# Due Process Complaint and Request for Hearing

Under the Individuals with Disabilities Education Act (IDEA) and
the Exceptional Children's Educational Act (ECEA)

***Questions and Answers***

COLORADO
Department of Education

## Filing a Complaint

**What is a due process complaint?**

A due process complaint (DPC) is a request for a hearing before an Administrative Law Judge (ALJ) to resolve a disagreement about the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) for a child with a disability. The ALJ conducts an evidentiary hearing to learn about the concerns and disagreements raised in the complaint. After the hearing, the ALJ issues a written decision to determine the outcome and resolve the dispute.

**How is this process like a formal court proceeding?**

This is an adversarial process where each party must find and then present evidence to prove their case. This process provides each party with the opportunity to call witnesses, present evidence, and examine and cross-examine witnesses under oath.

Unlike a state complaint, the party filing the DPC bears the burden of proof, which means that they must show the ALJ through evidence (documentation and testimony) that the allegations (concerns) raised in the complaint are true.

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

A parent, guardian, or public agency (School District, BOCES, or State Operated Program) may file a DPC.

**How do I file a due process complaint?**

You may file a DPC by filling out the CDE due process complaint form. Although you are **not** required to use the CDE form, it helps make sure that you provide the required information.

You must send the complaint by fax, mail, or hand-delivery to the CDE and the Special Education Director of the responding public agency[1] (i.e., School District, BOCES, State Operated Program, or CDE). The CDE does not currently accept complaints by e-mail.

**What information must be included in a due process complaint?**

[1] Public agency is defined as a school district, board of cooperative services ("BOCES"), state operated program, or state education agency (in this case, the Colorado Department of Education ("CDE").

- Name and address of the child and the name of the school the child attends;
- Description of the problems or concerns about the proposal or refusal to initiate or change the identification, evaluation, eligibility, placement or special education services for the child;
- Facts and/or descriptions of events that support each problem/concern; and
- Proposed resolution of the problem or the relief requested to the extent known to the person filing the complaint.

**What issues can be addressed?**

A DPC can address an alleged violation of the IDEA or ECEA about the identification, evaluation, or educational placement of a child with a disability or the provision of a Free Appropriate Public Education (e.g., special education program, supports and services provided to the child). The alleged violations must have occurred no more than two years prior to the date the complaint is filed.

**How does the process work?**

When CDE receives a due process complaint, we first contact the responding party to confirm that they have also received a copy of the complaint. The activities described below happen soon after the DPC is filed.

- ALJ Assigned. After the CDE confirms that the responding party has received the complaint, it is forwarded to the Office of Administrative Courts (OAC) to assign an ALJ to oversee the process.

- Written Response. Within 10 days of receiving the DPC, the responding party must file a written response to the allegations (concerns) raised by the party who filed the DPC (see below "Complaint and Hearing Process").

- Resolution Meeting. Within 15 days of receiving a DPC, the public agency must convene a resolution meeting with the parent(s) and relevant IEP team members to attempt to resolve the issues before scheduling the hearing (see below "Resolution Meeting"). If the parties are not able to resolve the issues in the complaint during this meeting, the hearing may go forward.

- Prehearing Conference. Within the first 30 days after the complaint has been filed, the OAC will schedule a Prehearing Conference. A prehearing conference provides an opportunity for the parties to meet with the ALJ (usually by phone) to discuss how and when the hearing will happen.

**What if a public agency files a due process complaint against a parent?**

In limited circumstances, a public agency may file a complaint against a parent. For example, a public agency may choose to file a DPC in response to a parent's request for an independent educational evaluation. In this situation, the parent is the responding party and must send a written response that

specifically addresses the issues raised in the complaint within 10 days of receiving it. The public agency is also not required to conduct a resolution meeting.

If a public agency files a due process complaint concerning the same issues on which a parent had received a state complaint decision in their favor, the parent may contact Student Defense Alliance to have an attorney appointed to represent them in the due process hearing. The Student Defense Alliance shall maintain a list of qualified attorneys and assign them on a rotational basis. Representation will be provided at no cost to a qualifying parent.

**What does it cost?**

While a DPC requires no filing fees, each party is responsible for their own attorney fees and costs (such as mailing or printing costs).

**Do I need an attorney?**

You are not required to have an attorney represent you during a due process hearing. You may choose to hire an attorney to assist with the due process hearing at your own expense. Prior to filing a DPC, you may want to contact an attorney or advocate experienced in special education law. If you are a parent, Disability Justice may be able to assist you or refer you to other available resources.

Self-represented parties must comply with all procedures and court rules as an attorney would. ALJs cannot provide legal advice or representation.

**Where can I receive legal advice or advocacy assistance?**

The following resources may be able to provide representation, legal advice, or support to parents:

- Disability Justice, https://disabilityjustice.co/
- AdvocacyDenver, https://www.advocacydenver.org/

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**What if I need an interpreter?**

The CDE will provide an interpreter free of cost for any parent who needs the assistance of an interpreter to participate in the due process hearing, resolution meeting, or mediation.

## Resolution Meeting

**What is a resolution meeting?**

A resolution meeting provides an opportunity for the parties to meet to discuss the concerns raised in the DPC and try to resolve them without a hearing. A resolution meeting is required as part of the DPC proceeding unless the parties both agree to use mediation or agree in writing to waive the resolution meeting.

**Who participates in the resolution meeting?**

The parent, the director of special education (or designee who has decision making authority on behalf of the public agency) and relevant members of the IEP team who the parties agree have specific knowledge of the facts identified in the complaint and can assist in resolving the issues. An attorney for the public agency may not attend the resolution meeting unless an attorney for the parent is also present.

**When will the resolution meeting be scheduled?**

The public agency must conduct the resolution meeting within 15 days of the complaint being filed, even though the resolution period may continue for up to 30 days. The public agency must make reasonable attempts to schedule a resolution meeting with the parents throughout the 30-day resolution period.

**Where will it be held?**

The meeting must be held at a location that is agreeable and convenient to both parties.

**Who decides the outcome of the resolution meeting?**

The parties. If the parties agree to a resolution, the terms of the agreement are put in writing, a document commonly referred to as a "written settlement agreement," and then signed by both parties.

**What happens after an agreement is reached?**

The parties notify the ALJ that an agreement has been reached and file a motion to request that the complaint/hearing be dismissed.

**What if I change my mind after an agreement is signed?**

You will have three business days to void or cancel a written settlement agreement signed by both parties.

**What if an agreement is not reached during the resolution meeting?**

The due process hearing may proceed and will be scheduled when the 30-day resolution period ends.

**What if a parent refuses to participate in the resolution meeting?**

The public agency may request that the ALJ dismiss the complaint after the 30-day resolution period has passed if it has been unable to obtain the participation of the parent in a resolution meeting. The public agency must diligently make and document reasonable efforts to obtain parent's participation in a resolution meeting throughout the 30-day resolution period.

**Can the parties waive the resolution meeting?**

Yes. The parties may agree that no resolution is possible or agree to use mediation instead of holding a resolution meeting. If the parties agree that no resolution is possible, they must both agree in writing to waive the resolution meeting.

**What if the public agency does not schedule a resolution meeting?**

If the public agency fails to hold a resolution meeting within the 15 calendar days after the filing of the complaint, the parent may file a motion with the ALJ to begin the 45-day hearing timeline and request that a hearing be scheduled.

**Can mediation be requested after due process is filed?**

Yes. Mediation may be requested at any time in the process and may be used in place of the resolution meeting if both parties agree. Mediation provides the parties with the assistance of an impartial third party who is trained in mediation and knowledgeable about special education law to help the parties resolve their concerns.

## Complaint and Hearing Process

**Response.**

Within 10 days of receiving a DPC, the public agency (School District, BOCES, State Operated Program, or CDE) must send a response to the parent that includes:

- An explanation of why the public agency proposed or refused the actions described in the complaint;
- A description of other options that the IEP team considered and why those options were rejected;
- A description of each evaluation, assessment, record or report used to make its decision; and
- A description of any other factors determined to be relevant.

**What if the public agency challenges the complaint?**

The public agency may ask the ALJ to dismiss a complaint if it claims that the required information is not included and/or the ALJ does not have the authority under IDEA to resolve the specific disagreement.

The public agency has 15 days from receipt of the complaint to file a motion for insufficiency. If the public agency files a motion for insufficiency, the ALJ must determine whether the complaint is sufficient within 5 days of receiving the motion.

If the ALJ finds the complaint to be insufficient, they may allow the complaint to be amended and re-filed. In this event, all timelines, including the resolution meeting timelines, start over with the filing of the amended complaint. This provides the parties with another opportunity to hold a resolution meeting, or use mediation, to resolve the issues in the amended complaint.

**Can the 45-day hearing timeline be extended?**

Yes. The hearing timeline may be extended by the ALJ at the request of a party.

**Prehearing Conference.**

The OAC will schedule a prehearing conference within 30 days of the filing date. The prehearing conference provides both parties an opportunity to discuss with the ALJ how and when the hearing will proceed. The ALJ will discuss documents relevant to the hearing and witnesses that may need to be present. The prehearing conference is typically conducted by telephone.

**Hearing.**

The ALJ will conduct the evidentiary hearing and manage the proceedings. Each party will have an opportunity to present evidence, give testimony, and question witnesses for both sides.

**Should the student attend the hearing?**

The parent(s) decide whether the student should attend the hearing.

## Hearing Decision and Appeal

**When must a due process hearing decision be issued?**

Unless extended by the ALJ, a decision must be issued within 75 days from the date the complaint is filed. This timeline includes the 30-day resolution period and the 45 days for the hearing. The ALJ may only extend the hearing and decision date if requested by a party to the DPC.

**Who decides the outcome?**
The ALJ. Following the hearing, the ALJ will issue a written decision. If the ALJ determines that there were IDEA violations, remedies may be ordered, and the violations must be corrected. If the ALJ determines that no IDEA violations occurred, no remedies will be ordered. The ALJ decision is the final decision.

**Can I request a copy of the hearing transcript and what does it cost?**

Yes. Either party may request a copy of the hearing transcript from the CDE. The CDE will provide a copy of the transcript free of charge to parents based on a standard rate contracted between the CDE and the court reporting agency. The requesting party will be responsible for charges over and above standard fees if a party requests an expedited transcript.

**Are due process decisions publicly available?**

Yes. Due process decisions can be found on the CDE website at: http://www.cde.state.co.us/spedlaw/decisions.

**How is the due process decision enforced?**

If the ALJ concluded that the public agency violated the IDEA or ECEA, the CDE must ensure the remedies ordered are provided unless the decision is appealed. In addition, a party who does not believe that a school district is complying with an activity ordered by an ALJ in a due process decision may also file a state complaint to request an investigation.

**Can the decision be appealed?**

A party wishing to appeal the ALJ's decision has the right to bring a civil action in state or federal court within 90 days of the date of the decision. A party who does not appeal within 90 days loses the right to appeal, and the ALJ's decision becomes final.

## Expedited Complaint

**What is an expedited due process complaint?**

If the complaint concerns a disciplinary change of placement (suspension or expulsion greater than 10 days) or disagreements about a manifestation determination, the DPC will be expedited. This means that the proceedings will occur within different, and most likely shorter, timeframes.

**When will the resolution meeting be scheduled?**

A resolution meeting must be held within 7 days of the complaint being filed, unless the parties agree that no resolution is possible and waive the meeting in writing, or the parties agree to use mediation instead of a resolution meeting. The resolution period may continue for up to 15 days. The parties may not extend the seven-day resolution meeting timeline or the 15-day resolution period.

**How are the timelines different for an expedited hearing?**

A hearing must take place within 20 *school* days of the complaint being properly filed, and a decision must be issued within 10 school days of that hearing.

**Can the timelines be extended for an expedited hearing?**

Timelines for an expedited hearing may not be extended.