

Procedural Safeguards - 5.13 Due Process Complaints

State Performance Plan (SPP):

(See Overview in the Introduction for more information on the SPP.)

SPP 17:

Percent of fully adjudicated due process hearing requests that were fully adjudicated within the 45- day timeline or a timeline that is properly extended by the hearing officer at the request of either party. (20.U.S.C. 1416 (a) (3) (B))

Intent:

To provide parents, school districts (LEAs), county boards of DD and other educational agencies with a formal due process hearing procedure to resolve matters related to the identification, evaluation, educational placement or provision of a free appropriate public education (FAPE) for a child with a disability. A party requesting a due process hearing must file a due process complaint.

Timelines:

Within 10 calendar days of receiving the parent's due process complaint

If the school district of residence has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the school district must, **within 10 calendar days of receiving the complaint**, send to the parent a response that includes the information specified in the requirements listed below (see School District of Residence Response to a Due Process Complaint).

If the school district files a due process complaint, the parent or other party receiving a due process complaint must, **within 10 calendar days of receiving the due process complaint**, send to the school district a response that specifically addresses the issues raised in the complaint.

Upon receipt of a due process complaint

Upon receipt of a due process complaint, the Ohio Department of Education, Office for Exceptional Children will appoint an impartial hearing officer and notify each party of the appointment. If the matter proceeds to a hearing, the hearing officer will conduct the hearing and will determine the sufficiency of the due process complaint, if it is challenged by the receiving party.

Within 15 calendar days

If the party receiving the due process complaint believes it is not sufficient, that party must, **within 15 calendar days of receiving the due process complaint**, notify the hearing officer and the other party in writing.

Within five calendar days

Within **five calendar days after receiving this notification of alleged insufficiency**, the hearing officer must make a determination on the face of the due process complaint regarding whether the due process complaint meets the requirements of rule 3301-51-05, and must immediately notify the parties in writing of that determination. If the hearing officer determines the due process complaint is insufficient, he or she must inform the filing party why the complaint is insufficient, how to make it compliant, and how to obtain assistance in writing a complaint that is sufficient.

Within 15 days of receiving notice of the parent's due process complaint

Within 15 days of receiving notice of the parent's due process complaint and before initiating a due process hearing, the school district of residence must convene a resolution meeting with the parent and the relevant member or members of the IEP team. This meeting is mandatory unless both parties agree to use state mediation or agree in writing to waive the resolution meeting. If the school district files the due process complaint, a resolution meeting is not required.

Within 30 calendar days of receiving the complaint

If the school district has not resolved the due process complaint to the satisfaction of the parent **within 30 calendar days of receiving the complaint**, the due process hearing may occur.

Not later than 45 calendar days

A final decision must be reached and a copy of the decision mailed to each of the parties involved in the due process hearing not later than 45 calendar days after the 30- day resolution period expires. The 30- day resolution period may be adjusted and the 45- day timeline would start the day after one of the following takes place:

- Both parties agree in writing to waive the resolution meeting;
- After either the mediation or resolution meeting starts but before the end of the 30- day period, the parties agree in writing that no agreement is possible; or
- If both parties agree in writing to continue the mediation at the end of the 30- day resolution period, but later the parent or school district of residence withdraws from the mediation process.

REQUIREMENT

(7) Filing a due process complaint

(a) General

- (i) A parent or a school district, county board of MR/ DD, or other educational agency may file a due process complaint on any of the matters described in paragraphs (H) (1) (a) and (H) (1) (b) of this rule relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.
- (ii) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in paragraph (K) (10) (f) of this rule apply to the timeline in this paragraph.

3301-51-05

(K) Conflict Resoluton

(10) Impartial due process hearing

(f) Exceptions to the timeline

The timeline described in paragraph (K) (10) (e) of this rule does not apply to a parent if the parent was prevented from filing a due process complaint due to:

- (i) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or
- (ii) The school district's withholding of information from the parent that was required under this rule to be provided to the parent.

GUIDANCE

A brief overview of the requirements that apply to a due process complaint and request for a due process hearing or an expedited due process hearing is included in the chart "Due Process Complaints: A Quick Reference Guide."

What is a due process complaint?

A due process hearing is requested by filing a due process complaint. A due process complaint is a written complaint filed with the child's school district of residence. Whenever a due process complaint that meets the requirements set forth in *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* is received, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing.

Who can file a due process complaint and on what issues?

A due process complaint can be filed on any matters related to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to the child by:

- The parents;
- A school district;
- A county board of DD; or
- Another educational agency.

What is the time limit for filing a complaint?

The due process complaint must allege a violation that occurred not more than two years before the date the parents or public agency knew or should have known about the alleged action that the complaint is about. The federal regulations and the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* provide exceptions to the two- year timeline stated in the above requirements.

The hearing officer is responsible for determining, on a case- by- case basis, exceptions to the two- year timeline, considering factors affecting whether the parents or the agency "knew" or "should have known" about the action on which the due process complaint is based.

"Misrepresentations" are not defined or clarified in the federal regulations. Such matters are within the purview of the hearing officer. If the complaining party believes that the two- year timeline should not apply, the complaining party needs to ask the hearing officer to determine whether an otherwise untimely due process complaint can proceed to a hearing based on misrepresentations by the school district or the district's withholding of information (*Federal Register*, August 14, 2006, pg. 46706). The non- complaining party may want to challenge the untimely filing.

REQUIREMENT

3301-51-05

(K) Conflict Resolution

(8) Due process complaint

(a) General

(i) The Ohio Department of Education shall establish state due process procedures. Additionally, the school district or public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(ii) The party filing a due process complaint must forward a copy of the due process complaint to the Ohio Department of Education.

(b) Content of complaint

The due process complaint required in Paragraph (K) (8) (a) (i) of this rule must include:

- (i) The name of the child;
- (ii) The address of the residence of the child;
- (iii) The name of the school the child is attending;
- (iv) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney- Vento Homeless Assistance Act (42 U.S.C.11434a(2), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431), available contact information for the child, and the name of the school the child is attending;
- (v) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (vi) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required Before a hearing on a due process complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (K) (8) (b) of this rule.

GUIDANCE

What information must be included in a due process complaint?

The federal regulations and the *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* set forth the specific information that must be included in a due process complaint. This information is identified in the above requirements.

The Ohio Department of Education, Office for Exceptional Children (ODE/ OEC) has developed a model form for filing a due process complaint. This form, Due Process Complaint and Request for a Due Process Hearing, is not a required form but can assist complainants with providing all the required information.

This form is posted on the ODE Web site at [http:// education.ohio.gov](http://education.ohio.gov), keyword search: *due process forms*.

The party filing the due process complaint may use the model form provided by the ODE/ OEC or may prepare and submit its own complaint, so long as it contains the required information.

A party may not have a hearing on a due process complaint until a sufficient complaint is filed; that is, a due process complaint that contains all the information listed in the above requirements.

REQUIREMENT

3301-51-05

(K) Conflict Resolution

(8) Due process complaint

(d) Appointment of hearing officer

Upon receipt of a request for a due process hearing, the Ohio Department of Education, Office for Exceptional Children, will appoint an impartial hearing officer from a list of attorneys maintained by the Office for Exceptional Children.

(K) Conflict Resolution

(10) Impartial due process hearing

(c) Impartial hearing officer

- (i) At a minimum, a hearing officer:
 - (a) Must not be:

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(i) An employee of the Ohio Department of Education or the school district that is involved in the education or care of the child; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(b) Must possess knowledge of, and the ability to understand the provisions of the IDEA, federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

(e) Must be an attorney licensed to practice law in Ohio who has successfully completed all training required by the Ohio Department of Education.

(ii) A person who otherwise qualifies to conduct a hearing under paragraph (K) (10) (c) (i) of this rule is not an employee of the school district solely because the person is paid by the school district of residence to serve as a hearing officer.

(iii) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

GUIDANCE

Appointment of hearing officer

Upon receipt of a due process complaint, the ODE/ OEC will appoint the impartial hearing officer.

If a due process complaint is withdrawn and subsequently re- filed, the original hearing officer will be reassigned to the case if the issues are substantially the same.

REQUIREMENT

3301-51-05

(K) Conflict Resolution

(8) Due process complaint

(e) Sufficiency of complaint

(i) The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (K) (8) (b) of this rule.

(ii) The appointed hearing officer shall handle all phases of the due process request, including, but not limited to, whether a determination of insufficiency should result in the amendment or dismissal of a due process complaint.

(iii) Within five days of receipt of notification under paragraph (K) (8) (e) (i) of this rule, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (K) (8) (b) of this rule, and must immediately notify the parties in writing of that determination.

The hearing officer shall review the sufficiency issues in accordance with the following:

(a) The hearing officer shall make a determination on the face of the due process complaint no later than five days after receipt of the notification under paragraph (K) (8) (e) (i) of this rule;

(b) The hearing officer shall notify all parties of that written determination on the same date the determination is made:

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(c) If the due process complaint is determined to be insufficient, the determination shall include:

- (i) The reasons for the determination of insufficiency;
- (ii) A statement in clear language that the case has not been dismissed;
- (iii) The case cannot go to hearing until a due process notice is filed which meets the requirements of paragraph (K) (8) (b) of this rule; and
- (iv) Notice of resources to assist parents without counsel in completing due process complaints and in correcting deficiencies included in the finding of insufficiency by the hearing officer, including, but not limited to, the identity and contact information of the employee at the Ohio Department of Education who is qualified to answer parents' questions about the required information specified in paragraph (K) (8) (b) of this rule that must be included in a due process complaint notice.

(iv) A party may amend its due process complaint only if:

- (a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to paragraph (K) (9) of this rule; or
- (b) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(v) If a party files an amended due process complaint, the timelines for the resolution meeting in paragraph (K) (9) (a) of this rule and the time period to resolve in paragraph (K) (9) (b) of this rule begin again with the filing of the amended due process complaint.

GUIDANCE

Who decides whether the information in the due process complaint is sufficient?

A due process complaint is considered sufficient, that is, meeting the requirements regarding the content of the due process complaint, unless the party receiving the complaint believes the complaint does not meet the requirements and notifies the hearing officer and other party.

This notice must be provided in writing within 15 days of receiving the due process complaint and must be sent to the hearing officer and to the party filing the complaint. A copy of the notice is also sent to:

Ohio Department of Education
Office for Exceptional Children, Procedural Safeguards
Attn: Due Process Coordinator
25 South Front Street, Mail Stop #202
Columbus, Ohio 43215-4183
Toll Free: (877) 644-6338
Fax: (614) 728-1097

The hearing officer must determine whether the due process complaint meets the requirements no later than five calendar days after receiving the notification; he or she notifies the parties in writing of that determination on the same date the determination is made.

The hearing officer decides, based on the face of the due process complaint, whether it is legally sufficient. This means that the hearing officer may only look at what is written in the due process complaint and may not take additional evidence or testimony to make his or her decision about the sufficiency of the complaint. (Pagano, L. (2008, February). Options for dispute resolution (Module 18). *Building the legacy: IDEA 2004 training curriculum*. Washington, DC: National Dissemination Center for Children with Disabilities.)

- 20 U.S.C. §1415(b) (7) (A) (ii) does not require a due process complaint to reach the level of specificity and detail of a complaint in a court of law;

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- The purpose of the sufficiency requirement is to ensure that the other party will have an awareness and understanding of the issues forming the basis for the complaint; and
- Due process complaints should be construed in light of *Schaeffer v. Weast*, 126 St. Ct. 528, 532 (2005), and *Escambia County Board of Education v. Benton*, 406 F. Supp. 2d 1248, 1259-1260 (S. D. Ala 2005).

(*Keene v. Zelman*, No. 2:06- cv-00389, United States District Court, Southern District of Ohio.)

If the hearing officer determines that the complaint is insufficient, the hearing officer must put that decision in writing. The decision by the hearing officer that the complaint is insufficient must include the following:

- The reasons why the complaint is insufficient;
- A statement in clear language that the complaint is NOT dismissed;
- A statement in clear language that the complaint cannot go to hearing until a complaint is filed that meets the above requirement; and
- A notice of resources that can assist parents without attorneys in completing a due process complaint and in correcting deficiencies included in the hearing officer's finding of insufficiency. The resources listed in the sufficiency decision shall include, but not be limited to, the identity and contact information for an ODE employee who is qualified to address the issues.

Contact:

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Office for Exceptional Children

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If the due process hearing request is determined to be insufficient, the filing party shall be given the options to amend the original complaint or to file a new complaint.

Note: The sufficiency requirement does not apply to expedited due process hearings. The non- filing party in an expedited due process hearing cannot challenge the sufficiency of a due process complaint.

Amending of due process complaint

A due process complaint can be amended only under the circumstances stated in the above requirements – if parties mutually agree in writing and are given the opportunity for a resolution meeting to resolve the amended complaint, or if a hearing officer grants permission to amend the complaint.

If the due process complaint is amended, the date on which the original due process complaint was filed also applies to the amendment. If the original due process complaint met the two- year filing deadline, the amendment will also be within the two- year filing period.

The timeline for the resolution meeting, 15 days — or seven days in the case of an expedited request — begins again and starts on the date the amended complaint is filed with the impartial due process hearing officer. The time period to resolve the due process complaint (30 days or if an expedited hearing, 15 days) begins again with the filing of the amended due process complaint.

See above requirements and [Procedural Safeguards - 5.14 Resolution Process](#).

The 45- day timeline for the due process hearing and decision (30 days if an expedited hearing: 20 days for the expedited hearing and an additional 10 days for the decision) begins again at the end of the new resolution period.

Re- filing the due process complaint

A re- filed due process complaint is considered to be a new complaint and must meet all the requirements of a new request. A re- filed complaint has a new filing date and the timelines for the complaint begin again. See timelines at the beginning of this topic.

Note: This may mean that all or part of the new due process complaint **MAY** be outside the two- year limitation for filing a due process complaint and hearing request.

Due Process Complaints Filed by Parents

REQUIREMENT

3301-51-05

(K) Conflict Resolution

(8) Due process complaint

(f) School district of residence response to a due process complaint

(i) If the school district of residence has not sent a prior written notice under paragraph (H) of this rule to the parent regarding the subject matter contained in the parent's due process complaint, the school district of residence must, within ten calendar days of receiving the due process complaint, send to the parent a response that includes:

(a) An explanation of why the school district of residence proposed or refused to take the action raised in the due process complaint;

(b) A description of other options that the IEP team considered and the reasons why those options were rejected;

(c) A description of each evaluation procedure, assessment, record, or report the school district of residence used as the basis for the proposed or refused action; and

(d) A description of the other factors relevant to the school district of residence's proposed or refused action.

(ii) A response by the school district of residence under paragraph (K) (8) (f) (i) of this rule shall not be construed to preclude the school district from asserting that the parent's due process complaint was insufficient, where appropriate.

(g) Other party response to a due process

Except as provided in paragraph (K) (8) (f) of this rule, the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(K) Conflict Resolution

(7) Filing a due process complaint

(b) Information for parents

The school district of residence must inform the parent of any free or low- cost legal and other relevant services available in the area if:

(i) The parent requests the information; or

(ii) The parent or the school district files a due process complaint under this rule.

(c) Hearing requested by someone other than parent

If a hearing has been requested by someone other than the child's parent, the parent shall be informed in writing of the request. The parent shall be invited to participate in the proceedings and shall be provided copies of all communications between the parties.

GUIDANCE

What steps does the school district take when it receives a due process complaint and a request for a due process hearing?

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When the parents or an agency files a due process complaint and a request for a hearing, the request is sent to the superintendent of the child's district of residence and to the ODE/ OEC. Upon receipt of a due process complaint, school district personnel should immediately:

- Time stamp the due process complaint notice.

The timeline for starting the resolution process begins on the date the school district receives the due process complaint, whether it is sent by the parents or by the ODE/ OEC.

- Mail or fax a copy of the due process complaint to:

Ohio Department of Education
Office for Exceptional Children, Procedural Safeguards
Attn: Due Process Coordinator
25 South Front Street Mail Stop #202
Columbus, Ohio 43215-4183.
Toll Free: (877) 644-6338
Fax: (614) 728-1097

- Forward a copy to the school district's attorney. (Optional)

There is no requirement that the school district be represented by legal counsel in a due process hearing; however, an impartial due process hearing is a legal procedure, and it is advisable to involve the district's attorney immediately upon receiving a due process complaint notice.

When the parents file the due process complaint, the school district provides the parents with:

- A copy of *Whose IDEA Is This?* (This must be provided only upon receipt of the first due process complaint filed in the school year); and
- Information on any free or low- cost legal and other relevant services available in the area. This information may include:

- Ohio Legal Rights Service

50 W. Broad Street, Suite 1400

Columbus, OH 43215-5923

(614) 466-7264; (614) 728-2553 (TTY)

- Ohio Coalition for the Education of Children with Disabilities

(Parent Training and Information Center [PTI])

Ohio Coalition for the Education of Children with Disabilities

165 W. Center Street, Suite 302

Marion, OH 43302-3741

(740) 382-5452; (800) 374-2806

- Educational Advocacy Services Memorial, Inc. (parent organization)

1607 Mansfield Street

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Cincinnati, OH 45202

(513) 621-3032

If a county board of MR/ DD or another school district or educational agency files the due process complaint notice, the school district of residence:

- Informs the parents in writing of the request for a hearing;
- Invites the parents to participate in the proceedings;
- Informs the parents that they will receive copies of all communications related to the due process complaint and the impartial due process hearing; and
- Provides the parents with a copy of *Whose IDEA Is This?* if this is the first due process complaint filed in the school year.

Upon receiving the due process complaint, the ODE/ OEC appoints an impartial due process hearing officer and notifies the school district of residence and the parents or, if appropriate, other agency of the appointment.

The superintendent or designee, or the school district's legal counsel, should contact the hearing officer and provide contact information (office phone, mailing address, e- mail address) for the individual who will be available to respond to any questions or requests from the hearing officer, throughout the hearing process.

If the due process complaint is filed by the parents and the school district of residence has not provided the parents with prior written notice regarding the issues contained in the parents' due process complaint notice, the school district will, within 10 calendar days of receiving the complaint, forward a response that includes the following information:

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

Though the school district is required to provide this response, it may still assert that the parents' or other agency's due process complaint is insufficient.

If the due process complaint is filed by the parents, the school district immediately contacts the parents to schedule a resolution meeting within 15 days of receiving the due process complaint. See requirements and guidance in [Procedural Safeguards - 5.14 Resolution Process](#).

The resolution meeting shall not be postponed if the school district believes that the parents' complaint is insufficient. While the period to file a sufficiency claim is the same as the period for holding the resolution meeting, parties receiving notice of a due process complaint should raise their sufficiency claims as early as possible, so the resolution period will provide a meaningful opportunity for the parties to resolve the dispute (*Federal Register, August 14, 2006, pg. 46698*).

If the due process complaint is filed by another school district, a county board of MR/ DD or another educational agency, the school district contacts the other party to determine whether it is interested in participating in mediation offered through the ODE/ OEC.

To ensure that the parents' or other agency's complaint accurately sets out the issues, making resolution of the complaint more likely, the school district may agree to an amendment of a due process complaint.

If the school district consents to the amendment of the parents' or other agency's due process complaint, it should promptly proceed (if it hasn't already done so) to schedule a resolution meeting with the parents at a mutually agreed upon time and place. (When a due process complaint is amended, the timelines for the resolution meeting and for resolving the due process complaint begin again with the filing of the amended due process complaint.)

The school district proceeds with scheduling a resolution meeting with the parents following the requirements and guidance set forth in Procedural Safeguards - 5.14 Resolution Process.

The school district proceeds with scheduling mediation with the other agency, if it has agreed to participate in mediation. Mediation is voluntary and must be mutually agreed upon by both parties. See Procedural Safeguards - 5.11 Mediation.

If the school district and the other agency do not agree to mediation, the due process hearing occurs. See Procedural Safeguards - 5.15 Impartial Due Process Hearing.

Due Process Complaints Filed by the School District of Residence

What steps does the school district take when it files a due process complaint?

The school district of residence should attempt to resolve disputes with parents before filing a due process complaint notice. This includes:

- Communicating with parents about the disagreement;
- Scheduling a case conference;
- Convening an IEP team meeting, if appropriate, to discuss the matter and to try reaching a solution; and/ or
- Suggesting mediation or IEP facilitation offered through ODE/ OEC.

If all efforts at resolving a dispute with the parents have been exhausted, the school district may choose to file a due process complaint.

The superintendent and/ or superintendent's designee should meet with the school district's legal counsel to discuss the issues involved in the dispute and to determine whether or not to file a due process complaint and request a due process hearing. (There is no requirement that the school district be represented by legal counsel in a due process hearing; however, an impartial due process hearing is a legal procedure, and it is advisable to involve the district's attorney immediately when all attempts at resolving disputes with parents or another agency regarding a child with disabilities have been unsuccessful.)

The superintendent or designee or the school district's legal counsel completes the Due Process Complaint and Request for a Due Process Hearing form. This form is posted on the ODE Web site at [http:// education.ohio.gov](http://education.ohio.gov), keyword search: *due process forms*.

The superintendent or designee or the school district's legal counsel sends the original due process complaint and request for a hearing to the parents and faxes a copy to the ODE/ OEC at (614) 728-1097, or mails it to:

- Ohio Department of Education
Office for Exceptional Children, Procedural Safeguards
Attn: Due Process Coordinator
25 South Front Street Mail Stop #202
Columbus, Ohio 43215-4183

The school district provides the parents with:

- A copy of the written due process complaint notice;
- A copy of *Whose IDEA Is This?* (This must be provided only upon receipt of the first due process complaint filed in the school year); and
- Information on any free or low- cost legal and other relevant services available in the area. This information may include:
 - Ohio Legal Rights Service
50 W. Broad Street, Suite 1400

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Columbus, OH 43215-5923

(614) 466-7264; (614) 728-2553 (TTY)

- Ohio Coalition for the Education of Children with Disabilities

(Parent Training and Information Center [PTI])

Ohio Coalition for the Education of Children with Disabilities

165 W. Center Street, Suite 302

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(740) 382-5452; (800) 374-2806

- Educational Advocacy Services Memorial, Inc. (parent organization)

1607 Mansfield Street

Cincinnati, OH 45202

(513) 621-3032

Upon receiving the due process complaint, the ODE/ OEC appoints an impartial due process hearing officer and notifies the school district of residence and the parents of the appointment.

The superintendent or designee, or the school district's legal counsel (optional), should contact the hearing officer and provide contact information (office phone, mailing address, e- mail address) for the individual who will be available for responding to any questions or requests from the hearing officer throughout the hearing process.

The school district receives a written response to its due process complaint from the parents within 10 calendar days that specifically addresses the issues raised in the school district's due process complaint.

If the parents believe the school district's due process complaint is not sufficient, the parents notify the impartial hearing officer as well as the school district, in writing. The parents also send a copy of the notification to the ODE/ OEC within 15 calendar days of receiving the due process complaint.

The impartial hearing officer determines the sufficiency of the complaint and notifies the school district and the parents no later than five days from receiving the notice. The hearing officer notifies the parties in writing of that determination on the same date the determination is made. If the hearing officer determines the due process complaint is insufficient, the hearing officer provides the school district and parents, in writing:

- The reasons why the complaint is insufficient;
- A statement in clear language that the complaint is NOT dismissed;
- A statement in clear language that the complaint cannot go to hearing until a complaint is filed that meets the above requirement; and
- A notice of resources that can assist parents without attorneys in completing a due process hearing and in correcting deficiencies included in the hearing officer's finding of insufficiency. The resources listed in the sufficiency decision shall include, but not be limited to, the identity and contact information for an ODE employee who is qualified to address the issues.

Contact:

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Ohio Department of Education

Procedures and Guidance for Ohio Educational Agencies serving Children with Disabilities

(October, 2011)

Office for Exceptional Children

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If the school district chooses to re- file the complaint, it takes into consideration the impact the re- filing may have on timelines:

- All timelines, including the hearing and issuance of the hearing officer's decision, begin again on the date the school district receives the re- filed complaint. This prolongs the process and the timeliness in which the complaint may be resolved.
- The revised timelines may mean that all or part of the new complaint MAY be outside the two- year limitation for filing a due process complaint and a request for a due process hearing.

The school district amends its due process complaint if the other party agrees in writing to the amendment and is given the opportunity to resolve the amended complaint, or if the hearing officer grants permission to amend the complaint.

The school district files its amended due process complaint.

The school district is not required to hold a resolution meeting.

The school district, depending on the specific case, may contact the other party and express an interest in participating in mediation offered through the ODE/ OEC. Mediation is voluntary and must be mutually agreed upon by both parties. See [Procedural Safeguards - 5.11 Mediation](#).

If the school district and the other party do not agree to mediation, the due process hearing may occur. See [Procedural Safeguards - 5.15 Impartial Due Process Hearing](#).

Note: A school district of residence may file a due process complaint and request a due process hearing with another public agency and one public agency may also file a due process complaint and request against another public agency. If a school district of residence or other public agency chooses to do so, it should contact the Due Process Coordinator at the ODE/ OEC to review procedures.

LEGAL CITATIONS:

Federal Statutes:

20 U.S.C. 1415(b) (6) and (k) (3)

Federal Regulations:

34 CFR §300.507-509

Ohio Revised Code: (Policies)

ORC 3323.05(G) (1)

Operating Standards:

3301-51-05(K) (7)

3301-51-05(K) (10) (c) and (f) (i)and(ii)

FORMS (* = required)

- Due Process Complaint and Request for a Due Process Hearing
- Due Process and/ or Complaint Withdrawal Form*
- Whose IDEA Is This?*