



Advocates for Justice and Education, Inc.

The federally designated Parent Training and Information Center for Washington DC

Know Your Rights: Special Education Dispute Resolution

The Individuals with Disabilities Education Act (IDEA) is a federal law that ensures students with a disability are provided with a Free and Appropriate Public Education (FAPE) tailored to their individual needs. If your child's school district fails to provide a FAPE, you have legal recourse. There are a number of ways a child's school district can violate this right, including failing to evaluate a child for an IEP, not providing the services mandated by a student's IEP or suspending or expelling a child without following the correct procedures. While there are a variety of ways to challenge and resolve a disagreement with a school district, below we have summarized the formal dispute resolution mechanisms available to you:

State Complaints

Definition

A state complaint is a written complaint requesting that the Office of the State Superintendent of Education ([OSSE](#)) investigate allegations that a school district has violated the federal Individuals with Disabilities Education Act ([IDEA](#)) and/or any other state special education laws.¹

Who Can File

Any individual or organization, including parents, teachers and advocacy groups, may file a state complaint.

How to File

This is the [OSSE home page for State Complaints](#), which has additional information about how to file, including a template you can use. The Federal Regulation for filing a state complaint is 34 C.F.R. § 300.153.

What May Be Required of You

OSSE investigates your complaint without much additional input from you, so it is important that you put as much information as possible in your complaint. OSSE may contact you, or others named in the complaint, for additional information as part of their investigation. You do not need to be an attorney to file a State Complaint; however, you have the right to consult with or retain an attorney before filing or entering a formal mediation. The school district also has the right to consult with or retain legal counsel.

Timeline

OSSE will only investigate alleged legal violations that occurred within one (1) year of filing the State Complaints, and OSSE will make a decision as to whether the LEA violated the IDEA in a **Letter of Decision** after sixty (60) days.² OSSE might also put a Corrective Action Plan in their Letter of Decision. You are entitled to a copy of the Letter of Decision. For more details about the process, look at the [information at the OSSE website](#).

What if I file a State Complaint and Disagree with the Letter of Decision?

If you disagree with the Letter of Decision, you may file a Due Process complaint.

¹ For a complete description of the State complaint procedures, see 34 C.F.R. §§ 300.151-300.153 for IDEA Part B and 34 C.F.R. §§ 303.432-303.434 for IDEA Part C.

² The State Complaint Office of OSSE may only extend this 60 day deadline if there are (1) exceptional circumstances or (2) in complaints alleging a violation of Part B, the complainant and public agency involved agree to an extension in order to engage in mediation.

Additional Resources

Other resources for learning more about State Complaints and how to file them are the [Advocacy Institute's IDEA State Complaint Resource Center](#) and the [Wright's Law Website](#).

Due Process Complaints

Definition

A due process complaint is a written complaint requesting that OSSE hold an administrative hearing to resolve disputes between school districts and families related to the IDEA and/or any other state special education laws.³ This involves either a parent or a school district challenging the other party over a matter concerning the provision of free appropriate public education (FAPE)⁴ to a child who needs, or is suspected of needing, of special education and related services. Due process complaints are the most formal dispute resolution processes under IDEA. However, most due process complaints do not end up in a courtroom because negotiations between the parties, usually involving attorneys, resolve most due process filings.

Who Can File

A **parent, guardian, adult student or school** can file a due process complaint on their own or through counsel to dispute education matters related to their child/student, including issues such as identification, evaluation and placement. AJE recommends that parents consult with or retain an attorney, if possible, when preparing to file a due process complaint; however, an attorney is not required. In D.C., nonattorneys cannot represent you in Due Process Hearings, but you may represent yourself.

How to File

Filing a due process complaint involves the following steps⁵:

1. **Complete a due process complaint notice and send it to whomever the complaint is against.** The complaint must be made **within two years** of the date the parent knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing, in the time allowed by that State law. This is a link to the form: [Due Process Complaint Form](#). Click [here](#) to find the parties against whom you can file the complaint and the corresponding contact information.
2. **Provide a copy of the complaint AND proof that you provided the complaint to the LEA or SEA to the Office of Dispute Resolution (ODR).**
3. There are **procedural rules** about Due Process Complaints and Hearings that must be followed. These can be found starting on **page 11** of the following link: [The Office of Dispute Resolution Standard Operating Procedures Manual](#).

What May Be Required of You

³ For the federal regulations which define a due process complaint see 34 C.F.R. §300.503 and §300.507 through §300.509.

⁴ According to Federal law, a Free Appropriate Public Education (FAPE) must be made available to all children with disabilities between the ages of 3 and 22.

⁵ The federal regulation for filing a due process complaint is 34 C.F.R. § 300.507, and the D.C. regulation is 5 D.C.M.R. § E3029.1.

A Due Process Complaint requires much more input and participation from both parties compared to the State Complaint procedure. Participation that may be required includes: drafting a complaint or response to a complaint, filing or responding to pre-hearing motions, attending a resolution session meeting or formal mediation (if both parties agree) after filing to attempt to resolve the dispute informally or through settlement, as well as arranging and disclosing all witnesses and documentary evidence 5-days before the hearing and preparing testimony and participating in the actual due process hearing.

Timeline

When a complaint is received, the **30-day resolution period** begins.⁶ During this period, the school district tries to resolve the issues outlined in the complaint before going to a hearing. The party who the complaint was filed against has **10 calendar days** to file a written response to the complaint. Within **15 calendar days** of receiving your due process complaint, the school must meet with you and the members of the IEP team for a **resolution meeting**, the purpose of which is for you and the school to discuss your due process complaint and give the school the opportunity to resolve the issue. However, this meeting is not necessary if you and the school agree in writing not to have the resolution meeting or you and the school agrees to use the mediation process. 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.

If the school has not resolved the complaint to your satisfaction within 30 calendar days, the **45-day hearing period** may begin. At the end of the hearing, the Hearing Office will issue a **Determination** (outcome).

What if I file a Due Process Complaint and Disagree with the Hearing Officer's Determination?

If a party disagrees with the outcome of a hearing, the party may appeal **within ninety (90) calendar days** from the date of the determination. The appeal may be filed within the United States District Court for the District of Columbia. If you do not file an appeal within 90 days, you waive the right to appeal and a higher court will very likely refuse to review your case.

Additional Resources

For more information about Due Process complaints, visit the following link:

<https://www.wrightslaw.com/info/dp.index.htm>.

Mediation

Mediation is a voluntary process that brings the disputing parties together to have a confidential discussion over the disputed issues. If both parties agree to participate in a mediation, the State Educational Agency, OSSE, will appoint a trained, neutral third party to facilitate the meeting and discussions with the goal of mutually resolving the disputes, ideally in a binding written agreement or "settlement." It offers an opportunity for parents and public agencies to resolve disputes or complaints about any matter involved in proposals or refusals to initiate or change the identification, evaluation, or educational placement of the child or the provisions of FAPE to the child with a disability.⁷ It may be preferable to State Complaint or Due Process Complaint because it provides an opportunity to resolve your disputes at low financial and emotional costs. A more detailed overview of the process and the forms needed to request mediation can be found [here](#).

⁶ There is a different timeline for Expedited Due Process Hearings which may be granted when a due process complaint involves a request for an expedited hearing. You may find an explanation of this timeline on **page 33** of the [Standing Operating Procedures Manual](#).

⁷ Mediation is governed by the federal regulations 34 CFR § 300.503(a)(1) and 34 CFR § 300.506.

Comparison: State Complaints v. Due Process Complaints Summarized

* The chart below summarizes the major points provided in the information above.

	State Complaints	Due Process Complaints
When to File	Must allege a violation that occurred not more than one year before the date that the complaint is received	Due Process Complaints must allege an event that occurred no more than two years before the date of filing (unless an exception to the timeline is present).
Who Can File	Anyone on behalf of any child or group of children (systemic complaint)	A parent (or the educational decision maker) or the school of the child
Input Needed	<p>To Begin the Complaint: Filling out the state complaint template and filing it with the appropriate party</p> <p>During the Process: OSSE may contact you for an interview and request additional information</p>	<p>To Begin the Complaint: Filling out the due process complaint template and filing it with the appropriate with the appropriate party as well as providing a copy to the ODR</p> <p>During the Process: Includes but is not limited to attending a resolution meeting, organizing and disclosing all witnesses and evidence for the hearing, participating in the hearing</p>
Lawyer Participation	Most of the time, a lawyer is not needed.	A lawyer is not required but is strongly recommended
Timeline	Maximum of 60 days to resolve (unless an exception applies)	Maximum of 75 days through the typical due process complaint procedure or 30 days through the expedited due process complaint procedure
Mediation	Available before or after filing	Available before or after filing

Contact Advocates for Justice and Education (AJE)

If you have questions or would like to request our assistance in challenging a suspension or expulsion, call, email or visit AJE. (202) 678-8060 • information@aje-dc.org • www.aje-dc.org • 1200 G Street NW Suite 725 • Washington, D.C. 20005 (Metro Center). Mary's Center Intake on Tuesdays and Thursdays at 3912 Georgia Avenue, NW, Washington, DC 20011.