

Due Process

Parent Handbook

**What is a Due Process
Complaint?**

How Do You File?

January 2006

What is a Due Process Complaint?

A due process complaint is filed with your local educational agency (LEA) and a copy sent to the Oklahoma State Department of Education (OSDE), Special Education Services (SES).

Upon receipt at OSDE-SES, a letter will be mailed to both parties giving information about which hearing officer has been assigned to hear the case, when the final decision must be reached, and other related information. Informational materials will also be sent with the letter to inform you of your rights and the due process procedures.

The assigned hearing officer will contact both parties, working to coordinate a resolution, set up a pre-hearing conference (telephone conference), or set up a hearing.

Question and requests should be directed to the hearing officer. The due process hearing complaint must remain confidential.

What Issues are covered?

A parent or a public agency may file a due process complaint on:

- any of the issues described in 300.503(a)(1)(2), and
- related to the identification, evaluation or educational placement of a child with a disability, or
- The provision of FAPE to the child.

300.507

What Issues are not covered?

- Issues related to school personnel
- Harassment, discrimination and other Civil rights violations

What Are the Timelines to File a Due Process Complaint?

The due process complaint must allege a violation that occurred not more than two years before the date the parent knew or should have known about the alleged action that forms the basis of the due process complaint. For exceptions, see 300.511(f)

300.511

How do I begin the Paperwork to Request a Due Process Complaint?

You may call the Oklahoma State Department of Education, Special Education Services at (405) 521-4871 to request a form "*Parent Request for Special Education Due Process Hearing.*"

You can also find it on the OSDE website at www.sde.state.ok.us.com. Select Special Education Services (enter) Documents and Forms (enter) Parent Request for Special Education Due Process Hearing (enter).

What Must be Included in Completing the Form?

- Name of the child
 - Address of where the child resides
 - Name of the school where child attends
 - A description of the problem of the child regarding
 - Proposed initiation
 - Refused initiation, or
 - Change
- Including facts relating to the problem
- A proposed resolution to the problem in your opinion

300.508(1)-(6)

See Attached Model Form

Where do I Mail the Form?

The party filing a due process complaint must send the original of the due process complaint to the LEA and forward a copy to the Oklahoma State Department of Education, Special Education Services.

300.508(2)

Can a Due Process Complaint be Amended?

The person filing the complaint may amend the due process complaint only if

- The other party consents in writing to the amendments and is given the opportunity to resolve the due process complaint through holding a meeting, or
- The hearing officer grants permission, but it must be granted no later than five (5) days before the due process hearing begins.
- If an amended complaint is filed, the timelines for the resolution meeting and time period for a decision will begin again with the filing of the amended due process complaint.

300.508 (3)(4)

Explain How Sufficiency of Complaint Works

1. Once the receiving party (LEA) receives the due process complaint, it is deemed sufficient to conduct a due process hearing unless the receiving party does not believe it meets the requirements to file. In which case, they must notify the hearing officer and the other party in writing within 15 days of receipt of the due process complaint.
2. Within 5 days of receipt of that notice, the hearing officer must decide whether the complaint meets the requirements and must immediately notify both parties in writing of that determination

300.508(d)

3. If not already provided, the school must, within 10 days of receipt of the due process complaint, send to the parent a response that specifically addresses the issued raised in the due process complaint.

300.518(i)

What is the Resolution Process and Am I required to Participate?

This is where the parent and the school district meet to try to resolve the dispute.

Within 15 days of receiving notice, and prior to the hearing, the LEA must have a meeting with the parents and relevant members of the IEP Team who have specific knowledge of the facts identified in the complaint.

- Includes a representative of the school who has decision-making authority on behalf of the school
- May not include an attorney of the school district unless the parent is accompanied by an attorney.
- The parent and the school determine relevant members of the IEP Team to attend.

300.510

Is the Resolution Process Mandatory?

The resolution meeting need not be held if:

- The parents and the school agree in writing to waive the meeting; or
- The parents and the school agree to use the mediation process.

If the school has not resolved the complaint to the satisfaction of the parents within 10 days of receipt of complaint, the due process hearing ~~must~~ occur.

may [510(b)(1)] 300.510

No

How Long Does it Take Before a Decision is Made at this point?

The timeline for issuing a final decision begins at the expiration of this 30-day period,

Except –

- -where the parties have jointly agreed to waive the resolution process, or
- use mediation

Note: The failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held.

What is a Settlement Agreement and How Does it Work?

If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is—

- Signed by both the parent and a representative of the agency who has authority; and
- Enforceable in any State court of competent jurisdiction or in a district court of the United States.

(If there is an agreement, a party may void the agreement within 3 business days of the agreement's execution.

300.510

Will the Hearing Officer be Impartial?

Refer to 300.511 (c) Impartial hearing officer.

After I file, may I request that additional issues be added?

The party request the due process hearing may not raise issues at the hearing that were not raised in the complaint unless the other party agrees.

300.511

What are my rights at the hearing?

You have the right to –

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect the toe problems of children with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- Obtain a written record of the hearing;
- Obtain written findings of fact and decisions;
- Right to have the child who is the subject of the hearing present;
- Open the hearing to the public; and
- Have the record of the hearing and the findings of fact and decisions provided at no cost to the parents.

300.512

What am I required to do for the hearing?

Within 5 business days prior to a hearing, each party must give all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A hearing officer may bar any party that fails to comply from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

What if I disagree with the hearing officer's decision?

You may appeal the decision of the hearing by completing a form _____. This form is in the back of this booklet. Complete the form, sign it, and mail it to the OSDE-SES at 2500 N. Lincoln Blvd., Oklahoma City, OK 73105.

What happens when I file an Appeal?

An impartial Appeal Officer will be assigned to examine the hearing records and ensure that procedures at the hearing were consistent with the requirements of due process.

- The Appeal Officer will seek additional evidence if necessary.
- The parties will be given an opportunity for oral or written argument, or both, at the discretion of the Appeal Officer.
- Appeal Officer will make an independent decision, and
- Give a copy of the written findings of fact and decision to the parties.
- The decision made by the Appeal Officer is final unless a party brings a civil action.

See Attached Model Form

300.514

What do I need to know about a civil action?

The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action. A civil action can only be filed if the party does not have the right to an appeal under 300.514(b).

300.514

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