

---

## INTRODUCTION

As an informed, involved parent you are vital to the success of your child's special education program. Federal laws and ND regulations enable you to play an important role in the special education process. By sharing what you know about your child and by helping to make decisions, you will make an important contribution to your child's education.

The decisions you make should be based on knowledge and understanding of your rights and responsibilities. If problems and misunderstandings do arise, however, there are several ways to address them. First, you may want to talk with the school personnel directly involved with the problem and discuss your concerns. If the problem is not resolved, you may request IEP facilitation or mediation, or you may file a formal complaint and/or request a due process hearing. Each of these options has a specific purpose for helping you with your concerns, so it is important that you choose the best option for you. This brochure describes the **due process complaint** procedures.

### What is a due process complaint and who may file one?

A due process complaint is a written document that initiates an impartial due process hearing regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to a child with a disability. Unlike a state complaint, only a parent or a school district may file a due process complaint.

### What are the steps I can take before filing a complaint?

1. Talk with the school building personnel involved and let them know that you are

- seriously concerned. Reasonable efforts should be made to resolve the problem at the school district or public agency level.
2. Make an appointment to see your local director of special education and/or your superintendent of schools.
  3. Contact a parent support group or an advocacy organization to discuss your concerns.
  4. Call the ND Department of Public Instruction (NDDPI) for assistance.

### What must be included in a due process complaint?

- The name and address of the residence of the child who is the subject of the complaint.
- The name of the school the child is attending.
- In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending.
- A description of the nature of the problem.
- A proposed resolution of the problem.
- It must allege a violation that occurred not more than two years prior to the date that the complaint is received.
- It must be signed by the person making the complaint.

### Where should I send the due process complaint?

Send the due process complaint to the school district against whom the complaint is filed and a copy to NDDPI. The timelines associated with the due process hearing and the resolution meeting are tied to the date the school district receives the complaint.

Director of Special Education  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

### What happens after the due process complaint is received?

1. Upon receiving the due process complaint, the ND Department of Public Instruction will notify the Office of Administrative Hearings (OAH). The OAH will assign an Administrative Law Judge (ALJ) to the case. The ALJ is also known as an impartial hearing officer (IHO).
2. If the school is the receiving party and it has not already sent you a prior written notice regarding the subject matter contained in your due process complaint, the school must, within 10 days of receiving the due process complaint, send you a response that meets specific requirements. These required components are outlined in the *Due Process Procedures* manual, which is sent out to the parties when a due process hearing request is received.
3. If you are the receiving party of a due process complaint, you (or your attorney) must, within 10 days of receiving the due process complaint, send to the school a response that specifically addresses the issues raised in the due process complaint.

### The Resolution Meeting

Before a due process hearing can occur, the parents and the school district must participate in a resolution meeting. The purpose of this meeting is for parents to be able to discuss the issues and the facts that are the basis of the due process complaint and to provide the school the opportunity to resolve the issues. A neutral facilitator is available to assist you and the school in the resolution meeting and is provided by the ND Department of Public Instruction at no cost to you or the school.

---

---

The school must convene the resolution meeting within 15 days from the date the due process hearing complaint was received; If the school has not resolved the complaint to the satisfaction of the parent within 30 days of receiving the due process complaint, the due process hearing may occur, except if:

- The parties have jointly agreed to waive the resolution meeting or to use mediation; or,
- The parent who files a due process complaint fails to participate in the resolution meeting resulting in a delay of the timeline until the meeting is held.

The 45-day timeline associated with the due process hearing begins at the expiration of the 30-day resolution period or one day after one of the following events:

- If you and the school district have both agreed to waive the resolution process;
- 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 was possible;
- 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 withdraws from the mediation process.

The school must document reasonable efforts to meet with you in a resolution meeting. If you do not participate in the resolution meeting, the school may request that the hearing officer dismiss your due process complaint request at the conclusion of the 30-day period. If the school fails to hold the resolution meeting within 15 days of receiving your due process complaint or fails to participate in the resolution meeting, you may seek the intervention of the hearing officer to begin the due process hearing timeline.

#### **What are my rights in a due process hearing?**

You and the school have the right to:

- Bring an attorney who can give you advice;
- Bring one or more individuals who have knowledge or training about children with disabilities;
- Present evidence and confront, cross-examine, and require relevant witnesses to be present;
- A written, or at your option, an electronic verbatim record of the hearing; and,
- A written, or at your option, an electronic record of the findings of the facts and decisions.

There are options available other than a due process hearing for dealing with special education problems and misunderstandings. **State Complaint Investigation** uses an investigator trained in special education law to collect facts and issue a report of findings relative to the issues outlined in the complaint. **Mediation** uses an independent mediator to guide the participants toward a mutually satisfactory solution in the best interests of the child. It can be a quick and positive method for resolving disputes. Mediation may occur prior to or concurrent with a request for a due process hearing. **IEP Facilitation** is an early assistance option available at any time the IEP team reaches an impasse that delays the development of a student's IEP. This process uses a neutral facilitator to assist the team in the development of an appropriate IEP. Both processes are offered at no cost to you or the school district.

The ND Department of Public Instruction is dedicated to building positive, effective parent and professional partnerships based upon knowledge, trust and open communication. This brochure describes the special education **due process hearing** and **resolution meeting**. If you wish to discuss other dispute resolution options available to you in resolving your problems, you may contact the Department at the number listed on the front of this brochure.

## *Dispute Resolution in Special Education*

### **Due Process Hearing and Resolution Meeting**



ND Department of Public Instruction

Dr. Wayne G. Sanstead

State Superintendent

600 E Boulevard Ave, Dept. 201

Bismarck, ND 58505-0440

701-328-2277

Toll Free 1-866-741-3519