

WEST VIRGINIA DEPARTMENT OF EDUCATION

INFORMATION FOR INDIVIDUALS FILING A DUE PROCESS COMPLAINT

Attached please find the following information related to due process complaints and mediation:

- Introduction to Due Process Hearings
- Due Process Complaint Request Form
- Free and Low Cost Legal Services
- Mediation Basics

Also enclosed is a copy of Procedural Safeguards Available to Parents and Students, which includes mediation and hearing rights.

Please call the West Virginia Department of Education, Office of Special Programs (OSP) at 1-(800) 642-8541 or (304) 558-2696 for further information.

Under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 04), when a due process complaint is filed by a parent, specific information is required: 1) student's name, 2) address of student's residence, 3) parent's name and address (if different from student's), 4) the name of the school and county, 5) a description of the nature of the problem relating to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education, including facts related to the problem and 6) a proposed resolution to the problem to the extent known and available to the parents. A model form to assist parents in filing a due process complaint is attached. Written due process complaints must be signed by a parent or by an attorney who submits authorization signed by the parent.

When the West Virginia Department of Education, Office of Special Programs (OSP) receives a request of a due process complaint, a hearing officer will be assigned. Both parties will receive a copy of the assignment memorandum of the hearing officer assigned. The local educational agency (LEA) must hold a resolution meeting within 15 days of receiving the due process complaint. This meeting, called a "resolution session," is intended to try and resolve the problem without going to a due process hearing. The meeting must be held unless the parents and the LEA agree in writing to waive such a meeting or agree to mediation. If the district has not resolved the dispute to the parent's satisfaction within 30 calendar days of the receipt of the due process complaint, the due process hearing may occur and all timelines for the due process hearing will commence. If resolution is reached, a signed legally binding agreement will be developed and the agreement will be sent to the OSP and hearing officer assigned to the pending due process hearing. A party intending to void an agreement must send the other party and the hearing officer a written, signed, dated statement to this effect. This statement must be received by the other party within three business days following the date of the agreement. Any other decisions in reference to the due process hearing shall be made by the assigned due process hearing officer.

The IDEA now requires mediation be *offered* as an option for resolving parent concerns, at a minimum when a due process complaint is filed. Parent and LEA may request mediation, at any time prior to filing a due process complaint notice. If you request mediation after filing a due process complaint, the mediation will not interfere with the timelines for the hearing. Please contact the OSP if mediation is desired.

The OSP is required by federal and state regulations to provide information regarding free and low cost legal services within the state to parents involved in due process complaints. A list of agencies that may provide assistance is attached. The OSP does not provide recommendations regarding legal services and does not guarantee the availability of assistance. Please refer questions to the agencies listed. Parents are *not required* to have attorneys in a hearing, Policy 2419: *Regulations for the Education of Exceptional Students* gives parents the *right to be represented* by an attorney. Usually the school district is represented by an attorney.

Policy 2419 outlines the due process complaint procedures and the rights of parties in a due process hearing. Please note that under the IDEA 04 documents to be used in the hearing must be disclosed to the other party 5 business days prior to the hearing. If a full copy of Policy 2419 is needed or the procedural safeguards available to parents and exceptional students, please contact the OSP at 1-800-642-8541 (V/TDD) or 1-(304)-558-2696.

The due process hearing officer's written decision will be issued within 45 days after the due process hearing commences or unless an extension is granted at the request of a party. The hearing officer's decision is final, unless appealed to civil court. If the decision provides orders to be implemented by the school district, the OSP will follow-up to ensure the decision is implemented. Within 30 days following the issuance of the decision, or based on timelines stated in the decision, the OSP will send a letter to the special education director requesting verification documentation of implementation. Parents will be given the opportunity to submit information if they believe the decision is not being implemented appropriately. The OSP will review the information and close the case or order further corrective activities. If a case is appealed to civil court, follow-up will be put on hold until the case is resolved.

The IDEA 04 states that courts may award reasonable attorneys' fees to parents of students with disabilities when the parents prevail in a due process hearing initiated under IDEA 04 and Policy 2419. The fees may be agreed to by the parties or may be awarded by a court. The due process hearing officer does not have the authority to award attorney fees.

The OSP hopes this information is useful to parents and school districts as they enter the special education due process hearing process.

Due Process Complaint Request

A due process complaint under the Individuals with Disabilities Education Improvement Act (IDEA 2004) is requested for the following student. Due process complaints may be filed in any matter relating to the identification, evaluation, educational placement of a student, and/or the provision of free appropriate public education (FAPE).

Student:		Parent:	
Student's Address (<i>residence</i>):		Parent Address: (<i>if different</i>)	
DOB:	Age:	Phone:	
School:		Parent Counsel: (<i>if any</i>)	
County:		Address:	
		Phone:	
<p>In the case of a homeless student (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C.11434a(2)). Contact Information:</p>			
<p>The alleged violation(s) occurred not more than two (2) years before the date either party knew or should have known about the alleged action that forms the basis for this due process complaint. This due process complaint is in respect to the matter(s) relating to: (<i>check one or more as appropriate</i>)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Identification </div> <div style="width: 45%;"> <input type="checkbox"/> Educational placement of the student; and/or </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="width: 45%;"> <input type="checkbox"/> Evaluation </div> <div style="width: 45%;"> <input type="checkbox"/> The provision of a free appropriate public education to such student. </div> </div> <p>The due process hearing officer may waive this timeline in the case of misrepresentation by the district or the district's withholding of information.</p>			
Signature/Date: (Party Requesting the Hearing)			
<p>Briefly describe the issue(s) for which the complaint is being filed, including any related facts. (Attach additional information, if necessary).</p> 			
<p>If known, please state a proposed resolution(s) to the issue(s).</p> 			
<p>All due process complaints must be signed by the party requesting the hearing. The complaint must contain an original signature and must be forwarded to the district's special education director at the same time it is mailed to the address below. Facsimiles or e-mails will not be accepted.</p>			

MAIL TO: West Virginia Department of Education
Office of Special Programs
Ghaski Browning, Coordinator, Due Process Hearings
1900 Kanawha Boulevard, East
Building 6, Room 304
Charleston, West Virginia 25305
Telephone: (304) 558-2696 or 1-800-642-8541 (V/TDD)

WEST VIRGINIA DEPARTMENT OF EDUCATION
FREE AND LOW COST LEGAL SERVICES

PUBLIC LEGAL SERVICES PROGRAMS

Legal Aid of West Virginia
922 Quarrier Street
Charleston, WV 25301
(304) 342-6814
(304) 344-9687

Mountain State Justice
Dan Hedges
922 Quarrier Street
Suite 525
Charleston, WV 25301
(304) 344-5564

LAWYER INFORMATION LINE

Toll Free Number 1-800-642-3617 available on Tuesday's from 6:00 p.m. to 8:00 p.m.

INTERNET LINK

www.wvbar.org (Option: Lawyer Referral)

FREE OR LOW COST LEGAL ASSISTANCE FOR DEVELOPMENTALLY DISABLED

West Virginia Advocates (WVA)
Litton Building, 4th Floor
1207 Quarrier Street
Charleston, WV 25301-1842
(304) 346-0847 or 1-800-950-5250

Serves developmentally disabled and
mentally ill.

ATTORNEYS FEES

Federal legislation allows for the award of attorneys' fees to parents to cover attorneys' fees and related costs of special education due process hearings under the Individuals with Disabilities Education Act when the parent is the prevailing party, subject to certain constraints. Such attorneys' fees may be agreed to by the parties or awarded by a court. Hearing officers cannot award attorneys' fees.

West Virginia Department of Education MEDIATION BASICS

Mediation is an informal process for resolving disputes regarding the identification, evaluation, placement or free appropriate public education of an exceptional student. As an informal process for assisting the parties in discussing their concerns, mediation can result in creative solutions not possible in a state complaint or due process hearing. The goal of mediation is to resolve concerns and to open lines of communication that will benefit the student, parent and school personnel throughout the school life of the student. Mediation can be a winning situation for all involved.

- Mediation is voluntary on the part of both parties: both the school district and parents must agree to participate. Either party may request mediation.
- Mediation may be requested without first filing for a due process hearing; it may be requested after filing for a hearing. It may not be used to deny or delay a hearing or other rights.
- Parents don't give up any of their rights when they request mediation. They may choose to give up some things as a result of the agreement.
- The impartial mediator is a person selected by the Office of Special Programs (OSP) and trained in mediation and special education law and regulations.
- The mediator assists parties in discussing their issues and solutions; the mediator does not make a decision or tell people what to do.
- The OSP pays for the cost of the mediator.
- Mediation may be filed with the school district or with the OSP.
- The OSP will assign a mediator on a rotational basis. The mediator then takes responsibility for scheduling.
- The mediator will schedule the session in a timely manner and at a convenient location of the parties.
- Parties may bring others to the mediation to assist them. Parties are encouraged to keep the number of people involved to a minimum, but those needed to make a decision should be present or available by phone.
- Discussions during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. All those present at mediation will be asked to sign a confidentiality agreement.
- If successful, the mediation session will result in a written agreement signed by the parties. The written agreement is copied for the parties and filed with OSP.
- Parties who sign mediation agreements are expected to implement them voluntarily. If this does not occur, the parties have the right to a due process hearing or a state complaint regarding violations of Policy 2419 or IDEA. Parties also have a right to civil action. Contact the OSP at (800) 642-8541 (V/TDD) or (304) 558-2696.