney, that would be up to them to decide.

f. Are you good at meeting deadlines?

You will have to meet deadlines set by the hearing officer. This includes deadlines for witness lists, exhibit lists, and submitting exhibits.

g. Do you understand the strategies and rules for questioning witnesses, especially cross-examining witnesses on the other side?

There are things you can and cannot ask and ways in which you can and cannot ask questions. For example, when you are questioning your witness, you cannot ask leading questions (those where the question itself suggests the answer). You can ask leading questions when cross-examining a witness. We recommend you contact an attorney or advocate for more guidance in this area.

h. Are you able to develop strong opening and closing statements?

The opening statement should be brief but provide enough information to summarize the evidence that you will offer. You will not argue your case during the opening statement. You should practice your opening statement as much as possible before the hearing.

Your closing statement (or argument) should be a summary of the facts of the case that you think will lead the hearing officer to rule in your favor. You would also present legal arguments in your closing statement such as where and how the school division has violated state or federal law or regulations and the impact of the issues on your child's educational progress. Practice. Practice. Practice.

i. Can you communicate effectively in writing?

While not always the case, sometimes, the hearing officer will ask each side to develop a written brief that provides their final argument. You will want that brief to be clear but concise. Even if not asked to do so, you have the right (as does the school) to submit a brief. This would include your argument, regulations you are relying on to make your case, court cases that support your argument, and the outcome(s) you would like to come out of the hearing (i.e., how the hearing officer should rule).

j. Are you expecting to recover (get back) your attorneys' fees if you hire a lawyer?

If the decision is in your favor, you can ask the court to award attorney's fees. It is not automatic. The court can but does not have to order the school district to award reasonable attorneys' fees. What does reasonable mean? Here's an example. If the prevailing legal fees in your area are \$300/hour and your attorney charged \$800/hour, the court may find that rate unreasonable and reduce the award.

If the school division is the prevailing party, the court can award legal fees against the parents' attorney (or the parents') under certain specified circumstances.

You can find out more information about attorney's fees in this fact sheet developed by the disAbility Law Center of Virginia <https://www.dlcv.org/wp-content/uploads/2021/11/2021-11-04-dLCV-Fact-Sheet-Recovery-of-Attorneys-Fees-in-SPED-Due-Process-Hearings.pdf>

Examples of Concerns Addressed in Due Process for Students in K-12

EXAMPLE 1

Concern: The school division has found Jenny ineligible for special education based on its evaluations. The parents have a medical diagnosis of autism for Jenny and other private evaluations that describe how Jenny's autism affects her ability to benefit from her educational program and make progress in the general curriculum.

IDEA/VA regulation: Eligibility. IDEA CFR 34 CFR 300.306; related Virginia Special Education Regulation 8VAC20-81-80

Reason for Due Process: The school division is not willing to reconsider its eligibility decision or conduct additional evaluations. The school does not wish to participate in mediation. The parents filed for a due process hearing asking that Jenny be found eligible as a student with autism.

EXAMPLE 2

Concern: Dominic has received services in the general education classroom from kindergarten until 5th grade, receiving supplementary aids and supports that have allowed him to be successful. The school division has proposed a self-contained placement for 6th grade. The parents object to this placement; they believe it is not the least restrictive environment (LRE) for their son.

IDEA/VA regulations: Least Restrictive Environment. IDEA 34 CFR §300.114(a)(2)(i); related Virginia Special Education Regulation 8VAC20-81-130

Reason for Due Process: The parents believe that Dominic's IEP can be effectively implemented in the general education classroom if he receives appropriate services and supports, such as a one-on-one aide. They believe Dominic's academic performance will suffer in a self-contained classroom and that his social and communication skills will be negatively affected, including potentially losing friends and experiencing diminished self-esteem. Because relationships have deteriorated, neither party wishes to participate in mediation. The parents have filed for due process asking that the hearing officer rule Dominic be educated in the general education classroom, his LRE.

EXAMPLE 3

Concern: Emma has a learning disability and is eligible under IDEA under the category of specific learning disability (SLD). The parents believe that the current IEP does not adequately address Emma's dyslexia but instead provides standard remedial reading instruction without individualization of goals or a determination of the appropriate methodology.

IDEA/VA regulations: IEP Development, Review, and Revision IDEA CFR 300.324 and IDEA Free Appropriate Public Education (FAPE) IDEA CFR; related Virginia Special Education Regulation 8VA20-81-110

Reason for Due Process: The IEP team has met multiple times and mediation was not successful. The parents have filed for a due process hearing to ask a hearing officer to require the school division to provide FAPE through the development of an appropriate IEP and to provide compensatory services for the time that Emma did not receive appropriate services.

EXAMPLE 4

Concern: Parents are concerned that their 16-year-old son Adam does not have an appropriate secondary transition IEP. He has had only one evaluation. Whenever the parents ask about transition assessments, pre-employment transition services (Pre-ETS), or the development of a plan with goals, the school division says that they still have time to do this and that right now the transition plan can stay general. No adult service agencies have been invited to IEP meetings.

IDEA/VA regulations: Transition services. IDEA 34 CFR §300.43 and Development, review, and revision of IEP IDEA 34 CFR 300.24; related Virginia Special Education Regulation 8VA20 81-110(G)(10)

Reason for Due Process: The parents believe that the school division is violating federal and state regulations regarding planning for secondary transition, which is to begin at age 14, including denying transition assessments, not inviting adult service agencies to the IEP meeting, not providing Pre-ETs services, and having a vague transition plan without specific post-secondary goals, objectives, and services.

EXAMPLE 5 - EXPEDITED DUE PROCESS

Concern: During a Manifestation Determination Review (MDR) the school found that a recent behavioral incident was not related to Maggie's disability and proposed an alternative placement in a separate school. The parents disagree with the MDR determination and believe the school failed to properly implement the IEP.

IDEA/VA regulations: Manifestation Determination IDEA 34 CFR §300.530 (c-g); related Virginia State Regulations 8VAC20-81-160.

Reason for EXPEDITED Due Process: The parents have private evaluations that state that Maggie's behavior is directly related to her disability and believe the proposed change in placement will harm Maggie and stigmatize her. They have filed for due process to challenge the MDR determination, make the case that the IEP was not properly implemented, thus leading to the behavior incident, and request that the school be required to conduct a functional behavioral assessment (FBA). An expedited due process is an available option.

The due process hearing/complaint system also applies to students with disabilities receiving **Early Childhood Special Education Services (ECSE)**. In Virginia, these services are available for children 2-5 years old. The same regulations apply to preschoolers as they do to K-12 students. See the following examples of due process scenarios relating to young children with disabilities.



Examples of Concerns Addressed in Due Process for Students in Early Childhood Special Education (ECSE)

EXAMPLE 1

Concern: Parents have a 3-year-old enrolled in early childhood special education. Janine has been placed in a self-contained preschool program and has no access to children without disabilities. The parents have asked for her to be placed in an inclusive preschool program so that she has social and communication role models. The school division has said that the least restrictive environment regulations do not apply to preschool.

IDEA/VA regulations: Least Restrictive Environment (LRE). IDEA 34 CFR §300.114(a)(2)(i); related Virginia Special Education Regulation 8VAC20-81-130

Reason for Due Process: The parents have provided a guidance letter from the U.S. Department of Education Office of Special Education Programs (OSEP) that clearly states that LRE requirements apply to preschool. The school continues to maintain it does not have to provide an inclusive preschool program or pay for the child to be placed in an inclusive preschool program not operated by the school. The parents have filed for due process to ask a hearing officer to require the school to serve Janine in an inclusive preschool setting which meets LRE requirements.

EXAMPLE 2

Concern: Justin is 4 years old and in an Early Childhood Special Education (ECSE) program. The parents are generally pleased with the services but believe that their son requires occupational therapy services to address his significant fine motor deficits. The IEP team says that during preschool the school division only provides consultative services to the teacher, not direct services to the student.

IDEA/VA regulations: FAPE and IEP. IDEA. 34 CFR §300.17; related state Virginia Regulation 8VAC20-81-100 and 8VAC20-81-100(B)(6).

Reason for Due Process: The parents believe that the school has an incorrect position regarding FAPE and IEP development requirements and that their son will fall further behind in his skills without direct OT services and not be ready for kindergarten. They have filed for due process to request that OT services be added to Justin's IEP and that compensatory services be awarded for the period starting with when they requested the OT services.

Process For Filing A Request For A Due Process Hearing

When filing for due process, you do not have to use the VDOE due process request form: <https://www.doe.virginia.gov/home/showpublisheddocument/38488/638061949892930000>. But you do have to **include all the required information**. If the request for a due process hearing is incomplete, the school division can say that it is insufficient (called “**sufficiency of notice**”). If the hearing officer agrees that the request is insufficient, they may let you change it or they may dismiss the case. If the case is dismissed, you can fix the request and refile it. The school division cannot challenge the sufficiency of the request in an **expedited case**.

If you do not use the form, be sure to include the following information:

1. **Your Contact Information** (name, address, email, telephone (home, office, mobile))
2. **Student Information** (full name, address, name of school, school division). In the case of a child experiencing homelessness, the request must include available contact information for the child including the name of their school.
3. **Name of Parents’ representative, if any** (e.g., attorney or advocate)
4. **A description of the disagreement**
 - ✓ **Nature of the problem** (what is/are the concern(s)/issue(s)).
 - ✓ **Facts related to the disagreement** (what happened to cause the problem(s) and other relevant facts).
 - ✓ **Desired solution/resolution** to the problem (e.g., provide compensatory services; reimburse private school tuition; provide private speech therapy services; change the child’s placement).

It is not required but may be helpful to describe the alleged IDEA and/or Virginia special education regulations you believe are being violated. **Remember, a due process hearing must address an action that occurred not more than two years before the hearing request being filed.** So, if the violation occurred/began on May 1, 2022, the complaint must be filed by April 30, 2024.

The Request for Due Process Hearing must be sent at the same time to both:

VDOE, Office of Dispute Resolution and Administrative Services

P.O. Box 2120, Richmond, Virginia 23218-2120 | Fax: 804-786-8520 | Email: ODRAS@doe.virginia.gov

AND THE

The local school division against whom you are filing the hearing request.

You can send the request to the Special Education Director and/or the Superintendent of Schools for the Division. You can also send a copy to the school principal. You can find **contact information** on your school division’s website or social media site or by calling the school division’s central office.

HELPFUL TIPS ON FILING THE DUE PROCESS HEARING REQUEST

- **Be thorough** (include all critical information including dates), **but concise** (use as few words as necessary).
- The due process hearing/complaint system focuses on the **facts of the case** and relevant IDEA or Virginia special education regulations violations, **not on emotions**. Focus on the allegations and the facts that support them. Do not include information about issues that occurred more than two years from the date you are filing the request for a due process hearing.
- Unlike with a written state special education complaint, you **do not need to submit any documentation or evidence** at the time you submit the request other than providing all the information asked for in the *VDOE Due Process Hearing Request Form*. You will submit your evidence later in the hearing process. However, if you have specific information that is directly relevant to the request, you can attach that information.



Virginia's Special Education Request For Due Process Hearing

(Virginia Department of Education Form)

SAMPLE COMPLETED FORM

If a due process hearing is requested by or on behalf of a student, please submit the written request to the Virginia Department of Education (VDOE), Office of Dispute Resolution and Administrative Services (ODRAS) via U.S. postal mail to: P.O. Box 2120, Richmond, VA 23218-2120; by email to ODRAS@doe.virginia.gov; or fax to (804) 786-8520. A copy of the request must be delivered contemporaneously by the requesting party to the Local Educational Agency (LEA) at the office of the division's special education director or designee. If the due process hearing is requested by the LEA, this form must be contemporaneously provided to the parent(s), parent representative, and/or student and the VDOE.

(Please type or write legibly, sign, and date)

1. Child's Name: Clarissa Jones

Age: 6 Date of Birth: 10/22/2016

2. Child's Home Address¹: 10000 Dabney Road

Hope City, Virginia 23333

3. City/County School Division: Jackson County Schools

4. School Child Attends: Concert Elementary School

5. Name of Parent(s)² Initiating Hearing: Rose Anne and Marcus Jones

Address: 1000 Dabney Road

Hope City, VA 23333

Telephone #: Home (804) 444-5555 Office (804) 666-7777 Cell (804) 888-9999

6. Parent's (Parents') Representative, if any (i.e., Attorney, Advocate, etc.)

Name: Annabelle Young

Address: Young Law Firm, 1922 Legal Services Way

Port City, VA 99999

Telephone #: Office (804) 111-2222 Cell (804) 211-3444

¹ If a homeless child or youth, then provide available contact information.

² Parent includes student at age 18, if parental rights have been transferred to the student, and any other individual who meets the definition of parent in the special education regulations.

7. Description of the nature of the problem (What are the issues? What is wrong?) My daughter needs speech therapy so she can catch up with her non-disabled peers. Her private therapist has recommended 1-1/2 hours a week of individual therapy and 30 minutes a week of group therapy. The school division is only offering 30 minutes a week of group therapy. Clarissa was also denied extended school year (ESY) services over the summer even though there was a significant risk of regression and she had new skills that are emerging. We, as her parents, are not qualified to provide her with speech-language therapy. We believe that Clarissa's right to a free appropriate public education under IDEA is being violated as are the regulations on IEP development.

8. Facts relating to the problem (What happened that caused the problem?) Clarissa has autism with a communication disorder that includes apraxia. She has been receiving special education and related services since she was 3 years old and has made very little progress with her communication skills because of the limited time for speech therapy that was put in her IEP. In the summer of 2022, we hired a private speech therapist and she started to make excellent progress and is now putting together 2-3-word utterances with improved fluency. Our insurance will not cover any additional therapy and the therapist has stated that without more intensive therapy, in terms of time and individualization, Clarissa will not progress and could lose the skills that she has gained. We have had several IEP meetings to discuss the issue and the school division will not agree to more therapy saying that their consultative and group therapy model is appropriate. We requested mediation before filing for due process and the school division refused.

9. A proposed resolution of the problem to the extent known and available to the parents.

We request that Clarissa's IEP be amended to provide her with one hour a week of individual therapy and 30 minutes a week of group therapy. We also request compensatory services for the lack of appropriate speech therapy services provided from the beginning of the 2021 school year and a determination that Clarissa be provided ESY for speech during the summer of 2023.

(Please attach additional pages to provide additional information, as necessary.)

Please see the attached evaluation and recommendation report from Clarissa's private speech pathologist, Dr. Nancy Cartman.

NOTE: New issues may not be raised at the due process hearing that are not raised in this Notice unless the other party agrees.

MEDIATION

Federal law requires that when a parent requests a hearing, the school division must inform the parent of the availability of mediation. Mediation is offered at no cost to the parties. Mediation is encouraged and may be beneficial in your case. Please be advised, however, that mediation is a voluntary system for resolving disputes. Both parties must agree to mediate their issues prior to the initiation of the mediation process. Any request for mediation cannot delay the appointment of a due process hearing officer or the scheduling of a due process hearing. Please indicate your decision below concerning your acceptance or rejection of the offer of mediation.

_____ I request mediation

_____ I decline mediation

Rose Ann Jones

1/5/2023

Marcus Jones

1/5/2023

Signature of Parent(s)

Date

Virginia Department of Education – Revised November 2017. Based on the *Individuals with Disabilities Education Improvement Act of 2004*, mandates effective July 1, 2005.

Virginia's Special Education Request For Due Process Hearing

BLANK FORM

If a due process hearing is requested by or on behalf of a student, please submit the written request to the Virginia Department of Education (VDOE), Office of Dispute Resolution and Administrative Services (ODRAS) via U.S. postal mail to: P.O. Box 2120, Richmond, VA 23218-2120; by email to ODRAS@doe.virginia.gov; **or** fax to (804) 786-8520. A copy of the request must be delivered contemporaneously by the requesting party to the Local Educational Agency (LEA) at the office of the division's special education director or designee. If the due process hearing is requested by the LEA, this form must be contemporaneously provided to the parent(s), parent representative, and/or student and the VDOE.

(Please type or write legibly, sign, and date)

1. Child's Name: _____ Age: _____ Date of Birth: _____

2. Child's Home Address³: _____

3. City/County School Division: _____

4. School Child Attends: _____

5. Name of Parent(s)⁴ Initiating Hearing: _____

Address: _____

Telephone #: Home: _____

Office: _____

Cell: _____

6. Parent's (Parents') Representative, if any (i.e., Attorney, Advocate, etc.) _____

Name: _____

Address: _____

Telephone #: Office: _____

Cell: _____

7. Description of the nature of the problem (What are the issues? What's wrong?) _____

8. Facts relating to the problem (What happened that caused the problem?) _____

³ If a homeless child or youth, then provide available contact information.

⁴ Parent includes student at age 18, if parental rights have been transferred to the student, and any other individual who meets the definition of parent in the special education regulations.

9. A proposed resolution of the problem to the extent known and available to the parents.

(Please attach additional pages to provide additional information, as necessary.)

NOTE: New issues may not be raised at the due process hearing that are not raised in this Notice unless the other party agrees.

MEDIATION

Federal law requires that when a parent requests a hearing, the school division must inform the parent of the availability of mediation. Mediation is offered at no cost to the parties. Mediation is encouraged and may be beneficial in your case. Please be advised, however, that mediation is a voluntary system for resolving disputes. Both parties must agree to mediate their issues prior to the initiation of the mediation process. Any request for mediation cannot delay the appointment of a due process hearing officer or the scheduling of a due process hearing. Please indicate your decision below concerning your acceptance or rejection of the offer of mediation.

I request mediation

I decline mediation

Signature of Parent(s)

Date

Virginia Department of Education - Revised November 2017. Based on the *Individuals with Disabilities Education Improvement Act of 2004*, mandates effective July 1, 2005.



Sample Letter Due Process Filing

(if not using the Due Process Request Form)

January 10, 2023

VDOE Office of Dispute Resolution and Administrative Services
PO Box 2120
Richmond, VA 23218-2120

XYZ School Division
900 Reading Drive
Greenspace, VA 230001

ATTN: Office of Dispute Resolution and Administrative Services (ODRAS), VDOE and Superintendent Burton, XYZ Schools

We are filing this request for a special education due process hearing on behalf of our son, Lawrence Book. I am sending it to you and to XYZ School division at the same time.

Our contact information is as follows:

Jasmine and Mark Book
9111 Roundtree Avenue, Greenspace, VA 23000
Jasmine.Crowfield@email.com
mcrowfield@email.com

757-222-7777 (home)
757-111-2222 (Jasmine Mobile) 757-333-4444 (Mark mobile)

Our son's information is as follows:

Lawrence Andrew Book
9111 Roundtree Avenue, Greenspace, VA 23000
XYZ school division, ZZZ Middle School

Our Attorney is Jackson Middleton, Middleton, Town, and Cityscape Law, Greenspace, Virginia 20012 (581) 333-4444;
jmiddleton@mtclaw.org

We are filing a due process hearing because Lawrence, who receives special education services under the category of autism and OHI (for his ADHD), has had some disciplinary issues at school and has been suspended multiple times. On October 12, 2022, we requested at an IEP meeting that the school conduct a functional behavioral assessment and develop a behavior plan, but the school division refused to conduct the assessment because they say Lawrence is just acting out for attention. They stated that if he continues the current behavior, they are going to change his placement from the general education classroom to a self-contained classroom. A behavior analyst has never come to our IEP meetings or conducted any type of behavior assessment of Lawrence and there are no appropriate behavior-related

goals or objectives in his IEP. We are opposed to a change of placement. We believe that the general education classroom with support is the least restrictive environment for Lawrence and that if the school conducted an FBA and developed and implemented a behavior intervention plan, the current issues would resolve. On November 2, Lawrence was suspended again. We sent in a written request for an FBA because of that incident. The school did not respond and did not provide the required Prior Written Notice as to why they refused our request.

We are requesting that the hearing officer rule that the school division must conduct a comprehensive FBA and develop a behavior plan based on that FBA as well as develop appropriate behavior objectives for inclusion of his IEP. We also request that his current placement in the general education classroom is maintained and that the appropriate supplementary supports and services be put in place to ensure that Lawrence can be successful.

Please contact me if you need further information concerning this request for a due process hearing.

Sincerely,

Jasmine Book

Mark Book

Jasmine and Mark Book

Cc: Maggie Black, Director of Special Education Services, XYZ School Division
Jonathan Ramirez, Principal, ZZZ Middle School

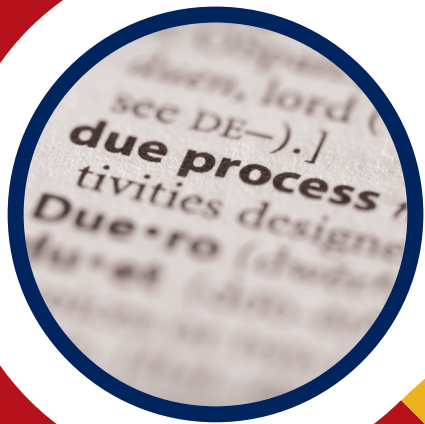


Glossary Of Special Education Due Process Hearing Related Terms

TERM	DEFINITION
Allegation	A statement describing how the school division or the VDOE state-operated program has violated the Individuals with Disabilities Education Act federal regulations or the <i>Regulations Governing Special Education Programs for Students with Disabilities in Virginia</i> . An allegation has not yet been proven true.
Appeal	Procedure in which one party seeks to reverse or modify the judgment or ruling of the hearing officer or the court.
Brief	A written argument that supports a case, providing a summary of the facts and legal analysis.
Burden of Proof	One party has to prove their case. Typically, the party bringing the case has the burden to prove their allegations by the legal standard set.
CFR	The U.S. Code of Federal Regulations.
Closing Argument	A final oral statement after both sides have presented their case. It is a summary of the facts of the case that the parties think will lead the hearing officer to rule in their favor. It includes when and how the other party has allegedly violated state or federal law or regulations and which ones.
Compensatory Services	Services provided by the school division to make up for the lack of appropriate services provided at an earlier time.
Cross-Examination	The chance to ask questions of a witness for the opposing party after their lawyer has questioned them. Questions are limited to the subjects covered in direct examination by the opposing party.
Direct Examination	The chance to ask questions and obtain the testimony of your witnesses.
Due Process Hearing	A hearing conducted by an impartial hearing officer to resolve disagreements over issues related to special education services that arise between parents and a school division.
Evidentiary Ruling	A hearing officer's decision on whether a piece of evidence will be considered.
Ex Parte Communication	Occurs when a party to a case, or someone involved with a party, talks, writes to, or otherwise communicates directly with the hearing officer about the issues in the case without the other party being present. It is not allowed except in rare circumstances.

Exhibit Book	A notebook(s) in which evidence is collected and organized in preparation for the due process hearing. Numbered exhibit tabs are used, and documents are lettered or numbered, and date stamped.
Exhibits	Any piece of physical or documented evidence that you will use to prove your case. For example, copies of your child’s IEP, video recordings of an IEP meeting, and evaluation reports.
Expedited Hearing	A due process hearing that is held more quickly to address a disciplinary matter when if the parent disagrees with a Manifestation Determination Review decision regarding whether the behavior was caused by the disability or any decision regarding placement under disciplinary procedures.
Expert Witness	A person who has special knowledge or is a specialist in a particular area who provides their expert opinion regarding matters in the due process hearing. For example, this could be a psychologist testifying as to a psychological evaluation they conducted on a student
FAPE	Free Appropriate Public Education under the Individuals with Disabilities Education Act.
Hearing Officer	An impartial lawyer, trained as a hearing officer, assigned to conduct the due process hearing and decide disputes under IDEA between parents and school divisions.
Legal Sufficiency	It means that the submitted documents include all required information, comply with applicable statutory (laws) and regulatory requirements, and include enough evidence to support a finding by the hearing officer.
Manifestation Determination Review (MDR)	A determination as to whether the misconduct was (or was not) a direct result or substantially related to the student’s disability or was (or was not) caused by a failure of the school division to implement the IEP.
Mediation	The process in which an objective third party (a trained mediator) works with two opposing parties to come to a mutually agreeable solution to their disagreement through a legally binding agreement.
Objection	A term used by attorneys (or the parents if they are representing themselves pro se) to complain about what the other side’s legal representative has done or said. For example, if they believe the attorney is violating a rule or asking a leading question, they can say, “Objection” and the hearing officer will uphold (sustain) the objection or overrule the objection which means the other party can continue what they are doing.
ODRAS	Office of Dispute Resolution and Administrative Services. This VDOE division handles complaints, mediation, and due process administration.
Opening Statement	An oral summary of the case, the evidence that will be presented at the hearing, and the desired ruling. It is not an argument of the case itself.

Parties	The two opposing sides in the case. The parents would be one party and the school division the other party.
Prejudice	A case dismissed with prejudice is over and done with, once and for all, and can't be refiled. A case dismissed without prejudice means the opposite. It is not dismissed forever and can be refiled.
Pro Se	The term for representing oneself in a legal process vs. having a legal representative like an attorney.
Procedural Issues	Issues that relate to technical aspects of the IEP process, evaluation, or other regulatory requirements. For example, if the IEP team did not give you Prior Written Notice after they denied a service or if they held an IEP meeting without you and without trying to reach out to you to arrange a mutually agreeable time and place for the meeting.
Rebuttal Testimony	Evidence that is introduced to disprove or contradict the other party's evidence, or legal argument. For example, if the school division testifies that a meeting took place on a certain date, the parents can call a rebuttal witness to provide evidence that the meeting was held on a different date.
Redaction	The process of eliminating (by blacking out or other means) personally identifiable information in a document such as a student's name, contact information, etc.
Resolution Session	A required meeting held to allow the parties to try to resolve the issues before the due process hearing
Stipulations	Facts that are not in dispute as agreed by both parties. For example, the student's date of birth or address.
Subpoena	An order by the hearing officer for a witness to testify at the hearing. A person who has been subpoenaed as a witness must appear or there can be legal consequences. This is called a witness subpoena . A subpoena duces tecum is an order by the hearing officer to request documents, like evaluation reports, for example.
Substantive Issues	Issues that deal with your child's right to a free appropriate public education. For example, a substantive dispute would be if your child is not receiving the assistive technology they need to communicate effectively. Another substantive issue is if your child has been excluded and has been denied access to the general education classroom and their non-disabled peers.
VAC	Virginia Administrative Code (state regulations).
Witness of Fact	A witness who has observed or experienced something related to the issues in a due process hearing. For example, the teacher who has worked with the student and observed their progress and behavior.





800-869-6782 (toll free) | 703-923-0010 | 800-693-3514 (fax)

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