

**Resolving Special Education Disputes  
in Vermont:  
A Guide for Parents**

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## 1. Introduction

Ideally, IEP teams and 504 teams make decisions by consensus, and everyone agrees about what special education placement and services are appropriate for your child. Sometimes, though, you and the school staff are not able to come to agreement. Even when everyone on your child's team is working hard and believes they are doing their best, disagreements happen. It may seem like everyone who works for the school district is in agreement against you. This does not mean that the school district is right and you are wrong. It does mean that you may need to engage in one of the three dispute resolution methods that are available to parents to resolve disagreements about your child's special education needs.

This manual will help you determine which, if any, of these three methods will be best for resolving a dispute with the school district. It will also give you information and resources to help you to advocate for your child. This manual is designed to answer some of the most frequently asked questions about special education dispute resolution in Vermont. We hope that it will be helpful to parents and families who are navigating the dispute resolution process without the assistance of an attorney. At the end of this manual, we list some organizations that might be able to provide you with additional assistance in resolving disputes concerning your child's education.

**Caution: This booklet is not intended to be legal advice. If you have a specific legal problem, you should seek legal advice from an advocate or attorney with expertise in special education law.**

The Individuals with Disabilities Education Act, referred to as the IDEA, is the federal law that guarantees that all children with disabilities, through age twenty-one, receive an appropriate education and related services at no cost to the family. This does not mean that you will get everything you want for your child, but it does require schools to provide a basic level of services. Federal law requires schools to provide ways for parents and schools to resolve disputes when they disagree. These procedures are set out in federal law (20 U.S.C. §§ 1400 and following) and regulations (34 C.F.R. Part 300 and 301). Vermont has incorporated the requirements of the federal law in state law (16 V.S.A. §§2941-2975) and regulations (Vermont Department of Education Regulations 2360 and following). This booklet describes the procedures used in Vermont. Practices in other states may vary.

## **A Few Important Notes**

The special education dispute resolution procedures are not generally applicable to children served by Children’s Integrated Services (formerly the Family, Infant and Toddler (FIT) program). Disputes about this program should be directed initially to the Children’s Integrated Services Division of the Department for Children and Families, and appeals may be filed with the Human Services Board (See Appendix A).

The federal Department of Education and the Vermont Department of Education frequently revise the special education regulations. You can check the Vermont Department of Education website for the current regulations.

For simplicity, in this manual the term “parent” is used to mean parents, guardians, and others who may have authority to act in the role of parents in the special education process. We refer to “schools” or “school districts.” You may also see the term “local educational agency” (LEA) or “supervisory union” to refer to the school district.

## **What Is Dispute Resolution?**

Dispute resolution is a means used to resolve disputes between parties. There are three procedures designed to help parents and school districts resolve disagreements:

- Mediation
- Administrative Complaint
- Due Process

The type of dispute resolution you choose will depend on your individual situation. You may use more than one kind of dispute resolution. This booklet will explain each of the three types of procedures, but will focus on Due Process because it is the most complex.

## **Can a family of a student on a 504 plan use the same dispute resolution procedures?**

Mostly. Mediation and Due Process are available to students on 504 plans. They are also available to families of children who have been denied eligibility for a 504 plan. In addition, students with disabilities have the right to file a 504 complaint or a discrimination complaint on the basis of disability with the U.S. Department of Education, Office of Civil Rights (OCR) at:

Office of Civil Rights  
US Department of Education

8<sup>th</sup> Floor  
5 Post Office Square  
Boston, MA 02109-3921  
(617) 289-0111

Disability-based discrimination complaints against schools may also be referred to the Vermont Human Rights Commission (See Appendix A for contact information).

### **What kind of disagreements can be resolved through dispute resolution?**

Almost any disagreement between a school district and parents is appropriately addressed by one or more of the dispute resolution procedures. Examples of problems that may be brought to dispute resolution include:

- You disagree with the school's decision that your child does not qualify for special education or a 504 plan;
- You are dissatisfied with the results of an evaluation;
- You disagree with your child's educational placement;
- You disagree with disability-based disciplinary actions taken by the school district against your child;
- You disagree with the level of service your child is receiving;
- You do not think your child is getting appropriate accommodations for a disability;
- You do not believe that your child is receiving a free and appropriate education (FAPE).

### **Solving disputes informally**

Disagreements with the school are not easy. Emotions may run high on both sides. The issues can be complicated. When possible, before moving forward with formal dispute resolution, your first step to resolving a dispute with the school should be to talk with the other members of the IEP or 504 team. If the school district's special education coordinator is not already a member of the IEP or 504 team, he or she may be able to assist the team in resolving a dispute. At a minimum, if you disagree with any action taken by the school or the team, you first need to let the school staff know how you feel, and give the school a chance to fix the problem. But if informal resolution is not successful, or takes too long, you are always free to start a formal dispute resolution process.

### **Report your complaints!**

Families often get very frustrated with school staff during special education disputes. You may find yourself feeling that there is no point making a complaint to the school about the problems you see, because you have lost faith that the school will do anything about it. It is very important, though, to let the school know about all issues or concerns, preferably in writing. Legally, the school is only responsible for addressing problems it knows about. When parents initiate dispute resolution, schools often respond by saying “We didn’t know there was a problem.” No matter how frustrated you may feel, report all problems in writing, and keep copies of all letters and e-mails that you send to the school. Then, if the school says it didn’t know about the problem, you can produce a copy of your correspondence to show that you reported it.

### **Go to all meetings!**

Similarly, you may feel that there is no point in going to IEP meetings, especially when it seems that the school has already made a decision without you. You may also feel like avoiding IEP meetings when they become contentious. It is very important, though, to attend all meetings. If the school district invites you to a meeting and you choose not to attend, the school has a legal right to make decisions without your input. If the meeting is scheduled at a time when you can’t come, you have the right to ask for the meeting to be rescheduled to a time when you can come. If this is the case, let the school know right away that you need to reschedule.

Even if it seems that no one at the meeting is listening to you, and you disagree with everyone else on the team, it is very important that you go to the meeting and let everyone know you disagree. You may be asked to sign a document about the decisions made at the meeting, and you can sign this form and check off that you disagree with the decision. It is important to have a record of your disagreement, which may be an issue later in a dispute resolution process.

### **Keep good records!**

Even if you do use a formal dispute resolution process, it is important to document everything that happens. This means you should make all requests in writing, ask the school to respond in writing to your requests by a specific date, keep a calendar with dates of meetings and other important events, take notes at meetings, and save everything the school sends you, including e-mail messages. You do not have to do any of these things before seeking dispute resolution, but it will be helpful if and when you do. You may also want to contact the Vermont Family Network (VFN), the Vermont Federation of Families for Children’s Mental Health (VFFCMH),

or the Disability Law Project (DLP) of Vermont Legal Aid, Inc., for help or advice in choosing among the dispute resolution options. Contact information for VFN, VFFCMH, DLP, and other resources is in Appendix A.

### **Advocacy Tips**

- Report all of your concerns.
- Put requests and complaints in writing.
- Ask for responses in writing from the school district by a specific date.
- Attend all meetings, and keep a record of what happens.
- Keep a calendar to record meeting dates and other important events.
- Save everything the school sends you, including e-mail messages.
- Do not sign or agree to anything you are unsure about!
- When you cannot resolve a dispute informally, use dispute resolution.

## **2. Administrative Complaints**

### **What is an Administrative Complaint?**

An administrative complaint is a formal report of a problem with the school district that you send to the Commissioner of the Vermont Department of Education (DOE). You can file a complaint if you believe that a school district is not following the requirements of special education law. The DOE may investigate the complaint if it determines an investigation is necessary. If the DOE decides not to investigate the complaint, or any part of the complaint, it must tell you in writing. The DOE will make a final decision about the issues raised in the complaint, and must send its decision to you in writing. The DOE may also offer mediation to help you and the school resolve the dispute.

### **What can I use the administrative complaint process for?**

If the school district is not following the special education law or regulations, filing an administrative complaint may be a good option. An administrative complaint may also be filed to enforce a due process decision. You may also file an administrative complaint against the DOE itself, if you feel it is not complying with special education law. If so, the DOE will need to identify an independent investigator to review the complaint.

An administrative complaint may be your best option if the school seems to be ignoring the proper procedures of the special education process, or if there is a problem that affects many children the same way. On the other hand, administrative complaints may not be the best option if you want to resolve a complaint about your child's eligibility for special education or 504 services, or about the specific ways that services are being delivered to your child on a day-to-day basis. The DOE uses administrative complaints to make sure schools are following the rules, but they will not usually use these complaints to second-guess a school's decisions about eligibility, placement or services.

### **Who can file an Administrative Complaint?**

Anyone who feels that a school district, or the state Department of Education, is not following special education law or regulations may file an administrative complaint. You do not need to be the student's parent, or have any other relationship to the school, as long as you believe that the law has been violated.



## How do I file an Administrative Complaint?

A complaint is filed by writing to the Commissioner of the Vermont Department of Education at:

Commissioner  
Vermont Department of Education  
120 State Street  
Montpelier, VT 05620-2501  
(802) 828-3135

You don't need a special form to file an administrative complaint. A complaint form is available online at:

[http://education.vermont.gov/new/pdfdoc/pgm\\_sped/policy/due\\_process/EDU-Administrative\\_Complaint\\_Form.pdf](http://education.vermont.gov/new/pdfdoc/pgm_sped/policy/due_process/EDU-Administrative_Complaint_Form.pdf)

Whether or not you use the form, the complaint must include:

- A statement that a violation of the IDEA, Section 504 or Vermont's special education regulations has occurred;
- A description of the facts on which the statement is based;
- Your signature; and
- Your name, address and telephone number.

If your complaint is regarding a specific child it must include:

- The child's name and address;
- The name of the child's school;
- If the child is homeless or in state's custody, contact information for the child;
- A description of the problem including relevant facts; and
- Your suggestion for a resolution of the problem.

**IMPORTANT:** Besides sending the complaint to the Department of Education, you must also send a copy to the school district.

If your complaint is regarding an infant or toddler, the complaint must be filed with the Director of the Children's Integrated Services Program (formerly Family, Infant and Toddler Program) at:

Children's Integrated Services Program  
Vermont Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495

### **How much time do I have to file an administrative complaint?**

An administrative complaint must be filed within one year of when the problem or violation occurred.

### **What happens after the complaint is filed?**

When a complaint is received by the Department of Education, the office will first determine whether your complaint actually raises an issue that would be a violation of special education regulations. If the DOE decides not to investigate your complaint, it must notify you in writing, and may refer you to other resources. If the DOE does decide to investigate, an investigator will be assigned to look into the complaint. The investigator is an employee of the DOE. The investigator must review all information he or she believes is relevant to the complaint. The investigator may look at a student's educational records or other records, meet with witnesses, visit the school, and/or hold a hearing. The school district has a chance to respond to the complaint.

**IMPORTANT:** If you want to talk with the investigator, or make sure the investigator looks at certain documents or other information, you need to contact the investigator and arrange for that to happen. The investigator has the discretion to decide who to talk to, and many complaints are resolved just by a review of the school district's file. If you want more input into the process, you need to request it. The investigator should send you a letter detailing how you can request an interview and submit documents as part of the investigation.

### **When will a decision be made?**

The DOE must make a written decision regarding each allegation in the complaint within sixty days after receipt of the complaint. The time limit may only be extended for exceptional circumstances.

### **What happens when I get the decision?**

If the DOE finds that the school district violated a special education law or regulation, it may order the school district to correct the problem. It may also order the school district to reimburse any expenses you incurred resulting from the problem.

If the DOE finds that the school district did not violate any laws or regulations, you may not appeal that decision—the Commissioner’s decision is final. If you disagree with the outcome, you may file a due process complaint against the school. In that case, the hearing officer will do a completely new review of the problem.

#### **Advocacy Tips**

- An administrative complaint may be filed by anyone, not just a parent or student.
- An administrative complaint must be filed within one year of the problem.
- If you want to talk to the investigator or submit more information, be sure to contact the investigator to make arrangements early in the process.
- Administrative complaints may be more appropriate for procedural violations than for failure to provide appropriate services.

### **3. Mediation**

#### **What is mediation?**

Mediation is an informal dispute resolution process. It brings the school district and parents together with a specially trained third person, a mediator. Mediation typically happens at a meeting, where both parties sit down together with the mediator, to talk through the dispute and try to come to a resolution. The mediator can meet with everyone together, or each side separately, or both. There are few rules about how mediation works—the point is to have a trained person there to help both sides reach a mutually satisfactory agreement.

The mediator is neutral. This means the mediator does not work for either you or the school district. The mediator will not make a decision about which side is right or wrong, but will try to work with both sides to get to a good resolution. The mediator is required to be knowledgeable about the IDEA, Section 504, and Vermont’s education regulations.

#### **When should I consider using mediation?**

Mediation can be used to resolve just about any disagreement with the school district concerning any matter. Either you or the school district can request mediation when there is a disagreement. You do not have to file a formal complaint before asking for mediation.

#### **Do I have to mediate?**

No. Mediation is voluntary. Both you and the school district must agree to participate in mediation. Both sides will be asked to sign a form agreeing to mediate. Mediation can be stopped at any time by either side, or by the mediator. The school district cannot use mediation to deny or delay your right to file for a due process hearing.

#### **What will mediation cost?**

Mediation is free. The Department of Education provides mediation at no cost to you or the school district.

### **Can I choose my own mediator?**

No. The DOE keeps a list of qualified mediators and assigns mediators on a rotational basis. A mediator will be assigned within five days of a joint request to mediate or confirmation that both sides agree to mediate. The mediation will be scheduled as soon as possible.

### **Where will the mediation meeting take place?**

The mediation session will usually take place at a mutually agreed upon neutral location such as a bank or library, unless both sides agree to meet at a different location. Sometimes, if the mediator is having a hard time finding a neutral location, the school district may offer to have the mediation at the school, or the district office, or at the office of the school's attorney. If the school district offers to have the mediation at one of these locations, and you are not comfortable meeting there, you have the right to object and ask for a different meeting place.

### **How long will the mediation take?**

Be prepared to set aside at least half a day for the mediation meeting. If the issues are complex, the mediator may ask to schedule the meeting for a full day. Occasionally, the parties may not get to the end of their discussions, even after a full day of talking, and may decide to continue to another day. If the meeting is scheduled for a full day, you may want to ask that the mediator schedule time for a break.

### **How do I ask for mediation?**

The DOE has a special form to request mediation, which is available on line at: [http://education.vermont.gov/new/pdfdoc/pgm\\_sped/policy/du\\_e\\_process/EDU-Request\\_for\\_Mediation\\_Form.pdf](http://education.vermont.gov/new/pdfdoc/pgm_sped/policy/du_e_process/EDU-Request_for_Mediation_Form.pdf).

You are not required to use this form. You can simply send a letter asking for mediation. The letter should be sent to:

Vermont Department of Education  
Special Education Mediation Service  
120 State Street  
Montpelier, VT 05620-2501  
(802) 828-3135

If you are unable to put your request to mediate in writing due to a disability or other special circumstances, the request may be made by other means, such as by telephone.

### **Who may ask for mediation?**

A parent, guardian, or educational surrogate parent, and in some instances, the student may ask for mediation. A school district may also ask for mediation.

### **What happens at the mediation?**

Before the mediation meeting takes place, the mediator will contact you to set up the time and location of the meeting, and to let you know how much time it is likely to take. The mediator will also usually ask you to talk about your dispute with the school. The mediator may ask you some questions to get a better understanding of the situation. The mediator may also ask you to say what you would like to see the school district do in order to resolve the problem. The mediator will also have a similar conversation with the school district, to get its perspective.

At the mediation meeting, all of the participants will usually meet together at the beginning to talk about the mediation process and to get a sense of how the meeting will proceed. You will be asked to sign a formal agreement about the mediation process. Part of the agreement will be a confidentiality statement, meaning that you agree not to talk about what is said in the mediation with other people. The agreement also says you may not use any statements made during the mediation in a later legal proceeding. These agreements are intended to make sure that both sides feel free to talk openly and honestly during the mediation session.

Once the agreement is signed, each party will be given an opportunity to tell its side of the story. If you are the person bringing the complaint, you will probably be asked to go first. Then the school district will have a chance to tell its side of the story. The mediator may ask questions to clarify the issues and help the parties understand each other's perspective in the dispute. A more open discussion of the dispute may then follow.

Both sides must have someone present at the mediation with the authority to make a decision. For example, the school district may bring the principal, the superintendent of schools, or the special education coordinator for the district. You will probably be the decision-maker for your side, but you can also bring an advocate, support person, or other family members to the mediation. You may also bring an attorney. The school district cannot bring an attorney to the mediation unless you bring an attorney. But if you decide to bring an attorney, you can assume that the school will also bring its attorney.

After the initial discussion, the mediator may ask you to keep talking through the various issues. At some point during the discussion, the parties or the mediator may ask to separate, to talk among themselves or to confer with the mediator alone. The parties may get back together for more talk, or may stay apart, with the mediator going back and forth. At some point, the mediator will ask the parties to propose terms for a settlement agreement. Again, these terms may be discussed with everyone together, or with the mediator going back and forth to negotiate a settlement. You will likely be asked to consider what things are most important for you in a settlement, and what things you might be willing to give up in order to reach an agreement. Through this process, the mediator will try to bring both sides closer together, in the hope of reaching a mutually acceptable settlement.

### **Do we have to come to an agreement?**

No. There is no requirement that you reach a settlement agreement in mediation. You should only agree to a settlement if you think it will help to resolve the problem. That doesn't mean that you should agree only if all of your demands are met. All mediation involves give and take. The mediation process assumes that you are willing to find a middle ground. But even if you don't get everything you want, the settlement has to be something you can live with. If you are not satisfied with the proposed settlement, and you think you can get to a better resolution by other means, you do not have to agree. But you should weigh the importance of the things you are giving up against the likelihood of winning at a due process hearing, the time it will take to get a decision in a hearing, or the cost (financial or emotional) of going through the hearing process.

**IMPORTANT:** If at any time during the mediation you are uncomfortable about the process, or you do not think that the other side is acting in good faith, you are free to stop the session and leave. If you feel like you are being pressured to settle, and you are not comfortable with the outcome, you can ask to stop the mediation, or ask to reschedule for a later time. If you are not sure what to do, you can ask to speak privately with the mediator. All parts of the mediation process are voluntary.

### **What happens if we come to an agreement?**

If you resolve your dispute through mediation, you and the school district will put your agreement in writing. The mediator can help get the agreement in an appropriate form. The written agreement will describe the resolution and will be legally enforceable. The mediation agreement will include all of the terms that you agreed to. The school district may ask that the terms of the agreement be kept confidential, which means you will not be able to discuss the settlement with anyone else. This is not a required element of a settlement agreement, but it is

very commonly included. If you are not sure about a confidentiality agreement, be sure to ask what exactly it means, and how it limits what you can say, and make sure that the language of the confidentiality agreement reflects that understanding.

If you have already filed an administrative complaint or due process complaint, one of the settlement terms may be that you agree to withdraw the complaint. If that is the case, be sure to read the language of this term carefully. You may withdraw the complaint “with prejudice,” which means that you are dropping your claims, and will not be able to raise them again later on. Or you may withdraw the complaint “without prejudice,” which means that you may raise your claims again at a later time. You may also be asked to agree to a general waiver, which means giving up the right to file complaints about any other actions in the past, even if you have not raised them before. If you are unclear about what any of the settlement terms mean, especially withdrawal of claims, ask. If you still have any doubts, you can ask to review the agreement with an attorney or advocate before signing it. Do not agree to something if you don’t know what it means.

### **What if I decide to mediate after filing for due process?**

If you choose to mediate after asking for a due process hearing, the timeline for issuing a decision in the due process will be extended by up to thirty days, to allow the mediation to go forward. If the dispute has not been resolved to your satisfaction within thirty days of filing the complaint, the due process case will go forward, unless both parties agree to continue with mediation. You may wish to extend the deadline if the mediation appears to be making progress. Due process and its relevant timelines are more fully discussed in the following sections.

### **What if one of the parties does not follow the agreement?**

If the other party to the mediation is not following the agreement you can ask to have the agreement enforced. Under current state regulations, there are several ways to ask for enforcement. You may file a request for a due process hearing. You may also seek enforcement by filing an enforcement action directly with the Vermont Superior Court, civil division in your county, or with the United States District Court of Vermont. Even though the mediation agreement is confidential, it may be disclosed as necessary to obtain enforcement.



### **Advocacy Tips**

- Mediation is voluntary. You do not have to mediate, and you can stop the mediation process at any time.
- Mediation may be used to resolve any type of disagreement with the school district, whether or not you have filed a complaint.
- Mediators must be impartial.
- The school district cannot bring an attorney to the mediation unless you bring an attorney.
- Agreements must be in writing and are legally enforceable.
- What happens during a mediation is confidential, and the final agreement may also be confidential.
- Mediation can be a long and draining process, but if it is successful, it will resolve the dispute much more quickly than the other dispute resolution methods. Mediation will also give you more direct input into the final outcome than a decision by a hearing officer.

## **4. Due Process—Before a Hearing**

### **Overview of Due Process**

#### **What is due process?**

Due process is the most formal method of dispute resolution. It is an administrative hearing that is conducted like a trial. Each party has a chance to present witnesses and evidence and to question the witnesses of the other side. There is a hearing officer who acts like a judge during the hearing and writes a decision based on the evidence and the law. If you disagree with the hearing officer's decision, you may appeal it to either a federal court or a state court.

Unlike mediation, due process puts the decision about resolving the dispute into the hands of another person, the hearing officer. On the one hand, this can be helpful, since a neutral, experienced person will be looking at the situation. On the other hand, it takes the decision out of your hands, and there is always a risk that the decision will be in the school's favor. The hearing officer is required to make a decision based on the law, not on whether your situation is emotionally or morally superior, or even based on what the hearing officers thinks the law ought to be.

A due process hearing is also a lot of work, and it will take up a great deal of your time for several months. There are situations when filing for due process is clearly the right thing to do. But before you decide to choose this route, you should understand exactly what a due process hearing involves, and carefully weigh all the pros and cons before you make a decision.

Due process hearings can be used to resolve disputes around special education, and also for similar disputes related to Section 504.

#### **What kinds of problems can be resolved by filing for due process?**

A due process complaint may be filed whenever you disagree with:

- The identification of a student—whether the school thinks your child has a disability.
- The results of an evaluation—the outcome of tests done by the school district, and whether the school thinks your child qualifies for special education or Section 504 services.
- The student's educational placement—the kind of setting where the school wants to educate your child.

- The provision of an appropriate education—whether the school is providing sufficient and appropriate services.

## **Filing a Due Process Complaint**

### **Who can file a due process complaint?**

Not everyone can file a due process complaint. To file on behalf of a student, you must be the student's parent or legal guardian, or the student's educational surrogate parent. If you are a student, you can file on your own if you are 18 years old and your own guardian, or under 18 and emancipated.

### **What is the deadline for filing a due process complaint?**

Due process complaints must be filed no later than two years after the date the parent or student knew, or should have known, that something was wrong. This type of deadline for filing a legal complaint is called the "statute of limitations." If the problems have been going on for more than two years, the hearing officer may look at some of the earlier issues for background information, but generally can only make a decision about issues that have happened in the last two years.

### **Are there exceptions to the statute of limitations?**

Yes. There are three exceptions to the two-year statute of limitations. The first exception shortens the two year time limit to 90 days. The last two exceptions extend the deadline.

**IMPORTANT:** The deadline is shortened to **90 days** when you have put your child in a private school, and you want the school to pay for it:

- If you decide on your own to put your child in another school (sometimes called a "unilateral placement") and you want the school district to pay you back for the tuition at that school, you have to file a due process complaint no later than 90 days after your child started going to that school.
- You also have to tell the school that you are putting your child in a different school no later than 10 days *before* starting at the new school. If you don't notify the school in advance, it may reduce the amount of tuition reimbursement you can claim to the period when the school had notice of the move.

For more information on private school tuition and unilateral placement, please go to Section 6 of this booklet.

The filing deadline may be extended in some cases:

- The two year statute of limitations may be extended if the school district promised you that a problem was resolved, when in fact it was not, and you didn't know that the problem was still going on.
- The two year statute of limitations may be extended if the school district kept information from you that it was required by law to provide, and as a result you didn't know that there was a problem.

In both of these cases, the hearing officer will have to decide whether to allow the deadline to be extended.

### **How do I file for due process?**

You can file for due process by sending a written complaint to the Vermont Department of Education. You do not need to use a specific form to file the complaint, but the Department has a model form available on its website. The due process complaint form can be found at:

[http://education.vermont.gov/new/pdfdoc/pgm\\_sped/policy/due\\_process/EDU-Due\\_Process\\_Complaint\\_Form\\_for\\_Parents\\_Guardians\\_or\\_Students.pdf](http://education.vermont.gov/new/pdfdoc/pgm_sped/policy/due_process/EDU-Due_Process_Complaint_Form_for_Parents_Guardians_or_Students.pdf)

You do not have to use this model form. It may be a good idea, though, to use this form to make sure you include all of the necessary information. A copy of the due process complaint form is provided in Appendix B.

**IMPORTANT:** You must give a copy of the complaint to the school district on the same day you file it with the Department of Education. You should send it to the person at the school district with the authority to respond, usually either the special education director or the Superintendent. If you send it by mail, it is a good idea to use certified mail with a return receipt, so that you know when it was received. If the school district does not receive a copy at the same time you file with the Department of Education, the process may be delayed. If the complaint is not complete, it may be dismissed by the hearing officer. This means you may have to file it again.

### **What information must be included in my complaint?**

You must include the following information in the complaint. If this information is not included in the complaint, the complaint may be dismissed. This is especially important if you are close to the deadline for filing the complaint (90 days for requests for tuition reimbursement, 2 years for all other complaints). You must include:

- The student's name, date of birth, and address;
- If the student is homeless, how the student can be contacted;
- Your contact information (if different from the student's);
- The name of the school the student is attending;
- A description of the problem and important facts about what happened;
- A proposed resolution of the problem; and
- Your signature.

**IMPORTANT:** A mistake in filing the complaint may be costly. It may result in the case being “dismissed with prejudice,” which means it cannot be re-filed.

### **The school “challenged the sufficiency of the complaint.” What does that mean?**

Be prepared for the school district to “challenge the sufficiency of the complaint.” This means the school district thinks your complaint is not complete, or does not give them enough information to understand the problem. The school district may make this challenge if your complaint is missing some of the required information listed above. The school district may also use this process if it feels that your complaint does not claim something that is actually a violation of the law.

When you file the complaint, the school has fifteen days after receiving the complaint to file a sufficiency challenge. You have a right to respond to a sufficiency challenge in writing. In your response, you can say that you think the complaint is sufficient, and also ask the hearing officer to tell you in what way it may be insufficient, and to allow you to amend it to add more information.

If the school district files a sufficiency challenge, the hearing officer will decide if your complaint meets the requirements of the law. The decision will be made within 5 days of the sufficiency challenge. You will receive a copy of the hearing officer's decision in writing.

### **Can I amend the complaint?**

If the hearing officer agrees with the school district that the complaint is not sufficient, you may ask to amend your complaint. This means you add the missing information. The complaint may only be amended if the school district agrees, in writing, to the amendment. If the complaint is amended, then the timeline for due process (see below) starts again.

You will likely lose a sufficiency challenge if your complaint is very general, such as, “My child is not receiving an appropriate education.” You must say *why* you think your child is not receiving an appropriate education, with specific examples of what the problems are. You do not need to provide every last detail in the initial complaint, but you do have to provide enough detail for the school district and the hearing officer to know what the specific problem is, and what needs to be done to fix the problem.

If you are not allowed to amend the complaint, you may be able to revise the complaint and file it again, as long as you are not past the filing deadline. In that case, you should be sure that the revised complaint meets the sufficiency requirements.

There may be other times when you want to amend the complaint. For example, when you learn more facts, or become aware that other rules have been broken, you should add these to the complaint. If this happens, you may ask the hearing officer for permission to amend the complaint. If the hearing officer permits you to amend the complaint, you must do so on or before the “five day rule” date. The “five day rule” is an important date. It occurs five business days before the due process hearing. What happens under the “five day rule” is described more fully below.

#### **Advocacy Tips**

- Be sure to include all necessary information in the complaint.
- Remember to describe the facts and circumstances surrounding your complaint fully and accurately.
- Remember to suggest a way to resolve the problem, if possible.
- Be sure to send a copy to the school district.

## **Initial Procedures**

### **What happens once the complaint is filed?**

Once the complaint is filed, the clock starts ticking. By law, certain things must happen by certain times, all based on the filing date. Be aware, however, that the dates will vary from case to case. This is because some people will decide to mediate after filing for due process. Others may participate in a resolution session (see below for more information). These events will make the process take longer if you need to have a hearing, but they may also help you resolve the dispute more quickly, without the need for a hearing. See Appendix C for a timeline of important dates in a due process proceeding.

### **Receipt of the complaint**

On the day the Department of Education receives the complaint form, it will be stamped with that day's date. On that date, the clock begins to run on the hearing process. If you mail the form, the date is when the DOE receives the complaint, not the day you mailed it. If you fax or e-mail the form to the DOE during business hours, the date will be that day, but if it is received after business hours, then it will be the next day.

### **Initial telephone conference**

Once the DOE receives the complaint, it has three business days to notify the parties (you and the school district) of the name of the hearing officer assigned to the case, and the time and date of the initial telephone conference. You should be prepared to make yourself available to participate in this phone conference whenever it is scheduled. At this point, you can expect that all of your communication with the school district will be through its attorney.

The hearing officer will initiate a conference call between the parties within five business days of when the complaint is received. In this initial telephone conference, the hearing officer will try to get an initial sense of what your complaint is about, and how the due process will proceed. The hearing officer will go through all of the deadlines required by law, and will also ask you whether you want to have a resolution session or mediation. Based on these discussions, the hearing officer will set dates for the resolution session or mediation, due process hearing and related deadlines. Shortly after the conference, the hearing officer will issue a scheduling order.

### **What is a scheduling order?**

The scheduling order is an order issued by the hearing officer setting the dates by which certain events must occur. Once this schedule is set, it can only be changed with the agreement of both parties and the hearing officer. The scheduling order will set:

- The time and date of the resolution session, if it is being held;
- The time and date of the mediation session, if it is being held;
- The date by which the resolution and/or mediation sessions must be concluded;
- The time and date of the half-day (four hour) pre-hearing conference;
- The date on which each party will have to submit all documents to comply with the five day rule;
- The dates of the hearing (normally two full days);
- The date by which the hearing officer will issue a written decision.

### **Advocacy Tips**

- Make yourself available for the initial telephone conference.
- Have your calendar with you when you participate in the initial telephone conference.
- Be sure to mark your calendar with important dates once you get the scheduling order.
- Plan in advance to obtain all materials you may need to gather well in advance of the deadlines, especially the “five day rule” date.
- Don’t wait until the last minute to prepare.

### **Resolution Period**

#### **What is the resolution period?**

The resolution period is the 30 days following the receipt of the complaint. This is the period of time when the parties have a chance to resolve the dispute. Most due process cases are actually settled during the resolution period. Special education law requires a resolution period in most



cases, and it can be waived only if both parties agree in writing not to participate. If the parties try to resolve the problem but are not successful, you and the school district may agree to waive the rest of the resolution period. Both parties must agree in writing to shorten the resolution period.

### **What is a resolution session?**

The “resolution session” is different from the “resolution period.” A resolution session is a meeting that happens during the resolution period between you and the school to try to resolve the dispute. The resolution session is supposed to be held within 15 days of when the complaint is received. There are two purposes for the resolution session:

- To give you a chance to discuss your complaint with the school staff, to make sure they understand your concerns;
- To give the school district a chance to resolve the complaint.

The resolution session is an informal meeting to make sure the two sides talk things through before the hearing. Even if you feel you have told the school about your concerns many times, a resolution session can be productive. For example, while you may have told your concerns to your child’s case manager, it is possible that the special education director and the Superintendent do not know about the problem. Even if they do know about it, the school may not have given the problem serious thought, or discussed the issues with its attorney. So even when you have had no luck in previous meetings, the resolution session may help you get to a satisfactory result.

As with mediation, if you do not bring an attorney to the resolution session, the school also cannot have its attorney there. The resolution session is meant as one last chance to work out the problems on your own.

### **Mediation or resolution session?**

During the initial phone conference, the hearing officer will probably ask you whether you want to have a resolution session or mediation. You will usually choose one or the other, unless both sides agree to waive the resolution period. The two options are similar, but not identical. A resolution session is an informal meeting between you and the school to talk through the problems. In mediation, you are also discussing the problems, but you will have a trained, neutral mediator to help facilitate the discussion. Mediation during due process works the same

way as mediation in any other context. Please read Section 3 to get more information about how mediation works.

Unless both sides agree that there is no point in further discussion—and this will rarely happen—then the main question is whether you feel comfortable talking with the school district on your own, or whether you want the help of a mediator. If the issues are fairly simple, a resolution session without a mediator may be more effective and efficient (and easier to schedule). If the issues are complex, or if you have had trouble in the past talking effectively with the school district, it's probably a good idea to ask for a mediator to help the discussion.

### **Do we have to have a resolution session?**

When you file a due process complaint, a resolution session (with or without a mediator) is required unless both parties agree in writing not to have the session. A resolution session is not required when a school district files for due process against you (a rare situation, but it can happen). If the resolution session is held, it must be held within 15 days of when the DOE receives the complaint. If the school district does not hold a resolution session within 15 days, you can ask the hearing officer to intervene.

**IMPORTANT:** If the school district makes a good faith effort to arrange for a resolution session and then you fail to participate, the hearing officer may dismiss your due process complaint at the end of the resolution period. If the school district wants to have a resolution session, then you must participate in order to keep your claim active.

### **What happens if we resolve the issues that I raised in the complaint?**

If a resolution is reached, the parties must enter into a legally binding agreement. The agreement is signed by you and someone from the school district with the authority to approve the agreement, such as the Superintendent or the special education director for the district. Both sides have three business days to change their minds and revoke the agreement. At the end of three business days, the agreement becomes final and is enforceable.

A few other points about resolution sessions:

- The parties may agree in writing to keep the discussions that occur during the resolution session confidential.

- The parties may agree that any information obtained during the resolution session may not be used as evidence in any subsequent due process hearing or civil proceeding arising from the dispute.
- The school district and the parents will decide who should participate in the resolution session. For example, which members of the IEP team or 504 team should be there.
- The school district attorney may attend the resolution session only if the parent brings an attorney to the resolution session.

### **What happens if we don't come to an agreement at the resolution session?**

If there is still time in the 30-day resolution period, you and the school district can keep trying to work out a settlement agreement. You could ask to bring in a mediator, though it might be hard to schedule, depending on how far into the resolution period you are. Or, if both sides agree in writing that there is no point in further settlement discussions, then you can waive the rest of the resolution period and ask to move up the hearing date. Whatever happens, you should make sure that the hearing officer stays informed about where you and the school district are in your discussions.

#### **Advocacy Tips**

- You must participate in a resolution session unless both sides agree in writing not to participate
- If one side agrees to participate in a resolution session and the other side does not attend, the complaint may be dismissed
- Keep the hearing officer updated about the status of resolution discussions.

### **The Pre-Hearing Period**

#### **What happens at the end of the resolution period?**

If at the end of the resolution period the parties are not able to resolve the problem, the clock will start to tick on the due process hearing. The hearing must be scheduled no later than 35 days

after the end of the resolution period. The hearing officer must make a decision on the case within 45 days of the day the complaint was received by the Department of Education, plus any time that elapsed during the resolution period. This timeframe is often referred to as the 45 day rule. So if the parties spend the full 30 days of the resolution period trying to work out the problem, and fail, the hearing officer must make a decision no later than 75 days after you file. If both you and the school have a resolution session, but agree to end the resolution period after 15 days, the hearing officer's decision has to come no later than day 60. If both sides waive the resolution period right at the start, the decision must come within 45 days.

### **Are there any exceptions to the 45 day rule?**

Yes. There may be some instances when you need a hearing really quickly. In that case, you can request an expedited due process hearing. An expedited hearing is only available when the dispute is about how the school disciplined your child, *and* when:

- The student has been removed from the school to an interim alternative educational setting (IAES) for bringing weapons to school, drug possession, or inflicting serious bodily injury to another person while at school, on school grounds, or at a school-related function; or
- You disagree with a manifestation determination; or
- A change in placement is proposed due to the student's misconduct.

In other words, an expedited hearing can only happen when, based on a discipline issue, the school has suspended, expelled, or otherwise removed your child from the placement agreed on in the current IEP or 504 plan, and you disagree with that decision.

An expedited due process hearing must take place within 20 school days of your request. The hearing officer must decide the case within 10 school days of the hearing.

### **How do I get ready for the due process hearing?**

A due process hearing is a lot of work. The first thing you need to do is get as much information as you can. In the pre-hearing period, both sides must share information. The school district may not use information at a hearing unless it has shared that information with you. The same goes for any information that you may want to use. Most of the information should already be in the school file, but there may be other information that you or the school has, or that other people might have (outside witnesses, doctors, etc.).

### **How do I get the information I want?**

Put your request for records in writing as soon as possible and send it to the school district (or its attorney). For a sample Parental Request for School Records letter, see Appendix E. You have a right to go to the school and inspect your child's records, to see what is in there. Going through the records can give you an idea of what records you want to ask for.

A little later in the process, the school district will have to give you a copy of the "Core Exhibits"—the most important documents from the school's file. But it's a good idea to check to see what else is in the file that you might want to ask for.

At the same time, you should be gathering any other information that you have that will support your case. This may include any documents, evaluations, letters, e-mails, or anything else that will be helpful to your position. Try to avoid submitting documents that are duplicates of ones that the school is submitting.

As you get the information, organize it. There is no required way to organize the information, but you should keep it in a way that allows you to find what you are looking for easily. It's usually a good idea to organize papers chronologically. You might also want to keep papers of the same type together—evaluations, IEPs, meeting notes, etc. Use folders or ring binders so that the documents stay organized. It is also usually helpful to keep a list of your documents, and to write up a detailed chronology of all relevant events, to help you understand all the issues.

### **What information do I need to share with the school district?**

The school district may want you to give them copies of any evaluations or reports you have obtained independently. If you are going to rely on a report or record to prove your case, you must share it with the district first. The school may also ask for access to your child's medical records. You do not need to give the district all of your child's medical or mental health records. But if you want to use those medical records in support of your claim, you have to share those, and possibly others related to the same medical issue raised in the complaint.

### **What if the school district won't give me the records I want?**

If the parties cannot agree about what records to share, or one side fails to give the other side the records asked for, either side may ask the hearing officer to order the other side to give them the information.

If you haven't gotten what you want, at least seven days before the pre-hearing conference, write a letter to the hearing officer. Tell the hearing officer what information you have asked for and not gotten. Tell the hearing officer in your letter why you need the information.

No later than one day before the pre-hearing conference, the school district must tell the hearing officer why it didn't give you the information you asked for.

### **Advocacy Tips**

- Think about what records you want the school to give to you. You may want copies of meeting minutes, evaluations conducted by the school, report cards or grades, behavior plans, standardized test results, or IEPs.
- If your child was suspended you will want a copy of the incident report prepared by school officials. You will want to know to whom the principal spoke in investigating the incident at the school involving your child, and what each person said.
- If your child was restrained, you should ask for all of the school's documentation for each instance of restraint or seclusion. You might ask the school what data they have collected about your child's behavior plan.
- Be clear in asking for the records you want. For example, you could ask for: "Copies of all the IEP team meeting minutes for the 2005-2006 school year."

### **What is the pre-hearing conference?**

The pre-hearing conference is a meeting with the parents, the hearing officer and the school district to prepare for the hearing. Before the conference, you will need to prepare several things for the school district and the hearing officer, giving them more information about your claim and what you want to present at the hearing (see below for more details). At the conference you and the school district will share this information. The hearing officer will make decisions about:

- What issues will be addressed at the hearing;
- What documents and other evidence will be allowed to be presented at the hearing;
- Who will speak at the hearing, and about how long each person will testify;
- What topics the witnesses will be allowed to discuss; and

- Which side will go first.

If there are any motions or other technical legal matters that have come up, the hearing officer may also decide those questions.

### **How do I prepare for the pre-hearing conference?**

There are several important things you need to do to get ready for the pre-hearing conference. Some of these things need to be ready before the conference, and others you need to bring to the conference. Here is what you need to do:

- At least seven days before the conference: If there are documents you requested from the school that have not been provided, write a letter to hearing officer to obtain the information you asked for but didn't get.
- At least three days before the conference: Provide the school district and the hearing officer with a detailed written statement of the issues to be raised at the hearing.
- At least one day before the conference: Reply to school district's request for information (if any).
- At least one day before the conference: Review the school district's detailed written statement of defenses.
- On the day of the conference: Bring a list of all the witnesses you want to have testify for you, and a short statement of what you want them to say. Also, bring a statement of facts for the hearing officer.

Remember, any issues that you want to be considered have to be raised at the pre-hearing conference, or they may not be included at the hearing. It will be up to the hearing officer to decide what issues may be considered at the hearing.

### **What is a detailed written statement?**

At least three days before the conference, you need to give the hearing officer and the school district a detailed written statement of the complaint. The detailed written statement is a descriptive statement of the facts that are relevant to your complaint. It starts with the same information you presented in your original due process complaint, but with more details and a full discussion of the problems. To prepare the statement, some things you may want to think about include:

- What did the school district do (or not do) that it should not have done (or done)? When did these things happen? Who did them, or failed to do them?
- What information did you give to the school that they did not respond to appropriately?
- What procedures or rules were not followed?
- What specific services did your child not receive? Over what period of time?
- Did the school district fail to consider the recommendations of an evaluator? Did the school district send you a written notice explaining their reasons for not following the recommendation of the evaluator?
- Did the school district follow the discipline rules before suspending your child?
- Did the school district fail to provide the services in your child's IEP? What services did the school district fail to provide? Over what period of time?

Try to make your detailed written statement as clear and organized as possible. While it is important to include all significant concerns, try to keep it concise, and focused on the issues that really matter—you don't need to include every single thing that happened. Ask someone else to read it, to make sure it says what you want it to say. Remember, this is one of the most important ways you have to express what the problem is.

### **What is a witness list?**

At the conference, you need to give the school district and the hearing officer your witness list. A witness list has the names of the people you intend to question at the hearing. Be sure to include yourself in the list if you plan to testify. Anyone you call as a witness must have actual knowledge of the events, unless the witness is an expert. Up to five business days before the hearing, names can be added to your witness list. After that five-day period, no additional names may be added to your witness list.

When thinking about who to call as a witness, there are a few things to think about. Try to keep the number of witnesses within reasonable limits. You will have one full day to present your case, and there needs to be time for all of the witnesses to testify, and for the school district to cross-examine them. In practice, this means that it will be hard to have more than about four or five witnesses altogether, including yourself. Try to choose people who will support your position, and who have direct involvement with the situation. You usually don't need to have multiple people who will say the same thing. If you have an expert, be sure that the expert has



enough information about the situation to give a valid opinion. Make sure you contact all potential witnesses to see if they are willing and available to testify.

In addition to giving the school district a list of the names of the people you intend to call as witnesses, you will need to prepare a written summary of what each person will say at the hearing. The school district will also give you its witness list and summary.

### **How do I prepare a statement of facts?**

Besides the detailed written statement and a witness list, you will need to bring to the conference a statement of facts. The school district will also bring its own statement of facts. The statement of facts is a listing of the “uncontested facts”—all of the facts that the parties can agree on. The hearing officer will look at both statements, and see where there is agreement. At a minimum, the parties should be able to agree on: the child’s name, date of birth, the town in which he or she lives, the name of the school he or she attends, and year in school. The parties may also agree about the specific services the child receives. For example: the student’s IEP states he will receive two hours per week of speech language services provided by a certified speech language pathologist. If you agree that your child has received these services, you can list that as a fact. You might also contact the school district in advance to see if you can agree to a joint statement of facts before the pre-hearing conference.

If both sides agree on a statement of facts, the hearing officer will incorporate those facts in the decision, and you will not need to present evidence during the hearing about those facts.

### **What are the “core exhibits”?**

The school district is responsible for preparing the “core exhibits,” and giving a copy to you and the hearing officer at the conference. The “core exhibits” include the relevant portions of the student’s educational file: IEPs, evaluations, grades, progress reports, etc. The core-exhibits may be added to by either side up to five business days before the hearing. Be sure to review these exhibits carefully, because they will also form an important part of the factual basis for the hearing officer’s decision. Let the hearing officer know if you think anything is missing from the exhibits, or if there are documents that are included that should not be there (though any document that is properly in the student’s file can be included in the core exhibits).

### **Where will the pre-hearing conference be held?**

The conference will normally be held at a neutral location, like a bank or library. The pre-hearing conference will not be held at the school or supervisory union offices, unless you formally agree to have it there. It will be some place private.

### **When will the pre-hearing conference take place?**

The hearing officer will set the date and time for the pre-hearing conference during the first telephone conference after receipt of the due process complaint. Be sure to set aside one half day, or a minimum of four hours for the pre-hearing conference.

### **What is the pre-hearing order?**

After the conference, the hearing officer will write an order and send it to each of the parties. In the order, the hearing officer will make decisions on motions, state what decisions have been made about the issues to be heard, decide which party will present evidence first, determine what evidence may be presented and what evidence will be excluded, confirm the dates for the hearing, and address other related matters. The pre-hearing conference will be tape recorded and become a part of the official record of the case. You may ask the hearing office to provide you with a copy of the recording.

### **Advocacy Tips**

- There is a lot that needs to be prepared for the pre-hearing conference. Make sure you give yourself enough time to get everything ready.
- If you are prepared and organized, the conference will go a lot more smoothly, and you will have already done a lot of the work to get ready for the hearing.

### **How do I prepare testimony?**

The next step is to get all of your evidence ready for the hearing. If there are documents not included in the core exhibits that you want the hearing officer to consider, gather those documents together and organize them so that they are easy to understand. Make sure that the school district has copies of these documents, and knows that you want them to be considered.

You also need to get your witnesses ready. Once you know who your witnesses will be, you should talk with them and understand what they will say. You can't tell your witnesses what to say, but you can let them know what questions you will ask them, and see what their answers will be. It is always a good idea to write out your questions for each witness in advance, to make sure you don't forget something important.

The school district may ask to talk with your witnesses before the hearing, and you may want to talk with the school district's witnesses. If so, talk with the hearing officer and the school's attorney, at the Pre-Hearing Conference or after, about this process, and who can be present during these interviews.

### **What is an affidavit?**

Sometimes, especially if you have a lot of witnesses, you may want to use an affidavit to present evidence. An affidavit is a written statement of fact that must be truthful. Instead of testifying in person at the hearing, you may ask your witness to "testify" in writing. The statement must be signed and dated, with a statement indicating that the witness swears that the statements in the affidavit are true. The hearing officer may also want the affidavit to be notarized.

Even with testimony by affidavit, your witness must come to the hearing so that the other side can ask questions about the statements, unless both sides agree ahead of time that the witness's appearance will not be necessary. Affidavits must be given to the other side **at least three business days before the hearing.**

### **What is the "five day rule"?**

At least five business days (don't count weekends or holidays) before the hearing, the parties must complete the exchange of all information that will be included in the hearing. In particular, any evaluations that you want to be considered must be disclosed, and you must also disclose all recommendations based on the evaluations to the school district. **Failure to disclose the information may result in the hearing officer excluding the information from the hearing.**

### **What else do I need to do under the five day rule?**

The five day rule date is important and should be marked on your calendar. Five business days before the hearing, both sides must exchange any information they want to use in the due process hearing. If you want to use information at the hearing to prove your case, you must give it to the other side no later than the five day rule date. The following information must be shared:

- Evaluations;
- Expert recommendations;
- Copies of all documents you intend to use at the hearing, properly labeled;
- Any update of your witness list;
- Any updated summary of the witnesses' statements;
- Any additions to the core exhibits;
- An index of marked exhibits.

### **Do I send the information to the hearing officer, too?**

The information may be given to the hearing officer only if both sides agree it is appropriate to do so. If the parties agree to disclose the information, it must be given to the hearing officer **at least two business days before the hearing**. The only exception to this rule is the core exhibits which must be prepared by the school district and given to you and the hearing officer no later than five business days before the hearing under the five day rule.

### **How do I mark exhibits?**

Both sides must identify the exhibits or documents they plan to use at the hearing. The parent's exhibits are identified by marking them in the upper right hand corner with the words, "Parent's Exhibit \_\_\_." The exhibits should be marked in order, such as: 1, 2, 3, etc.

### **What is an index?**

An index is an itemized list of all the marked exhibits. You should make a list of the exhibits, with the numbers and a short description of each exhibit, and include the list as the first page of your exhibits.

### **What if we settle the case before the hearing?**

If the parties reach an agreement before the hearing, the school district must notify the hearing officer in writing that an agreement has been reached. The notice must be signed by both parties.

Once the signed statement is received by the Department of Education, the complaint will be dismissed. An agreement may be reached through mediation, at the resolution session, or at any other time before (or even during) the hearing. A settlement agreement is enforceable in a due process hearing, and may also be enforceable in court.

### **What if the parties cannot reach an agreement?**

If the issues raised in the complaint are not resolved prior to the hearing date, the hearing will be held. The hearing itself will be held over a two day period. This means each side has one day to make its case. The two day hearing limit may be extended only under exceptional circumstances.

#### **Advocacy Tips**

- Be sure to share all information you intend to use at the hearing with the school district at or before the five day rule date, or it will not be considered by the hearing officer in making a decision.
- Be sure to keep everything organized and labeled.
- Talk to your witnesses before the hearing. Don't tell them what to say, but make sure you know what kinds of things they are going to say.
- Make sure your witnesses know the date, time and location of the hearing.

## **5. The Due Process Hearing**

### **What can I expect at the hearing?**

A due process hearing is very much like a courtroom trial. Each side presents its evidence and witnesses, cross-examines witnesses from the other side, makes objections, and makes opening and closing statements. There is no jury, but the hearing officer acts as the fact-finder and decision-maker. The hearing is recorded.

Unlike a courtroom trial, the hearing does not take place in a court, but in a more informal meeting room. Usually, you will be sitting pretty close to the school district staff, on opposite sides of a table. The rules of evidence that apply to courtroom trials are generally in effect, but usually a little more relaxed than in court.

Even with a more relaxed setting, the hearing can be very stressful. A two-day hearing is a long time, and it can be very tiring. It helps to make sure you come to the hearing with all of your papers and ideas well organized. Be sure to let the hearing officer know if you need a break, need something to eat, or want to talk with someone privately during the hearing process.

### **Who has the burden of proof?**

The party filing the complaint for due process has the burden of proof. This means, if you filed the complaint, you must be able to prove that the school district violated your child's rights under the IDEA. You must prove to the hearing officer that the evidence supporting your complaint is greater than the evidence the district presents in defense. Which party has the burden of proof becomes very important in close cases. If the hearing officer believes that the evidence is evenly balanced, then the party with the burden of proof loses. If the school district files the complaint, it has the burden of proof. But in most cases, you will be the one who needs to prove your case.

### **What is the role of the hearing officer?**

The hearing officer is, in effect, both the judge and the jury. The hearing officer will make decisions about the case before, during and after the hearing. The hearing officer will listen to the witnesses, review all of the records admitted into evidence, make rulings on questions about the evidence, and finally decide the case.

The hearing officer will rule on the legal issue of whether your child received a free appropriate public education. Normally, the party filing for due process must demonstrate both a procedural and substantive violation of the law in order to win. In other words, you have to show both that the school didn't follow the rules and that your child was significantly harmed as a result. You may want to do some legal research to help you identify violations of the rules and understand the law as it may be applied to your case. See Appendix F for a list of some resources to help you find the relevant laws and regulations.

A procedural violation of the rules, without a substantive violation, will result in a win only if the procedural violations:

- Get in the way of your child receiving a FAPE;
- Get in the way of your being able to participate in making important decisions about your child's special education; or
- Stopped your child from benefitting from his or her education.

#### **Advocacy Tips**

- It is a good idea to do some research to help you understand the special education rules and how the law may be applied to the facts of your case. There are many times when parents disagree with what a school is doing, but the school is still acting within the law. If that is the case, you are likely to lose in a due process hearing, no matter how sympathetic your story.
- Remember—even with all the legal technicalities of a due process hearing, the main thing to remember is that you have a story to tell, and this is your chance to tell it. Keep your focus on letting the hearing officer know what the problems are, and how you want them to be fixed.

#### **How should I prepare for the hearing?**

Think about your case and how you want to tell your child's story. Organize your evidence, including your witnesses and materials, to make it easy for the hearing officer to understand your case. Usually, telling the story from the beginning, and keeping everything in chronological order, is most easy to understand. Remember that you know all the background information, but the hearing officer does not. Keep in mind you can only talk about the issues raised in your complaint, and that the hearing officer agreed that you can discuss in the pre-hearing order.

### **Things to do before the hearing:**

- Review all of the documents you want the hearing officer to focus on so that the information will be fresh in your memory.
- Prepare your witnesses. Be sure you know what they will say at the hearing. Refer to your witness summaries.
- Prepare questions to ask your witnesses. You want your witnesses to tell what they know about what happened. Remember, except for expert witnesses, a witness can only speak from firsthand knowledge, not about what they heard from someone else. An expert witness, like a doctor or a counselor, can speak about information received from someone else if it helped to form the expert's opinion.
- Read through the school district's affidavits, if any, so that you know what each of their witnesses will say ahead of time.
- Prepare questions to ask of the school district's witnesses. Try to anticipate what they will say, and think about the possible weaknesses in their story. Be prepared to ask the school's witnesses about topics that help your case, but that the school's attorney may want them to avoid talking about.
- Be familiar with the core exhibits.
- Organize the documents you want to use at the hearing in a notebook or folder.
- Write down the exhibit number of each of the documents you want to refer to so you can easily find them.
- Index all of your documents. Colored tabs can be helpful.

### **Do I need an attorney?**

Although a due process hearing is a formal hearing, and follows many legal rules, you do not need to be represented by an attorney. You can represent yourself at the hearing as the parent of a student under age 18. Once your child turns 18, unless he or she is under guardianship, the protections of the IDEA transfer to the student, though you may still challenge things that happened before the student turned 18. (There are some court cases that suggest parents may have claims even after children turn 18, but the extent of that right is currently unclear.)

You certainly have the right to bring an attorney to the hearing with you. Even if you do not have an attorney, the school district almost certainly will. The IDEA requires the Department of



Education to inform parents of any free or low-cost legal and other relevant services available in the area. See Appendix A for advocacy resources.

### **If I don't have an attorney, can I bring someone else to the hearing with me?**

You can bring anyone to the hearing who has special knowledge or training about the problems of children with disabilities. During the hearing, you may consult with this person.

**IMPORTANT:** While you can bring someone to the hearing to help you and consult with you, that person cannot act as your attorney unless he or she really is one. This means that any non-attorney assisting you at the hearing cannot speak on your behalf or question witnesses.

You can also bring the student to the hearing. If you want, the hearing may be open to the public. You may also ask for the hearing to be closed. This means that only people involved in the hearing may be in the room during the hearing. You may also ask that only one witness be in the room at a time.

### **Some useful terms to know**

- **Evidence:** Any information that is relevant to the issues raised in the complaint or supports a factual claim. Evidence comes in many forms. For example, it can be live testimony; an affidavit signed by a witness; a tape recording of a conversation between you and the special educator; an expert report with recommendations; letters; e-mail records; report cards; progress reports; doctor's notes; classroom notes; photographs; etc.
- **Witness:** Someone who will testify about what he or she knows by direct experience.
- **Testify:** To speak truthfully about what you know by direct experience.
- **Fact Witness:** Someone with personal knowledge of the facts of the case. This witness can only testify based on firsthand knowledge. This means that the witness cannot speak about information learned from someone else.
- **Expert Witness:** Someone with specialized knowledge about an issue relevant to the complaint. For example, an expert witness might be your child's pediatrician, or the independent evaluator who reviewed your child's educational records. An expert can testify based on personal knowledge and also offer opinions based on the information the expert reviewed, if it is the kind of information other experts in the field would normally rely on in forming opinions.

- Direct examination: Asking questions of the witnesses you have called.
- Cross examination: Asking questions of the other side's witnesses.

### **What happens at the hearing?**

The due process hearing lets both parties tell their side of the story. It also gives each side the chance to challenge the statements of witnesses on the other side. It is an opportunity to offer information you believe supports your position. This is done by calling witnesses (including expert witnesses), admitting documents into evidence, and cross-examining the other side's witnesses. Each side gets one day to present its case. If you are the person who filed the complaint, on the first day you will call each of your witnesses and ask them questions. You may also testify yourself, and the hearing officer may ask you some questions. After each of your witnesses has testified, the school district will ask cross-examination questions. On the second day the school district will have its witnesses testify, and you will have a chance to cross examine them.

If you want to offer any documents not included in the core exhibits, you can do that at the start of the first day, before the witnesses testify. Or, you may introduce those documents as they come up in the testimony. The hearing officer or the school's attorney may ask you or your witnesses to testify that the documents really are what you say they are. For example, if you want to include your child's medical records, you may need to have the doctor testify that those are the actual records.

### **What do I do at the hearing?**

If you filed the complaint, you will present your case first. This means you will have your witnesses speak first. You will also give the hearing officer the documents you want to be considered. The hearing officer may limit the number of witnesses and how long they can testify if their testimony is cumulative, repetitive, or not relevant. When you are finished asking your witnesses questions, the attorney for the school district will get a turn to ask your witness questions. Be sure your witnesses know they will be cross-examined by the school district's attorney. You may want to refer to records in the binder of core exhibits or your folder of exhibits as they become relevant to the story. Remember, they will be marked as "Parent's Exhibit (number)" or "School District's Exhibit (number)." You will also have an index of the records to refer to which makes finding them easier, especially if you also number all of the pages.

### **Here's how you might present your case:**

- I asked my son's teacher for an evaluation of my child at the parent/teacher conference in November because I was concerned he wasn't reading very well. When nothing happened, I put my request in writing on December 3, 2010. Here is a copy of the letter. It is marked, "Parent's Exhibit 1."
- No one responded to my letter until after the February break. Here is a copy of the e-mail message I received in response to my letter. It is dated February 21, 2011. It is marked, "Parent's Exhibit 2."
- The school did not schedule an evaluation planning team meeting until March 15. I never received written notice of the meeting. The principal called me the day before the meeting, on the afternoon of the 14<sup>th</sup>, to tell me about it. I attended the meeting. The team discussed what areas we wanted the evaluator to evaluate. Here is a copy of the meeting minutes from the March 14, 2011 meeting. It is marked, "Parent's Exhibit 3."
- We agreed my son should have neurological testing and a complete battery of psychological testing. The neurological testing was to be performed by a neurologist. The psychological testing was to be performed by a licensed psychologist.
- On March 30, the school sent me consent forms which I signed and returned to them the same day when I picked up my child. The evaluation was not completed until June 15, 2011, more than 60 days after I gave my consent. The law requires the district to complete its evaluation within 60 days. This is a procedural violation of the law. Because of this delay, my child received fewer services than he was entitled to.
- Additionally, the evaluator was not qualified. She was not a licensed psychologist. She only tested his cognitive functioning and did not test his adaptive behavior. Neurological testing was never completed. These are substantive violations of the law.

This is only a short example of how testimony may go. In an actual hearing you will probably have a lot more to say, and you have a full day—seven or eight hours—to present it.)

After you have finished telling your side of the story and given the hearing officer all of the documents you want to be considered, the school district will present its case. They will call their witnesses, and introduce their evidence. You will have an opportunity to ask questions of their witnesses. The school district can only introduce information it disclosed to you on or before the five day rule date. You can object to the hearing officer considering any information not disclosed by that time.

## **A Few Notes About Direct Examination and Cross-Examination**

When you ask questions of your witnesses, they need to be open-ended questions, such as “What happened at that meeting?” Try to stick to questions that begin with “who, what, when, where, why and how.” You can’t put words in the mouths of your witnesses, or ask them leading questions. When you cross-examine witnesses from the school, though, you can ask leading questions, such as, “Didn’t you tell me that the IEP would be completed in 30 days?”

In most cases, you can only cross-examine witnesses about subjects they have already testified to. When the school district’s witnesses are testifying, it is a good idea to take notes of their testimony, and use those notes to help you ask your questions. If you start to ask the school’s witnesses about other topics during cross-examination, the school’s attorney will probably object, and you may have to stop that line of questions.

Also, you want to be careful about what kinds of questions you ask in cross-examination. The general rule is that you should only ask questions in cross-examination for which you already know the answer. If you ask too broad a question, you give the school’s witness a chance to say things that might hurt your case. If so, it may be better not to ask the question.

When you are preparing your witnesses, tell them that during cross-examination they should answer the questions from the school’s attorney, but not to answer any more than is asked. If you feel that the school’s attorney has asked a misleading question, you can’t interrupt (except for a formal objection). But you will have another chance to question your witness (“redirect”). During redirect you can go back to the misleading question, and ask your witness to clarify the point.

### **What if the school district’s witness doesn’t come to the hearing?**

If the school fails to bring a witness whose name appeared on its witness list, and you want to ask that witness questions, you can ask the hearing officer to compel the witness’s attendance (make that person come to the hearing).

### **Will there be a record of the hearing?**

The hearing will be recorded electronically. When the hearing is over, you may ask for a copy of the recording, or a transcript (a written record of what was said at the hearing). You do not have to pay for these items.

### **Advocacy Tips**

- Be prepared. Write out your questions in advance.
- Be respectful and courteous, even to school staff you do not like or trust.
- Ask your witnesses questions in an open-ended way: Who, What, When, Where, Why and How questions.
- Only talk about the issues raised in your complaint. Don't open up issues that were narrowed by the hearing officer in the pre-conference hearing order.
- Only submit documents you gave to school at or before the 5 day rule deadline.
- Start at the beginning of your story and tell what happened in the order it happened.

### **What are the “proposed findings of fact”?**

Proposed findings of fact are a statement of the facts for the hearing officer to consider adopting in the final decision. Before the hearing officer makes a decision, you may want to send the hearing officer a written summary of the facts as you understand them. The facts must have been a part of the hearing record. If possible, refer to the document or witness testimony from the hearing for each fact. New facts not disclosed at the hearing or in the documents presented at the hearing may not be included in the proposed findings of fact. If the hearing officer agrees with you that the facts are important and accurate, she may include them in her decision. It is a good idea to ask the hearing officer at the end of the hearing whether or not she wants you to submit proposed findings, since not all hearing officers want them.

### **What is a “brief” of the legal issues?**

A brief is a written legal argument. In order for the hearing officer to decide in your favor, you must convince the hearing officer that your side of the story is more likely right than wrong, and that the law supports your position. It helps to be familiar both with the facts of your case and also with the law. You can become familiar with the law by doing research ahead of time. It may be especially helpful to find decisions in other similar due process cases where a hearing officer decided in the parent's favor. See Appendix F for a list of legal resources. Your goal in

writing a brief is to help the hearing officer understand the law and how it applies to the facts of your case. Again, it is a good idea to ask the hearing officer at the end of the hearing if she wants a brief before you submit it. Most of the time, either both sides will submit briefs, or neither one will.

### **What happens after the hearing?**

After the hearing, the hearing officer will write a decision and send it to you. The hearing officer will issue a final decision within 45 days of receipt of the complaint. The time frame will be extended by the time the parties participated in the resolution period. In most cases, then, the decision will actually come 75 days after the complaint was filed. The hearing officer will make findings of fact and conclusions of law. She will state what facts are important. She will also decide what the law says about the facts. Based on the findings of fact and the law, the hearing officer will decide which side won. If the decision is in your favor, the decision will also say what the school needs to do to fix the problem.

### **What if I am unhappy with the hearing officer's decision?**

If you are unhappy with the hearing officer's decision, or you disagree with the hearing officer's findings of fact or conclusions of law, you may file an appeal with the U.S. District Court for the District of Vermont or the civil division of the state Superior Court in the county in which you live. An appeal must be filed within 90 days of the date the hearing officer's decision was issued. If you wait longer than 90 days, the decision is final, and you will lose any chance to appeal it.

## **6. Other Important Issues to Consider When Filing for Due Process**

### **Can I get the school district to pay for tuition at a private school?**

Sometimes. Special education law strongly prefers that students are educated in a regular school environment as much as possible. But there are times when the school district can't provide an appropriate education, and you need to look at other educational settings.

If the IEP team agrees that your child cannot receive an appropriate education in a regular school setting, then the team can decide to place your child in another setting, including a private school. If the team makes that decision, the school district will pay the cost of the placement.

If your child needs a residential school placement, the rules are a little different. If the reason for a residential placement is just educational, then the IEP team can also decide to make that placement and pay for it, but it also requires approval by the state Department of Education.

If your child needs a residential placement both for education and for mental health issues at home, then you should ask the school to set up an "Act 264" meeting—sometimes also called a "Local Interagency Team" (LIT) meeting. This meeting brings together people from the school and community support agencies, to discuss treatment options. You can ask the team to recommend that your child get a residential placement. Both the school district and the community mental health agency need to agree to this plan. If so, the request will be reviewed by another committee at the state level to approve funding. If they agree, they will identify a placement. If the placement is denied, or you disagree with the placement, you can challenge the decision in a Fair Hearing at the Human Services Board. (See Appendix A for contact information). You can also go back to the IEP team and ask them to pay for the residential program. If they say no, you can request a due process hearing.

### **What is a unilateral placement?**

If you ask to place your child in a private school, and the school district says no, you may decide to enroll your child in that school on your own. This is called a "unilateral placement," which is any time you place your child in a private school or other setting without the school district's consent. You might decide to do this if you believe the school district is unable to provide your child with an appropriate education, or that it will be harmful to your child to remain in the district placement any longer.

If you make a unilateral placement, you will have to pay any tuition costs up front—a private school will not enroll your child unless someone has first agreed to pay for it. It is important to

understand that, in any unilateral placement, you risk having to pay all of the tuition and related costs yourself.

### **Will I get all my money back?**

It depends. If you place your child in a different school on your own, you can ask the school to pay for the costs. If they say no (which is likely), then you can request a due process hearing to require them to pay for the placement. In order to win, you will need to prove that school was unable to provide an appropriate education, as defined by special education law. Even if everyone agrees that the private school is a better place for your child, the school does not have to pay for it if it can offer a reasonable and adequate education.

Even if you win at a hearing, the amount of money you get back from the school district may be reduced or denied if:

- You fail to let the school district know at least 10 days before placing your child in a different school or other setting; or
- You fail to let the school district know at the last IEP meeting of your plan to put your child in a different school or setting; or
- You place your child after the school notifies you of their intent to evaluate the child, but before you make the child available for the evaluation.

If waiting to make the change in your child's educational placement will result in serious emotional or physical harm to the child, you may be able to seek full reimbursement even if you do not let the school district know ahead of time. But you should always let the school know about the change as soon as possible.

**VERY IMPORTANT: If you decide to put your child in a private school without the school district agreeing to pay for it, you are taking on considerable risk of having to pay for it entirely on your own. Be sure to consider all of the risks of making a unilateral placement before you make a decision.**

### **What is "Least Restrictive Environment"?**

One issue that comes up in many due process hearings is "least restrictive environment," or LRE. The law requires schools to educate students with disabilities in the least restrictive environment, which means a placement where the student spends as much time as possible with non-disabled students, while still receiving an appropriate education. For most students, this means spending



most of the time in a regular classroom, with appropriate accommodations and supports, as long as they can keep learning, and don't prevent other students in the class from learning. LRE refers not only to the classroom, but all aspects of school activities: lunch, recess, gym, music, art, after school activities, and field trips. In all of these settings, students should be included to the maximum appropriate extent, and not segregated from the mainstream. By definition, a separate classroom for students with disabilities is more restrictive than a regular classroom, and a separate school for disabled students is even more restrictive.

You and the school district may disagree about which setting is the least restrictive, and how much time in a regular classroom is appropriate. You may feel that the school is separating your child from the regular classroom and other activities too much. Or, you may want your child educated in a special classroom or private school, but the school district may feel that setting is too restrictive. In either case, LRE is a frequent topic both for mediation and in due process disputes.

Remember that the law favors inclusion. So it is always easier to argue that your child should be spending more time with non-disabled peers than it is to ask to remove your child to a more restricted environment. If you are asking for a placement in a special setting just for students with disabilities, you will need to have strong evidence that the regular classroom is not an appropriate placement.

### **What are attorney's fees and who may get them?**

If you work with an attorney, most of the time that person will want to be paid. Sometimes the party who wins at the hearing is entitled to recover attorney's fees from the other side. If the case goes to a hearing, and you win, and you have an attorney, then in many cases the school district will have to pay the fees. If the school district files for due process against you and loses, then fees for your attorney are also possible. If you bring the case and lose, in most cases you will not have to pay the school district's fees. However, if a court decides that you had no good reason for bringing the claim, and you were only trying to harass the school by filing it, you might be liable to pay the school's attorney fees. If you do not have an attorney, you cannot collect fees for the work you did on your own.

If you come to a settlement agreement, it may include a provision for attorneys fees. If not, the attorney can file an action in federal district court to recover attorney's fees and related costs. The attorney should receive the same hourly rate as other lawyers in the community receive for similar work.

As noted above, a court has the power to award attorney's fees to the attorney for the school district if they are the winning party under limited circumstances. The parent or parent's

attorney could then be responsible for the fees and related costs of the school district's attorney. The law allows for this to happen in the following circumstances:

- The attorney for the parent or student files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation.
- The attorney for the parent or student continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.
- If the request for due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Under these circumstances even an unrepresented parent could be ordered to pay the district's attorney's fees.

### **What if you are offered a settlement and you don't accept it?**

The IDEA encourages parties to resolve disputes without going to a contested hearing. One way that the law promotes this is by using attorney fee awards. According to the law, attorney's fees and costs may not be awarded for a lawyer's services performed after a written settlement offer has been made to the parent if:

- The offer is made more than ten (10) days before the due process hearing is scheduled to begin;
- The offer is not accepted within ten (10) days; and
- The court or hearing officer finds that the relief finally obtained by the parent following the hearing is not more favorable to the parent than the offer of settlement, unless the parent is found to have been substantially justified in rejecting the offer.

If you do not have an attorney, these provisions will not affect you. But any time you get a settlement offer, it is always a good idea to weigh the benefits of that offer against what you might win (or not win) at a hearing, and the expense of time and effort that the hearing will cost you.

## **Appendix A Vermont Contact Information**

### **Advocacy Resources**

The following organizations specifically provide assistance to families in special education and Section 504 disputes:

#### **Vermont Family Network (VFN)**

Vermont Family Network assists families of children with disabilities on a wide range of issues, including education issues. VFN can consult with families about how to advocate effectively for appropriate special education services, and how to access dispute resolution.

Vermont Family Network  
600 Blair Park Road, Suite 240  
Williston, VT 05495  
800-800-4005  
[www.vermontfamilynetwork.org](http://www.vermontfamilynetwork.org)

#### **Disability Law Project of Vermont Legal Aid, Inc.**

The Disability Law Project provides legal advice and, in some cases, representation to students and their families in special education and other disability-related legal issues.

Disability Law Project  
Vermont Legal Aid  
PO Box 1367  
Burlington, VT 05402  
800-889-2047  
[www.vtlegalaid.org](http://www.vtlegalaid.org)

Please use the above address and phone to contact the Disability Law Project about a new case. For information, you may also stop into these local offices of Vermont Legal Aid:

For Chittenden, Addison, Franklin and Grand Isle counties:

Vermont Legal Aid  
264 North Winooski Ave.  
Burlington, VT 05402

For Washington, Orange, Lamoille, Caledonia, Orleans and Essex counties:

Vermont Legal Aid  
7 Court St.  
Montpelier, VT 05601

For Rutland and Bennington counties:

Vermont Legal Aid  
57 North Main St.  
Rutland, VT 05701

For Windsor and Windham counties:

Vermont Legal Aid  
56 Main St., Suite 301  
Springfield, VT 05156

### **Disability Rights Vermont (DRVT)**

Disability Rights Vermont is the Protection and Advocacy agency for Vermont. DRVT provides advocacy and legal assistance for persons with disabilities, especially for persons in institutional settings.

Disability Rights Vermont  
141 Main St., Suite #7  
Montpelier, VT 05602  
800-834-7890  
[www.disabilityrightsvt.org](http://www.disabilityrightsvt.org)

### **Vermont Federation of Families for Children's Mental Health**

Vermont Federation of Families for Children's Mental Health provides support, information and referrals for families of children experiencing mental health and behavioral issues.

Vermont Federation of Families for Children's Mental Health  
600 Blair Park Road  
PO Box 1577  
Williston, VT 05495  
800-639-6071  
[www.vffcmh.org](http://www.vffcmh.org)

## **Government Agencies**

### **Vermont Department of Education (DOE)**

Contact the state Department of Education to file administrative complaints, due process complaints, or request mediation. DOE may also be able to provide information about other special education issues, or refer you to appropriate resources. DOE also runs the Educational Surrogate Parent program, that appoints individuals to make education decisions for children in state custody or whose families are otherwise unavailable to make education decisions.

Vermont Department of Education  
120 State St.  
Montpelier, VT 05620-2501  
802-828-3140  
[www.education.vermont.gov](http://www.education.vermont.gov)

Vermont DOE Special Education Technical Assistance Line: 802-828-5114

### **Children's Integrated Services Program (formerly Family, Infant and Toddler Project)**

Children's Integrated Services provides early intervention programs under the IDEA and other laws for children age birth to three.

Children's Integrated Services Program  
Vermont Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495  
800-649-2642  
Or call Vermont 2-1-1  
<http://dcf.vermont.gov/cdd/cis>

### **Vermont Human Rights Commission (HRC)**

The Human Rights Commission investigates complaints of discrimination based on disability and other protected categories in schools and other public accommodations, as well as in housing and other areas.

Vermont Human Rights Commission  
14-16 Baldwin St.  
Montpelier, VT 05633-6301  
800-416-2010  
<http://hrc.vermont.gov/>

**Vermont Human Services Board**

The Human Services Board accepts appeals of service denials by departments of the Agency of Human Services, including Children's Integrated Services funded through the IDEA.

Human Services Board  
14-16 Baldwin St., 2<sup>nd</sup> Floor  
Montpelier, VT 05633-4302  
802-828-2536  
<http://humanservices.vermont.gov/boards-committees/hsb/>

## **Appendix B Due Process Complaint Form**

On the following pages is a copy of the Vermont Department of Education Due Process Complaint Form. You can also find the form on line at:

[http://education.vermont.gov/new/pdfdoc/pgm\\_sped/policy/due\\_process/EDU-Due Process Complaint Form for Parents Guardians or Students.pdf](http://education.vermont.gov/new/pdfdoc/pgm_sped/policy/due_process/EDU-Due_Process_Complaint_Form_for_Parents_Guardians_or_Students.pdf)

## **DUE PROCESS COMPLAINT NOTICE**

(For Parent/Student/Guardian)

The department makes this form available for you to use to notify the Commissioner of a due process complaint on any matter regarding the identification, evaluation, placement of a student, or regarding provision of a free appropriate public education to a student under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973, as amended. You are not required to use this form to file a due process complaint; you may opt to write a letter, or contact the department or one of the advocacy organizations listed below for further assistance with your filing.

### Instructions:

1. All asterisked (\*) information on this form should be included when you submit your request for a due process hearing. If the sections marked with an asterisk (\*) item are not provided, it may result in the denial or delay of a due process hearing and the reduction of any attorneys fees awarded by the court.
2. At the same time that you submit this form to the Commissioner, you must also provide a copy of this form to the special education coordinator or superintendent for the Student's supervisory union/school district.
3. As soon as your complaint is received by the Commissioner, the Department's Legal Unit Administrator will contact you to schedule an initial telephone conference call to take place within five (5) business days of the receipt of the complaint. If the Department is unsuccessful at reaching you, a time and date will be selected and you will be notified by first class mail and e-mail, if an e-mail address is provided.
4. Under federal and state law, a parent/student/guardian may raise the following in a due process complaint within two years of the date the parent/student/guardian knew or should have known about the alleged action forming the basis for the complaint:

**Identification** (Issues related to the timely and accurate identification by a school district of a student with a disability. This may also include issues arising from termination of services or eligibility.)

**Evaluation** (Issues involving timeliness, appropriateness and conclusions of evaluation procedures, and/or of the determination of eligibility, continuing eligibility or ineligibility.)

**Educational Placement** (Issues involving the appropriateness of the instructional and related services, program and/or setting in which the student with a disability is provided services, including issues arising from proposed or requested changes in placement.)

**Provision of a free appropriate public education** (Issues involving the appropriateness and adequacy of the individualized education program (IEP) offered to a student with a disability, or the appropriateness and adequacy of the Section 504 Plan, modifications or accommodations offered to a student with a disability, and/or issues about the district's compliance with special education or Section 504 requirements. This may also include issues arising from termination of services, eligibility, suspension or expulsion of the student with a disability.)

5. Please describe your complaint completely and accurately. Remember: It is important that you describe any issue that you wish to have addressed at the due process hearing, and detail the facts you believe support your position. If you do not include an issue in your complaint, you may not be able to raise it at the hearing. Focus on the issues that have had an impact on the student's ability to receive meaningful educational benefit.

If you are not sure how to complete this form, you may contact one of the following for more information or assistance:

Vermont Dept. of Education  
Legal Unit Administrator  
120 State Street  
Montpelier, VT 05620-2501  
Tel: (802) 828-3136

Vermont Family Network VT  
600 Blair Park Rd, Suite 240  
Williston, VT 05495  
Tel: 1-800-800-4005

Disability Law Project  
264 North Winooski Avenue  
Burlington, VT 05402  
Tel: 1-800-889-2047  
other locations in VT



**DUE PROCESS COMPLAINT  
(Parent/Student/Guardian)**

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Is this request for an Expedited Due Process Hearing for disciplinary issues, per SBE Rule 4313.3(c)? Yes No

**Complainant Information:**

Name, First and Last: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: H (\_\_\_\_) \_\_\_\_\_ W (\_\_\_\_) \_\_\_\_\_ Cell (\_\_\_\_) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Relationship to Student: \_\_\_\_\_

**Student Information:**

\*Name, First and Last: \_\_\_\_\_

\*Address: \_\_\_\_\_

\*Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Current Grade Level: \_\_\_\_\_ Has student received a diploma? \_\_\_\_\_

\*School of Attendance: \_\_\_\_\_

\*District of Residence: \_\_\_\_\_

Parent/Guardian Name, if applicable: \_\_\_\_\_

Parent/Guardian Address and Telephone Number, if different from Student:

\_\_\_\_\_  
\_\_\_\_\_

Disability (check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> Autism Spectrum Disorder | <input type="checkbox"/> Multiple Disabilities          |
| <input type="checkbox"/> Deaf                     | <input type="checkbox"/> Orthopedic Impairment          |
| <input type="checkbox"/> Deaf-Blindness           | <input type="checkbox"/> Specific Learning Disability   |
| <input type="checkbox"/> Developmental Delay      | <input type="checkbox"/> Speech or Language Impairment  |
| <input type="checkbox"/> Emotional Disturbance    | <input type="checkbox"/> Traumatic Brain Injury         |
| <input type="checkbox"/> Hard of Hearing          | <input type="checkbox"/> Visual Impairment              |
| <input type="checkbox"/> Learning Impairment      | <input type="checkbox"/> Other Health Impairment: _____ |

**Attorney Information (if applicable):**

Name, First and Last: \_\_\_\_\_

Address: \_\_\_\_\_

Tel (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

A copy of this request must be provided to the Special Education Coordinator or Superintendent at the School District. Please confirm that this has been done by checking the appropriate box and providing the date: A copy of this request was: Mailed or Delivered on \_\_\_\_/\_\_\_\_/\_\_\_\_ .

The copy was provided to:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

**\*Descriptions of the issues and proposed resolution(s)**

Under federal and state law, a parent/student/guardian may raise issues arising in one or more of the following areas within two years of the date the parent/student/guardian knew or should have known about the alleged action forming the basis for the complaint: identification, evaluation, educational placement and provision of a free appropriate public education (FAPE). Describe your complaint completely and accurately. Attach additional pages if necessary. It is important to describe any issue you wish to have addressed at the due process hearing, and include any facts you believe support your position. If you do not include an issue in your complaint, you may not be able to raise it at the hearing. Focus on the issues that have had an impact on the student's ability to receive a meaningful educational benefit. You must identify at least **one** of the issues listed on the pages below; leave blank any parts of the form that are not addressed in your complaint.

[This portion of page intentionally left blank.]

**Identification** (Issues related to the timely and accurate identification by a school district of a student with a disability. This may also include issues arising from termination of services or eligibility.)

Describe the nature of the issue(s) and any facts relating to the issue(s).

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Describe how the issue(s) could be resolved.

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Describe what actions have been taken to address the issue(s).

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Were the issue(s) identified above, the subject of a previous or concurrent due process complaint, administrative complaint or mediation? Yes No

**Evaluation** (Issues involving timeliness, appropriateness and conclusions of evaluation procedures, and/or of the determination of eligibility, continuing eligibility or ineligibility)

Describe the nature of the issue(s) and any facts relating to the issue(s).

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Describe how the issue(s) could be resolved.

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Describe what actions have been taken to address the issue(s).

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Were the issue(s) identified above, the subject of a previous or concurrent due process complaint, administrative complaint or mediation? Yes No

**Educational Placement** (Issues involving the appropriateness of the instructional and related services, program and/or setting in which the student with a disability is provided services, including issues arising from proposed or requested changes in placement.)

Describe the nature of the issue(s) and any facts relating to the issue(s).

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Describe how the issue(s) could be resolved.

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Describe what actions have been taken to address the issue(s).

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Were the issue(s) identified above, the subject of a previous or concurrent due process complaint, administrative complaint or mediation?  Yes  No

**Provision of a free appropriate public education** (Issues involving the appropriateness and adequacy of the individualized education program (IEP) offered to a student with a disability, and/or issues about the district's compliance with special education procedures. This may also include issues arising from termination of services or eligibility, and/or issues arising out of suspension or expulsion of the student with a disability.)

Describe the nature of the issue(s) and any facts relating to the issue(s).

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Describe how the issue(s) could be resolved.

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Describe what actions have been taken to address the issue(s).

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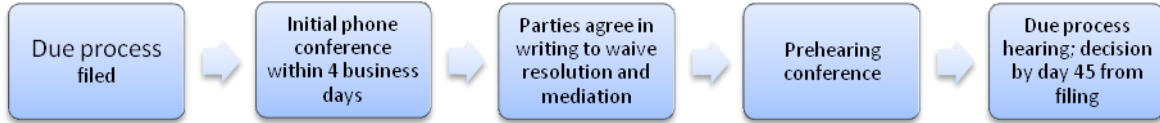
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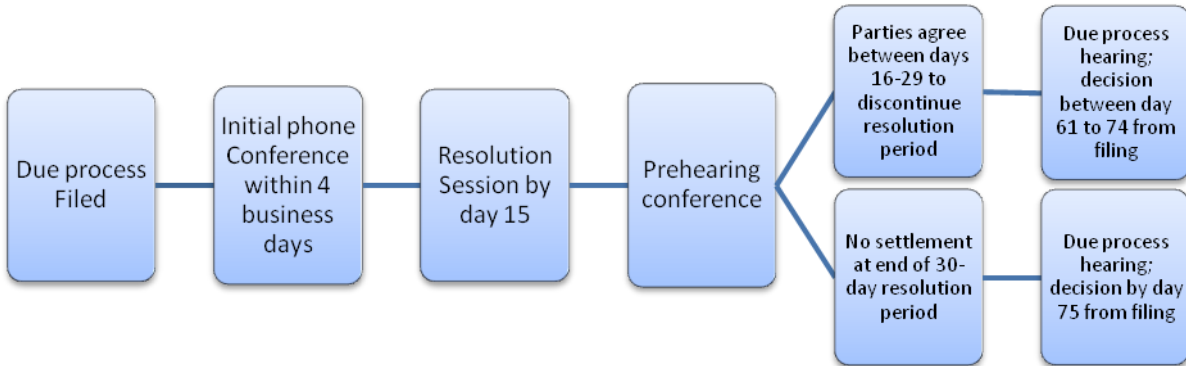
Were the issue(s) identified above, the subject of a previous or concurrent due process complaint, administrative complaint or mediation? Yes No

## Appendix C Due Process Timelines

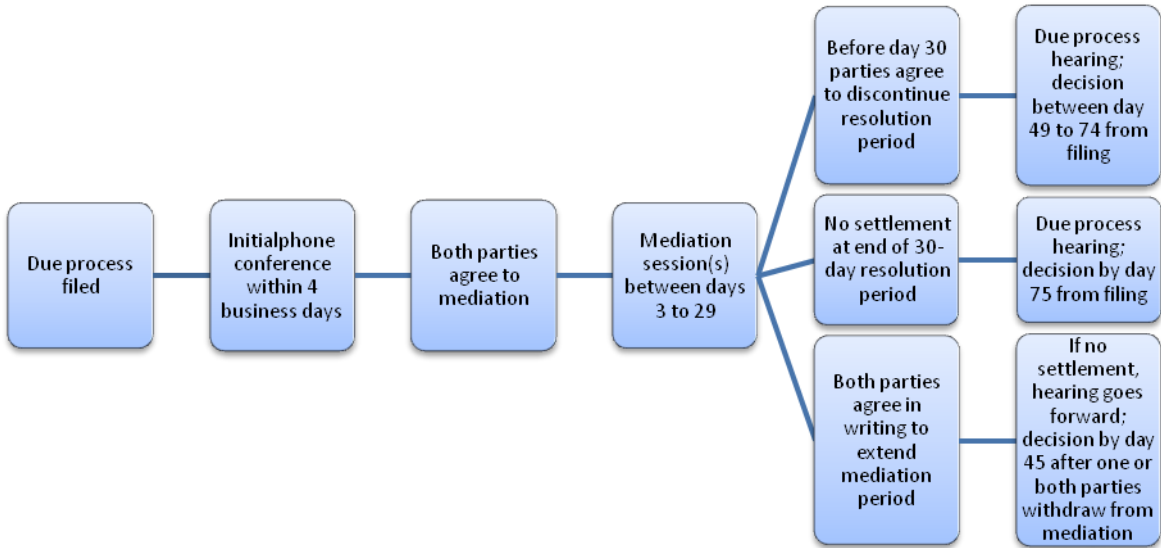
### Parties agree to waive resolution period



### Parties hold resolution session



### Parties agree to mediation



### Expedited due process



**Appendix D Sample Parent Request for School Records**

**STATE OF VERMONT**

**DEPARTMENT OF EDUCATION**

**Re: Special Education Due Process Case #** *(insert case number and name)*

PARENT'S REQUEST FOR EDUCATIONAL RECORDS FOR *(inset student's name)*

Please provide copies of the records specified below to *(insert your name and address)*. We are requesting copies of the records, rather than an opportunity to review the records, as copies are necessary in order to prepare for the due process hearing. Please provide these records no later than *(insert date—within a reasonable time to allow the records to be copied, but with enough time for you to make use of them, and no later than the 5-day-rule date)*.

*For a general copy of the file:*

Please provide copies of any and all records related to the above-named student maintained by *(inset name of school district and supervisory union)*. The request is meant to include all records of any kind, including but not limited to

- All regular education records;
- All special education records;
- Evaluations, test results, screenings, or progress reports of any kind;
- All written, recorded or e-mail correspondence between school district employees, between school district employees and parents, and between school district employees and any other person or entity;
- Student portfolio records;
- Notes kept by school district employees;
- Other records related to the student.

*For specific records:*

Please provide copies of the following records between *(specify dates)*:

*List specific types of records you would like copies of, such as IEPs, grade reports, correspondence, etc.*

\_\_\_\_\_  
PARENT NAME

\_\_\_\_\_  
DATE



## Appendix E Legal Research Resources

### Federal Laws and Regulations

You may find the current versions of federal laws and regulations on line. To access all federal laws and regulations, go to the site for the U.S. Government Printing Office, Federal Digital System:

<http://www.gpo.gov/fdsys/>

For federal laws, click on “United States Code,” or “U.S.C.” For regulations, click on “Code of Federal Regulations,” or “C.F.R.” For both, choose the most current year (in some cases, if the section you want is not listed in the current year, you may need to go to the immediately previous year). Then use the information below to find the appropriate citation. The first number (before “U.S.C.” or “C.F.R.” is the Title number. Go to that section, and then keep opening the menus to get to the section you want.

The citations below show where the law begins in the code or regulations. The on-line listings will show the different section titles to help you find what you want.

Individuals with Disabilities Education Act (IDEA)

20 U.S.C. §1400 (and following)

34 C.F.R. Parts 300 and 301

No Child Left Behind Act

20 U.S.C. §6301 (and following)

Americans with Disabilities Act (ADA)

42 U.S.C. §12101 (and following)

28 C.F.R. Part 35

Section 504 of the Rehabilitation Act of 1973

29 U.S.C. §705(20) and 794

34 C.F.R. Part 104

McKinney-Vento Homeless Assistance Act

42 U.S.C. §11431 (and following)

Family Educational Rights and Privacy Act (FERPA)

20 U.S.C. §1232g

34 C.F.R. Part 99

## **Vermont Laws and Regulations**

Vermont statutes are available online at:

<http://www.leg.state.vt.us/statutesMain.cfm>

Education laws generally are found under Title 16

Special Education laws are under Title 16, Chapter 101

Attendance and Discipline laws are under Title 16, Chapter 25

Vermont Board of Education Special Education Regulations are available online at:

[http://education.vermont.gov/new/pdfdoc/pgm\\_sped/laws/educ\\_sped\\_guide.pdf](http://education.vermont.gov/new/pdfdoc/pgm_sped/laws/educ_sped_guide.pdf)

Other Department of Education regulations, guidance and publications related to special education are available online at:

[http://education.vermont.gov/new/html/pgm\\_sped.html](http://education.vermont.gov/new/html/pgm_sped.html)

Vermont Due Process Hearing decisions are available online at:

[http://education.vermont.gov/new/html/pgm\\_sped/policy/dispute\\_resolution.html#due\\_process](http://education.vermont.gov/new/html/pgm_sped/policy/dispute_resolution.html#due_process)

Information about Act 264/Interagency Process/Children with Severe Emotional Disturbance programs and resources is available online at:

<http://mentalhealth.vermont.gov/cafu/act264>

## **Sources for Legal Research on the Web**

Wrightslaw has extensive articles and materials on all aspects of special education law and related issues:

[www.wrightslaw.com](http://www.wrightslaw.com)

Findlaw has a section on education law, with a number of resources and links:

<http://www.findlaw.com/01topics/37education/index.html>

The Nolo law help site has a section on special education law:

<http://www.nolo.com/legal-encyclopedia/special-education-law-29626.html>

Google Scholar has a search engine for court cases and other legal materials:

<http://scholar.google.com/>

## Appendix F Alphabet Soup

The following is a list of common acronyms and abbreviations used in special education. You are likely to find others, as some districts have their own programs with acronyms.

504	Section 504 of the Federal Rehabilitation Act of 1973
ADA	Americans with Disabilities Act
AHS	Vermont Agency of Human Services
CIS	Children's Integrated Services
CRC	Case Review Committee (Act 264 interagency process)
DAIL	Vermont Department of Disabilities, Aging and Independent Living
DCF	Vermont Department for Children and Families
DLP	Disability Law Project of Vermont Legal Aid
DMH	Vermont Department of Mental Health
DOE	Vermont Department of Education
DRVT	Disability Rights Vermont
DS	Developmental Services
EEE	Essential Early Education
EPT	Evaluation and Planning Team
ESD	Extended School Day
EST	Educational Support Team
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
FITP	Family, Infant and Toddler Project (now Children's Integrated Services)
HIPAA	Health Insurance Portability and Accountability Act (privacy of medical information)
IAES	Interim Alternative Educational Setting
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individual Family Service Plan
IST	Instructional Support Team
LEA	Local Education Agency (School District or Supervisory Union)
LIT	Local Interagency Team (Act 264 interagency process)
LRE	Least Restrictive Environment
NCLB	No Child Left Behind Act (also called ESEA, Elementary and Secondary Education Act)

OT	Occupational Therapy or Therapist
PT	Physical Therapy or Therapist
SEA	State Education Agency (Department of Education)
SIT	State Interagency Team (Act 264 interagency process)
SLP	Speech Language Pathologist
VFN	Vermont Family Network
Act 230	Vermont law authorizing Educational Support Teams
Act 117	Vermont law regarding educational support outside of special education
Act 264	Vermont law creating the interagency process for children with severe emotional disturbance