



Virgin Islands Department Education
State Office of Special Education
Bimonthly Newsletter – Volume 4



SPECIAL EDUCATION DISPUTE RESOLUTION SYSTEM

From the Desk of State Director of Special Education, Kathleen Merchant

This newsletter represents the final edition of a series of topics previously discussed in prior newsletters of the State Office of Special Education (SOSE). Specifically, those topics were *Parental Referrals for Initial Evaluation*; *13 Disability Categories*; *Conducting Manifestation Determination Meetings*, *Suspension*, and *Expulsion*. The State Office of Special Education team is committed to supporting parents and school personnel in working in partnership on behalf of children with disabilities and/or special needs within our community. Our collective goal is to ensure that we meet the mandates outlined in The Individuals with Disabilities Education Act (IDEA), federal legislation that guarantees students with disabilities the right to free and appropriate public education, governs the procedure (FAPE) is available to each Virgin Islands child and youth with a disability and that each child/youth successfully completes their elementary and secondary education and is ready for post-school success.

The State Office of Special Education is dedicated to supporting parents and school personnel in collaborating for the benefit of children with disabilities and/or special needs in our community. Our collective goal is to ensure that every child and youth with a disability in the Virgin Islands has access to a free appropriate public education (FAPE) and successfully completes their elementary and secondary education, preparing them for post-school success. Consistent with the Individuals with Disabilities Education Act (IDEA), the SOSE has established a due process system that provides options and resources for addressing concerns or disagreements between parents and schools in special education matters. The SOSE team is committed to assisting schools, parents, or other stakeholders in identifying ways to address conflict issues. Both methodologies, Formal State Complaint, and Due Process Complaint, will be discussed in this final SY 2024-2025 Edition.

As State Director of the State Office of Special Education, I thank you for the opportunity afforded me to provide ongoing assistance through this modality as we continue to forge ahead in our continuous endeavor to impact the lives of children and youth receiving special education and related services throughout the territory. Complaint forms are available on the Division's website.

DUE PROCESS FOR SPECIAL EDUCATION

Students with disabilities have the right to a free and adequate education, known as “due process for special education.” Due Process is a powerful tool for ensuring that students’ rights are respected and that the school meets their needs regarding Individualized Education Programs (IEPs). Due process is a powerful tool for ensuring that students’ rights are respected and that the school meets their needs regarding Individualized Education Programs (IEPs). Regarding individualized education programs (IEPs), due process for special education can be invoked in several ways. The IEP federal laws and regulations provide a legal framework for these procedures. The special education due process timeline:

Evaluation: Due process hearings can be requested if you disagree with your child’s evaluation results or think they should be assessed for a different handicap.

Placement: If you disagree, dispute the school’s placement recommendation by requesting a due process hearing.

IEP development: You may request a due process hearing to dispute your child’s IEP if you disagree with any of the listed goals, accommodations, or services.

Implementation: Due process hearings can be requested if parents believe their child’s school is not following their child’s Individualized Education Program (IEP) or is not providing the services and adjustments indicated in the IEP.

DUE PROCESS. WHAT IS IT?

Have you ever heard the term “due process” when considering schooling choices for children with special needs? Wondering what it is all about and why it is super important to get the scoop? Well, you are in the right spot! This topic is among the [current legal issues in special education](#) that parents and educators should be aware of. Due process in special education refers to the **legal procedures followed in a dispute** regarding the provision of special education services to a student with a disability.

Have you ever come across the term “due process” when exploring schooling options for kids with special needs? Are you curious about what it entails and why it’s crucial to understand? You’re in the right place! This topic is one of the key legal issues in special education that parents and educators should know about.

It is important to note, that there is a time limit for requesting a due process hearing. Under the IDEA you must request a due process hearing **within two years of the date you knew or should have known** about the issue. However, there are exceptions to this rule, so if you are unsure if you are still eligible to obtain a due process hearing, it is advisable to consult with an attorney. The **dispute resolution processes** for special education conflicts include **mediation, due process hearings, state complaints, and resolution meetings**.

Due process for special education can help ensure your child’s rights are respected and that their individualized education program (IEP) is adequate. You may pursue the due process for special education to advocate for your child’s needs **if you have any issues with your child’s evaluation, placement, Individualized Education Program (IEP), or the implementation of your child’s IEP**.

What is a "Formal State Complaint"?

A formal state complaint is a signed, written statement alleging that a district or Local Education Agency (LEA) violated a requirement of the Individuals with Disabilities Education Act (IDEA) or a state rule that implements IDEA. A formal state complaint is generally an expression of some disagreement with a procedure or a process regarding **special education programs, procedures, or services**. A formal state complaint is considered a request that the State Office of Special Education (SOSE) investigates an alleged violation of a right of a parent and/or child with a disability who is eligible, or believed to be eligible, for certain services based on federal regulations and state rules governing special education.

What are the requirements for filing a Formal State Complaint (FSC)?

Any individual or organization who believes that an LEA has violated the IDEA or the VI Special Education Rules (VI SER). The formal state complaint must be a signed, written complaint under the procedures described in 34 CFR §300.151 – 300.152.

A formal state complaint must include:

A statement that the LEA or public agency has violated a requirement of Part B of the IDEA or of Section 300; *The facts on which the statement is based; *The signature and contact information for the Complainant; and *If alleging violations with respect to a specific child:

The name and address of the residence of the child; the name of the school the child is attending; A description of the nature of the problem of the child, including facts relating to the problem; A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed; and, In the case of a homeless child, the available contact information for the child (name of the school the child is attending, etc.)

The formal state complaint must allege a violation that occurred **not more than one year prior to the date that the complaint is received**, in accordance with 34 CFR §300.151, unless the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than two (2) years prior to the date the complaint is received by the SOSE.



Who must get a copy of the formal state complaint?

The party filing the complaint must forward a copy of the formal state complaint to the local educational agency (LEA) or District Office of Special Education, serving the child at the same time the party files the complaint with the SOSE or State Educational Agency (SEA). **The purpose for requiring the Complainant to forward a copy of the complaint to the LEA serving the child at the same time the Complainant files the complaint with the SEA is to ensure that the LEA has knowledge of the issues and is given an opportunity to resolve the issues directly with the complainant, at the earliest possible time.**

A model form for formal state complaints is in the Procedural Safeguards Manual for Parents, and it is also available on the VDOE's website or from the State Office of Special Education. Although advisable, a person filing a formal state complaint is not required to use the model form. A formal state complaint must meet the criteria set forth in 34 CFR §300.153(b)(c)(d), and may allege any violation of the IDEA, federal special education rules, state office of special education rules, including allegations concerning the identification, evaluation, placement, or provision of a free appropriate public education to a child with a disability. A formal state complaint may also contain allegations concerning the failure of a district to implement a decision after a due process hearing, a resolution meeting agreement, or a mediation agreement.

The SOSE's formal state complaint system does not handle Civil Rights violations related to disability. These matters are addressed directly with the Office of Civil Rights of the United States Department of Education.

In addition, the formal state complaint system cannot address personnel issues or general education matters. These matters are under the control of the insular superintendent. Any matter which is under the exclusive control of the local school division will not be addressed in the special education complaint system. Local school divisions are responsible for the general day-to-day operation of schools, including supervision of personnel and the administration of programs.

What is the difference between a Formal State Complaint and a Due Process Hearing Request?

Anyone can file a Formal State Complaint. The formal state complaint usually involves a review of the alleged procedural violations. A formal state complaint requires investigation by a SOSE staff (compliance monitor, compliance manager, or designee) and may involve interviewing the complainant, reviewing documents, and interviewing district personnel to determine whether the district is in compliance. A formal state complaint must be filed within one year of the alleged violation and can be filed alleging noncompliance with any federal regulations or state special education rule. *A formal state complaint does not include formal testimony by experts or others, formal records of proceedings, oaths, subpoenas, or other formal due process protections.*

A Due Process Hearing Request is a formal administrative hearing conducted by a Hearing Officer. In a due process hearing, the parties can subpoena witnesses, provide testimony by experts, bring witnesses and cross-examine witnesses, have a record of the proceedings, and enter and object to evidence. Due process hearings are likely to involve disputes between the parent and the local school district over the appropriateness or nature of the student's program or services (*an issue relating to the identification, evaluation, or education of a child or the provision of free appropriate public education (FAPE) for the child*). Unlike a formal state complaint, a due process hearing must be filed within two (2) years of the alleged noncompliance. **In a due process hearing, the decision of the Hearing Officer can be appealed to a court of competent jurisdiction, whereas in a Formal State Complaint, the decision of the SEA is the final agency action. There is no internal administrative appeal or request for reconsideration.**