Due Process Hearings

What is a Due Process Hearing?

A due process hearing is like a court proceeding where evidence is presented to an impartial hearing officer, and ultimately one side prevails. A due process hearing can be requested by either a parent or the school. The hearing typically takes place in a conference room setting, not a courthouse. Although the hearing does not take place in a courtroom, the procedures are similar. The school will be represented by their own attorney, and in order to have a fair chance at receiving a favorable ruling, it’s essential that you are represented by somebody who can help you navigate the complex process and relevant laws.

When should a parent request a due process hearing?

A due process hearing is considered one of the most adversarial dispute resolution processes, and it is recommended that a parent try to resolve issues with the school through other means first. However, some disputes cannot be resolved through less adversarial means, and a hearing may be necessary. Some instances in which a due process hearing may be required is when:

- Your child’s IEP is not being followed, and as a result, your child is not receiving the services that they need;
- The school refuses to evaluate your child in order to establish eligibility for special education;
- You disagree with disciplinary action imposed by the school; or
- You disagree with the school’s eligibility or placement decision.

Timeline for Filing Due Process

A due process complaint must allege a violation that occurred not more than two years before the date the parent or adult student or school district knew or should have known about the alleged action.

How to Request a Due Process

You may fill out the “Request for Due Process Hearing” form available here or draft a separate due process complaint that contains all of the required information. You will need to submit the complaint and/or form to the other party (e.g., the school district or public charter school Special Education Director) as well as the State Director of Special Education at the Utah State Board of Education (“USBE”). Directions for submission can be found on the form here.

How can I prepare for a Due Process Hearing?

- Keep an organized file of your child’s educational records;
• Draft a timeline that outlines and describes the events that lead you to file a complaint/request for a due process hearing;
• Be able to articulate the relief that you hope to achieve through the due process hearing. Make sure to understand the kind of relief that a hearing officer can order (e.g., while a hearing officer can order compensatory education, they cannot award damages); and
• Find and work with an attorney who can help you throughout the hearing process.
As explained above, the school district will be represented by their own attorney, and in order to succeed, it's essential that you are represented by somebody who can help you navigate the complex process and relevant laws.

Examples of the relief that may be ordered by a hearing officer

Compensatory Education:
If compensatory education is ordered by a hearing officer, the school district may be required to cover the costs incurred by a parent in having to pay for private services such as social skills training, speech therapy, occupational therapy, and psychological counseling that were denied by the school district; alternatively, the school district may be ordered to provide such services moving forward.

Private School Tuition Reimbursement:
If parents have to remove their child from an inappropriate public-school program, they may be able to secure reimbursement for the cost of sending the child to a private school.

What Happens after I file a Due Process Complaint?
The student remains in their current educational setting unless you and the school agree otherwise.

• Ten days after receiving the due process complaint, the school district must send the parent or adult student a response addressing the specific allegations contained in the complaint.
• After filing a due process complaint, you and the school will attend a resolution session to attempt to find a resolution before going any further. The meeting must be held within 15 days of the school receiving the complaint, and the parties have 30 days to try to reach a resolution agreement.
• You and the school may agree, in writing, to waive this meeting.
• If it is determined that a resolution cannot be reached, the 45-day timeline for the due process hearing will commence.
• Five days before the hearing, you and the school will exchange a list of witnesses and documentary evidence that you intend to use at the hearing. If either side fails to disclose any information, it can be excluded at the hearing.
What happens during the hearing?

- Each party will give an opening statement.
- Both sides will present their evidence and question witnesses. The other party will have the opportunity to cross-examine each witness. This process usually takes several hours to several days for each party.
- Both parties will give a closing argument or submit a brief summarizing the evidence and arguments at the end of the proceedings. The hearing officer will then issue a decision in the case. If the hearing officer decides in favor of the student, the hearing officer will order relief.

What if I disagree with the decision?

If you disagree with the results of a due process hearing, you may appeal the decision by bringing a civil action in state or federal court. The school district may also appeal the decision.

What are my rights as a parent or adult student?

- The right to be accompanied and advised by an attorney and individuals with special knowledge or training with respect to the problems of students with disabilities.
- The right to present evidence and to confront, cross-examine, and compel the attendance of witnesses.
- The right to obtain a verbatim record of the hearing and decision at no cost to you.
- The right to have the child who is the subject of the hearing present.
- The right to have the hearing open to the public.
- If you are the prevailing party, you are entitled to reimbursement of attorney fees.
The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC believes in a society where abilities, rather than disabilities, are recognized; all people have an equal opportunity to participate; and where all people are treated with equity, dignity, and respect. We work toward our vision by enforcing and advancing the legal rights, choices, and opportunities of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

If you have further questions, please contact us. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us. Materials are also available in alternative formats such as audio, large-print, Braille and Spanish. Call (800) 662-9080 or apply for help online, and our staff will contact you within 1-3 business days.

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