Delaware Procedural Safeguards

Parent and Child Rights in Special Education

In Compliance with Part B of the Individuals with Disabilities Education Act,
and State and Federal Regulations Governing Special Education

Exceptional Children Resources
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This document is available in multiple languages at: https://education.delaware.gov/legacy/home/instruction-and-assessment/exceptional-children/special-education/for-families/rights-and-disputes/
Please contact Exceptional Children Resources if you need an additional translation.

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Delaware Department of Education
Exceptional Children Resources

Delaware Procedural Safeguards

Parent and Child Rights in Special Education

In Compliance with Part B of the Individuals with Disabilities Education Act, and State and Federal Regulations Governing Special Education

Procedural Safeguards

What are the *Delaware Procedural Safeguards Parent and Child Rights in Special Education*?

This information provides you as parents, legal guardians, and educational surrogate parents of children with disabilities, with an overview of your educational rights, sometimes referred to as Procedural Safeguards. This information is your Notice of Procedural Safeguards (Notice), as required by the Individuals with Disabilities Education Act (IDEA) and state and federal regulations governing the provision of special education and related services. This Notice is also provided to students who are entitled to these rights at age eighteen (18).

When is the Notice of Procedural Safeguards provided?

This Notice of Procedural Safeguards must be given to you at least one (1) time a school year; and:

(1) The first time your child is referred for a special education evaluation;

(2) Any time you request your child receive a special education evaluation;

(3) The first time you file a due process complaint or state complaint in a school year;

(4) Each time you request a copy of the Notice of Procedural Safeguards;

(5) At each IEP Team meeting; and

(6) Any time a decision is made by the school[1] to change your child's educational placement due to a violation of the school code of conduct (if your child is entitled to the disciplinary protections of the IDEA).

The *Delaware Procedural Safeguards Parent and Child Rights in Special Education* is also available at: https://education.delaware.gov/legacy/home/instruction-and-assessment/exceptional-children/special-education/for-families/rights-and-disputes/

[1] The term school is used throughout this Notice to describe any public education agency responsible for providing your child's special education program, including public charter schools and school districts.

General Information

What is the Individuals with Disabilities Education Act (IDEA)?

The IDEA is a federal law that requires schools to provide a free appropriate public education to children with disabilities. A free appropriate public education is referred to as FAPE and means special education that is specially designed instruction provided to your child through an individualized education program, or IEP, under public supervision at no cost. FAPE must be individualized to meet your child's unique needs, confer meaningful benefit on your child gauged to your child's potential, and provide significant learning to your child.

What are some common special education terms?

Your child's IEP is written by the IEP Team at an IEP Team meeting held at least once a year and including parents as participants. The IEP must include certain required provisions, including, but not limited to a present level of your child's academic achievement and functional performance, measurable annual goals, a statement of the specialized services and supports your child requires, a list of the accommodations necessary for classes and assessment, and an explanation of the amount of time your child will not be participating in regular education classes. The school must provide regular progress reports about your child's progress toward reaching IEP goals. Special education services must be provided in the least restrictive environment, or LRE, which means your child should attend class and participate in other activities with children without disabilities as much as possible, given the educational needs of your child. As a parent, you can provide or withhold consent to certain actions before the school can act.

Where can I get more help?

When you have a concern about your child's education, it is important that you call or contact your child's teacher or administration to talk about your child and any problems or concerns you have. Staff in your school can answer questions about your child's education, your rights, and the procedural safeguards. When you have a concern, the conversation with school staff may solve the problem and help to maintain open communication.

You may also contact your local supervisor of special education for the school district or charter school. Note, the Delaware Department of Education (Department) Regulations governing special education are available at:
http://regulations.delaware.gov/AdminCode/title14/900/index.shtml

For further information about special education services, you may contact:

Director, Exceptional Children Resources
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901

Phone: (302) 735-4210
Fax: (302) 739-2388
https://education.delaware.gov/

Additional information is available by contacting:

Parent Information Center of Delaware, Inc.

Website: www.picofdel.org

Email: picofdel@picofdel.org

New Castle County Office:

404 Larch Circle
Wilmington, DE 19804

Telephone: (302) 999-7394
Fax: (302) 999-7637
Toll-Free: (888) 547-4412

Kent County Office:

1675 S. State Street
Dover, DE 19901

Fax: (302) 999-7394
Toll-Free: (888) 547-4412

Sussex County Office:

221 High Street, Unit 106B
Seaford, DE 19947

Toll-Free: (888) 547-4412

The Special Education Partnership for the Amicable Resolution of Conflict (SPARC)

Website: www.udel.edu/academics/colleges/biden-school/research-public-service/ipa/public-service/crp/sparc/

Email: sparc-info@udel.edu

The Conflict Resolution Program
177 Graham Hall
Institute for Public Administration
University of Delaware
Newark, DE 19716

Telephone: (302) 831-8158

Disability Rights Delaware, Community Legal Aid Society, Inc.

Website: http://www.declasi.org/disabilities-law-program/

New Castle County:

100 West Tenth Street, Suite 801
Wilmington, DE 19801

Telephone: (302) 575-0660
(302) 575-0696 (TTY/TDD)
Toll Free: (800) 292-7980

Kent County:

840 Walker Road
Dover, DE 19904

Telephone: (302) 674-8500
(302) 674-9430 (TTY/TDD)
Toll Free: (800) 537-8383

Sussex County:

Georgetown Professional Park
20151 Office Circle
Georgetown, DE 19947

Telephone: (302) 856-0038
(302) 856-7491 (TTY/TDD Also)
Toll Free: (800) 462-7070

Delaware Volunteer Legal Services, Inc.

Website: https://www.dvls.org/

Email: tventresca@dvls.org

Wilmington Telephone: (302) 478-8680
Sussex or Kent County Telephone: (888) 225-0582

Parent Participation in Meetings

How are decisions made about my child's special education needs?

Decisions about your child's special education needs and services are made at Team meetings. As the parent of a child with a disability, you have the right to participate in meetings regarding the identification of your child as a child with a disability, the evaluation of your child's special education needs, the determination of whether your child requires special education services, the development, review, and/or revision of your child's IEP, and the educational placement of your child.

What is an IEP Team meeting?

An IEP Team is a group of qualified persons who periodically meet at IEP Team meetings to make determinations about your child's IEP. The IEP Team includes:

(1) The parents of the child;

(2) At least one of your child's regular education teachers;

(3) At least one of your child's special education teachers;

(4) A school representative who has the authority to commit school resources and ensure services in your child's IEP are provided;

(5) An individual with expertise to interpret your child's evaluation results;

(6) The child, when appropriate; and

(7) Your child's career technical education teacher, or the career technical teacher coordinator, if your child is, or may be, participating in a career and technical education program.

You may invite other individuals with knowledge or special expertise regarding your child to participate in an IEP Team meeting. You may also request the presence of any teacher, paraprofessional, and additional staff at an IEP Team meeting.

How do I participate in my child's IEP Team meeting?

You have the right to participate at each IEP Team meeting for your child because you have knowledge about your child's strengths, goals, and needs, and your input is important. If you cannot participate in an IEP Team meeting in person, the school must use other methods to ensure your participation, such as using individual or conference telephone calls or video conferencing.

You also have the right to have an interpreter, translator, or sign language interpreter provided by the school at no cost, if necessary.

The IEP Team must ensure your participation by providing you with a questionnaire prior to the IEP Team meeting. The questionnaire requests information about your child's progress, and proposed steps that should be taken to adjust your child's goals, curriculum, services, aids, modifications, and other elements of your child's IEP.

In addition, if the IEP Team prepares a draft of your child's IEP prior to the meeting, the IEP Team must provide you with a copy of the draft IEP with a letter clearly stating the IEP is only a draft for discussion purposes and subject to revisions.

Prior to the IEP Team meeting, you may also request any data in the school's possession related to your child's needs or disability, to include classroom and formative assessments, behavior data, related services reports, and data related to your child's progress when provided evidence-based interventions.

Can the school hold an IEP Team meeting if I am unable to attend?

The school can hold an IEP Team meeting if you are unable to attend, but only if the school can demonstrate it made efforts to arrange a mutually agreed upon time and place for the meeting and tried to convince you to attend. The records must demonstrate detailed records of telephone calls made and the results of the calls, copies of correspondence sent and responses received, detailed records of visits made to the parent's home or place of employment, and the results of the visits.

Must all members of the IEP Team attend the meeting?

All required members of the IEP Team must attend all meetings of the IEP Team, unless you provide written consent to excuse a required member of the IEP Team. There are two circumstances when a school may request your consent to excuse a member of the IEP Team from a meeting:

(1) If a required IEP Team member's area is not being discussed or modified at the meeting, the school may ask for your written consent to have that member of the Team excused from the meeting, in whole or in part. If you agree the Team member may be excused, you must provide written consent to the school. You may also decline to provide consent, and that Team member must attend the meeting or the meeting may need to be rescheduled.

(2) If a required IEP Team member's area is being discussed or modified at the meeting, the school may ask for your written consent to have that member excused from the meeting, in whole or in part. Prior to the meeting, the excused Team member must provide written input into the development of the IEP to the parent and the IEP Team. If you agree the Team member may be excused, you must provide written consent to the school. You may also decline to provide consent, and the Team member must attend the meeting, or the meeting may need to be rescheduled.

Notice of IEP Team Meeting

How will I be notified to participate in an IEP Team meeting?

The school must take steps to ensure you are present at each IEP Team meeting for your child and afforded an opportunity to participate. The school must schedule the meeting on a mutually agreeable date and time, and send you written notice of the IEP Team meeting no less than ten (10) school days prior to the meeting (and no less than five (5) school days prior to a meeting to conduct a manifestation determination) to ensure you will have the opportunity to attend.

What information does the Notice of Meeting contain?

The written Notice of Meeting must state:

(1) The purpose, time, and location of the meeting, and who will be in attendance;

(2) Inform you of the right to invite to the meeting other individuals who have knowledge or special expertise about your child;

(3) Inform you of the right to request the presence of any teacher, paraprofessional, and additional staff members at the meeting;

(4) Inform you of the right to request any data, prior to the IEP Team meeting, including classroom and formative assessments, behavior data, related service reports, or data related to your child's progress when provided evidence-based interventions, in the school's possession and related to your child's needs and disability.

(5) For a child with a disability, beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8^{th}) grade, or younger if determined appropriate by the IEP Team, the notice must indicate a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child, and the child must be invited to the meeting in writing.

In addition, a summary of the *Delaware Procedural Safeguards Parent and Child Rights in Special Education* is included in the written Notice of Meeting.

Prior Written Notice

How will I be informed of decisions related to my child's special education program?

The school must inform you of important decisions being made about your child's special education program by giving you prior written notice that is understandable and in your native language or other mode of communication. The notice is meant to provide you with sufficient information to ensure you understand the special education and related services the school is proposing or refusing to provide with the reasons for the decision and provide you with an opportunity to seek resolution of any dispute through mediation, or the filing of a state complaint, or due process complaint.

When will the Prior Written Notice be provided to me?

The notice must be given to you no less than ten (10) school days before the school proposes (or refuses) to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education. In cases involving a change of placement for disciplinary purposes, the notice must be provided no less than five (5) school days before the school changes your child's placement.

What will the Prior Written Notice tell me?

The Prior Written Notice will:

(1) Describe the action being proposed or refused by the school;

(2) Explain why the action is proposed or refused by the school;

(3) Describe each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;

(4) Describe any other options the IEP Team considered and the reasons those options were rejected;

(5) Describe any other factor relevant to the action proposed or refused;

(6) Contain a statement explaining your rights to the procedural safeguards; and

(7) Contain sources for you to contact to obtain help understanding the IDEA and Delaware Department of Education Regulations;

In addition, a summary of the *Delaware Procedural Safeguards Parent and Child Rights in Special Education* is included in the Prior Written Notice.

Can I receive notice by electronic mail?

If your school offers parents the choice of receiving documents by email, you may opt to receive the Notice of Meeting, Prior Written Notice, and *Delaware Procedural Safeguards Parent and Child Rights in Special Education* by email.

Parental Consent

What is parental consent?

As a parent of a child with a disability, you have the right to provide or withhold consent to certain actions the school is proposing. Consent means you have been fully informed of all the information related to the action the school is proposing, and you understand and agree, in writing, to the proposed action.

When is my parental consent required?

(1) **Prior to Your Child's First Special Education Evaluation.** The school must obtain your informed, written consent before it can proceed with your child's first special education evaluation. The school must make reasonable efforts to obtain your informed consent for an initial evaluation to determine whether your child is a child with a disability. However, your consent for the initial evaluation does not mean that you have also given your consent for the school to start providing special education and related services to your child through an IEP.

(2) **Prior to Your Child's Reevaluation for Special Education.** The school must document it made reasonable attempts to obtain your consent. If you do not respond to these attempts, the school may proceed with the reevaluation without your consent.

(3) **Prior to Your Child Receiving Special Education Services for the First Time.** You must give informed, written consent before the school can provide special education and related services to your child through an IEP for the first time.

Can I refuse or revoke parental consent?

If you refuse consent for an initial evaluation or reevaluation, the school may continue to seek the evaluations by requesting a mediation conference with you or using the due process hearing procedure.

If you refuse consent for your child to receive special education and related services through an IEP for the first time, or if you do not respond to a request to provide such consent, the school is not required to have an IEP Team meeting or develop an IEP for your child. In addition, the school may not use mediation or the due process hearing procedure to obtain your agreement or a ruling that it may provide special education and related services to your child.

You can revoke your consent for the continued provision of special education and related services to your child at any time. However, your revocation must be in writing and provided to the school. In turn, the school must discontinue all special education and related services to your child, but only after providing you with prior written notice regarding the change in educational placement and services that will result.

Your consent is not required to review existing information as part of the evaluation process or to administer tests that are given to all children (unless consent is required for all children). Your consent to any activity is voluntary and may be revoked at any time, but revoking your consent does not negate any action taken while the school had your consent.

The school may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

What if the child is a ward of the state?

If the child is a ward of the state and not living with either parent, the school does not need consent from a parent for an initial evaluation if:

(1) The school cannot locate the parent after making reasonable efforts to do so;

(2) Parental rights have been terminated in accordance with state law; or

(3) A judge has assigned the rights to make educational decisions to a person other than the parent, and consent for an initial evaluation has been given by the person appointed to represent the child.

Educational Surrogate Parent Appointment

What if the parent cannot be identified or located?

Schools must ensure an individual is assigned to act as a surrogate parent for the child with a disability when a parent cannot be identified, and the school cannot determine the parent's whereabouts. A surrogate parent may also be appointed if a child has been determined to be a ward of the state, is an unaccompanied homeless youth, or is in the custody of the Department of Services for Children, Youth, and their Families.

What is the role of a surrogate parent?

A surrogate parent represents the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child. The surrogate parent must become thoroughly familiar with the child's educational history and needs, safeguard the confidential nature of the child's school records, and participate in the development of the child's IEP. The surrogate parent may provide or withhold consent for the initial evaluation or placement of the child, and reviews and evaluates the available special education programs for the child. The surrogate parent is further responsible for requesting mediation, or filing a state complaint, or due process complaint, when necessary. The Department provides training to surrogate parents concerning state and federal law related to the education of children with disabilities.

How is a surrogate parent appointed?

Schools are responsible for identifying and locating children who may need a surrogate parent and must promptly submit a request to the Department for appointment of a surrogate parent, when necessary. The Department then appoints a surrogate parent who has the knowledge and skills to adequately represent the child. The surrogate parent must be at least eighteen (18) years of age and have no interest that conflicts with the child. The surrogate parent cannot be an employee of the school district, charter school, or Department, or any other agency involved in the care or education of the child.

When does a surrogate parent's role terminate?

The Department may terminate a surrogate parent's appointment when it determines the child no longer requires a surrogate parent. A surrogate parent may also be terminated if the surrogate fails to discharge his or her responsibilities, or duties to maintain confidentiality.

A youth between the age of eighteen (18) and twenty-two (22) may remain eligible for guidance through the appointment of an educational representative. Unless declared incompetent by a court of law, the youth has the right to have an educational representative or refuse the appointment of an educational representative. The youth also has the right to participate in the selection of an educational representative and terminate the surrogate parent's services.

Evaluations

What is an evaluation?

An evaluation is a process used to determine whether your child has a disability and needs special education and related services. The process involves the review of relevant data and the individual review of any assessments and observations of your child, including information provided by the parents. A singular measurement or assessment may not be used to determine your child's eligibility for special education and related services. A minimum of two (2) data sources are required. Each assessment must be administered by a trained and knowledgeable individual with qualifications to conduct the assessment consistent with his or her professional license and certification.

What is the timeline for completing an evaluation?

The school must complete an initial evaluation within forty-five (45) school days, or ninety (90) calendar days, whichever is less, of receiving your written consent to conduct the evaluation.

A reevaluation must be conducted at least once every three (3) years, unless you and the school agree a reevaluation is not necessary. A reevaluation may occur sooner than the (3) years but not more than once a year, unless you and the school agree.

If you request an evaluation of your child, and the school refuses to complete the evaluation, the school must provide you with prior written notice describing the reasons for its refusal.

Independent Educational Evaluations

Can my child be evaluated independently at the school's expense?

Independent evaluation means an evaluation conducted by a qualified examiner who is not employed by the school. You have the right to ask for and obtain an independent educational evaluation for your child at public expense if you disagree with an evaluation of your child obtained by the school, subject to the following:

If you request an independent evaluation of your child at public expense, the school must either: (1) file a due process complaint to request a hearing to show its evaluation was appropriate, or (2) provide an independent evaluation at public expense.

If the school files a due process complaint to request a hearing and the final decision is that the school's evaluation is appropriate, you still have the right to an independent evaluation, but not at public expense.

The school must respond to your request for an independent evaluation and provide you information about where to obtain the evaluation. The school may ask why you object to its evaluation, but you are not required to provide an explanation. The IEP Team must consider independent evaluations when making decisions about your child's free appropriate public education. You or the school may present the independent evaluation as evidence at a due process hearing regarding your child.

The school may not unreasonably delay providing the independent educational evaluation or initiating a hearing to defend the public evaluation. If the school requests a hearing and prevails, you still have the right to an independent educational evaluation, but not at public expense.

What are the requirements for an independent evaluation?

If an independent evaluation is at public expense, the criteria for the evaluation must be the same criteria the school uses when it initiates an evaluation, such as the location of the evaluation and the qualifications of the evaluator. Otherwise, the school may not impose additional conditions or timelines related to obtaining the evaluation at public expense.

You are entitled to only one independent evaluation of your child at public expense each time your school conducts an evaluation of your child with which you disagree.

Eligibility

How is eligibility determined?

Once the evaluation is completed, your child's eligibility for special education and related services is determined collaboratively by you and a group of qualified professionals. Your child may be found eligible for special education and related services if your child meets the criteria for one (1) or more educational classifications, the disability adversely affects your child's educational performance, and your child needs special education and related services. There are twelve (12) educational classifications with eligibility criteria described in the Delaware Department of Education Regulations, to include: autism, developmental delay, deaf-blind, emotional disability, hearing impairment, specific learning disability, intellectual disability, orthopedic impairment, other health impairment, speech or language impairment, traumatic brain injury, and visual impairment including blindness.

The school must provide you with an evaluation summary report and documentation of eligibility at no cost, to include the Team's discussion of the eligibility determination.

Individualized Education Program

What is an IEP?

An IEP is a written plan describing how your child's special education program and related services will be provided within a certain educational placement or setting. The school must provide a copy of your child's IEP to you at no cost.

The school must also convene an IEP Team meeting to develop your child's IEP within thirty (30) calendar days of the eligibility determination finding your child needs special education and related services. Once developed, the IEP must be implemented as soon as possible and reviewed at least once a year at an IEP Team meeting.

Your child's IEP must contain a description of your child's current levels of academic and functional performance, specific instructional needs, services, supports, and accommodations, as well as an explanation of the amount of time your child will not be participating in regular education classes. The IEP must also contain measurable annual goals.

The school must ensure your child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other person responsible for implementing the IEP.

The school must ensure each teacher is informed of his or her specific responsibilities related to implementing your child's IEP, and the specific accommodations, modifications and supports to be provided to your child.

Transition Planning for Adult Life

What is transition planning?

Transition planning is a process to assist your child in transitioning from the school environment into the adult world, and involves the IEP Team, parents, school staff, and staff from other public agencies. Transition planning must be included in your child's IEP beginning with the first IEP to be in effect when your child turns age fourteen (14), or enters the eighth (8^{th}) grade, or at a younger age if determined appropriate by your child's IEP Team.

Whenever transition planning will be included in your child's IEP, the school must provide a written invitation to your child to attend the IEP Team meeting. If your child does not attend the IEP Team meeting, the school must take steps to ensure your child's preferences and interests are considered.

Key components of transition planning in the IEP include:

(1) Measurable postsecondary goals, based upon age-appropriate transition assessments related to training, education, employment, and if appropriate, independent living skills;

(2) Transition services and activities, including courses of study, to assist your child in reaching the goals; and

(3) Your child's strengths, interests, and postsecondary preferences, and plans to make application to high school and career technical education programs.

The school must provide regular progress reports on your child's postsecondary goals and transition services described in the IEP.

Transfer of Rights Upon Reaching Age of Majority

What are my rights when my child reaches age eighteen (18)?

When your child reaches age eighteen (18), all rights under special education law will transfer to your adult student, unless a court-appointed guardian of the person has been appointed for your adult student or the IEP Team has determined the student does not have the capacity to make informed educational decisions. The school must notify you and your adult student when the transfer of rights occurs at least one (1) year prior to your child turning age eighteen (18).

What happens if my adult student lacks capacity to make educational decisions?

An adult student with a disability, without a court-appointed guardian of the person, is presumed to have capacity and is afforded the rights of a parent upon reaching the age of eighteen (18). The determination of capacity is made by the IEP Team. If the student's capacity is uncertain, a school psychologist familiar with the student must attend the initial meeting, and the student and parent must be invited to participate. The IEP Team may consider information from other sources outside of school personnel and may authorize evaluations if necessary. If the information is ambiguous, any benefit of the doubt will be resolved in favor of finding the student has capacity.

If the IEP Team determines the student lacks capacity, the IEP Team shall request a person to serve as the student's educational representative and begin with a willing and available biological or adoptive parent, or a willing and available relative. If such person is not identified, the IEP Team shall make a referral to the Department for appointment of an educational representative. If the student or parent disagrees with the capacity determination, either may contest the determination by pursuing the dispute resolution options described in the procedural safeguards.

Access to Educational Records

Can I examine my child's educational records?

You have the right to inspect and review all your child's education records without unnecessary delay, including prior to a meeting about your child's IEP, before a due process hearing, and before a resolution meeting. The school will let either parent see the records unless an appropriate court order directing otherwise is given to the school.

You have these rights concerning your child's education records:

(1) On request, the school must tell you what kinds of records are collected, maintained or used concerning your child, and where the records are kept.

(2) You must be allowed to review these records before the IEP or any other meeting where identification, evaluation or educational placement of your child is an issue, or before a hearing.

(3) The school must allow you to review the records promptly and in no case longer than forty-five (45) calendar days after you request to see them.

(4) When you request information from the records, the school may not charge a fee to search for the records.

(5) The school must give an explanation of the information in the records, if requested.

(6) When copies of the records are requested, they must be provided at reasonable cost.

(7) The school may not refuse to provide copies of a student's records if refusing would prevent you from accessing the records.

(8) The school may not allow you to see information on any other student except your child.

(9) You may allow another person to review your child's records on your behalf.

(10) If you find an error in your child's records, you may ask the school to change the information and add a statement to the records describing the disagreement. The school must make a decision on your request within a reasonable time. If the school refuses to change the records as you requested, it must tell you so and advise you that you have the right to a hearing to challenge the records.

(11) The school must keep a record of parties obtaining access to your child's education records, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(12) With some exceptions, the school must obtain your consent before disclosing personally identifiable information concerning your child.

(13) The school must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Additional information about how schools maintain student records and about the rights of students and parents under the Family Educational Rights and Privacy Act of 1974 (FERPA) is available in the Delaware Department of Education Regulations.

Mediation

Can I request mediation to resolve my dispute with the school?

Yes. The Department offers mediation to assist you in resolving disputes with the school concerning the provision of special education to your child. The Department will provide you information about mediation services.

The Department developed a mediation request form for parents to complete when requesting mediation services from the Department. A copy of the Request for Special Education Mediation form is attached to the back of this Notice. This form, as well as other resources including the IDEA regulations, state regulations, and additional information about mediation can be found online at https://education.delaware.gov/legacy/home/instruction-and-assessment/exceptional-children/special-education/for-families/rights-and-disputes/.

Mediation is a voluntary way to resolve disputes and is conducted by a qualified and impartial person trained in strategies that help people come to agreement over difficult issues. Mediation gives parents and schools the opportunity to resolve disagreements and work out acceptable solutions in an informed, non-adversarial context. Mediation is provided at no cost, but both parents and the school must agree to try mediation before it can be attempted. Mediation may *not* be used to delay your right to a due process hearing.

Mediation will be scheduled in a timely manner and held at a place that is convenient for you and the school. You are permitted to be accompanied and advised by an individual of your choice at mediation. If a school is involved in mediation, it must send a district representative with authority to make decisions and commit resources to agreed upon services. Discussions that occur during mediation are confidential and cannot be used in any future due process hearing or civil proceeding in any federal court or Delaware court.

If you resolve your dispute through mediation, the parents and school must sign a legally binding agreement that sets forth the resolution, and states that all discussions that occurred at mediation will remain confidential and may not be used as evidence in a due process hearing. A written signed mediation agreement is enforceable in any state court of competent jurisdiction or in a District Court of the United States.

The Department has established a voluntary mediation system through the Conflict Resolution Program at the University of Delaware. The Department offers mediation in circumstances other than when a due process complaint has been filed. You have the right to request mediation to resolve a disagreement with the school.

For further information on mediation, contact the Special Education Partnership for the Amicable Resolution of Conflict (SPARC), at the Conflict Resolution Program, 177 Graham Hall, Institute for Public Administration, University of Delaware, Newark, Delaware 19716, (302) 831-8158.

Due Process Hearing

What is a due process hearing?

You have the right to request an impartial due process hearing regarding the identification, evaluation, and educational placement of your child, or the provision of a free appropriate education to your child. School districts and charter schools may also request hearings.

How do I request a hearing?

You need to file a written due process complaint. The complaint must include:

(1) Your child's name;

(2) The address of your child's residence;

(3) The name of the school your child is attending;

(4) If your child is a homeless child or youth, the child's contact information and the name of the child's school;

(5) A description of the nature of the problem, including facts relating to the problem; and

(6) A proposed resolution to the problem to the extent known and available to you.

The due process complaint must be filed within two (2) years of the date you knew or should have known about the alleged action that forms the basis of the due process complaint. However, this requirement does not apply if you could not file a due process complaint within this timeline because:

(1) The school specifically misrepresented it had resolved the problem forming the basis of the complaint; or

(2) The school withheld information it was required to provide to you under the IDEA.

The complaint must be signed by you, by the child's legal guardian, or by legal counsel. The complaint must be hand delivered, mailed, faxed, or emailed to:

Secretary of Education
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, Delaware 19901

Fax (302) 739-4654
Email: dispute.resolution@doe.k12.de.us

You must also send a copy of the due process complaint to the school at the same time you send it to the Secretary of Education. The Department has developed a form to assist parents in filing a due process complaint. A copy of the Due Process Complaint Form and Request for Due Process Hearing is attached to the back of this Notice. The complainant may also contact (302) 735-4210 to request the form be mailed. This form, as well as other resources including the IDEA regulations, state regulations, and Due Process case findings can be found online at:

https://education.delaware.gov/legacy/home/instruction-and-assessment/exceptional-children/special-education/for-families/rights-and-disputes/.

You may not raise issues at the due process hearing that are not stated in your due process complaint (unless the school agrees).

When the Secretary of Education receives a due process complaint, a hearing panel (or single hearing officer in the case of expedited hearings) will be appointed and you will be told who has been appointed. The Secretary of Education will also provide information on low-cost legal assistance, the availability of mediation, and a copy of this *Delaware Procedural Safeguards Parent and Child Rights in Special Education*.

What if my due process complaint does not include all the required information?

In order to have a due process hearing, your due process complaint must contain all the information listed above. The complaint will be considered sufficient unless the school notifies you and the hearing panel in writing, within fifteen (15) calendar days of receiving the complaint, that it does not contain all the required information.

Within five (5) calendar days of receiving the school's notice, the hearing panel must decide if your due process complaint contains all the required information and notify you and the school immediately.

How long does a due process hearing take?

The due process hearing must be held and a decision issued not later than forty-five (45) calendar days after the expiration of the thirty (30) calendar day resolution period or the adjusted time periods, discussed in more detail below.

In addition, the hearing panel, for good cause, may grant specific extensions of time at the request of you or the school.

Can I make changes to my due process complaint after it is filed?

You can make changes to your due process complaint only if:

(1) The school approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting; or

(2) By no later than five (5) calendar days before the due process hearing begins, the hearing panel gives you permission to make the changes.

If you make changes to your due process complaint, the timelines for the resolution meeting and resolution period (discussed below) start again on the date the amended complaint is filed.

Must the school respond to my due process complaint?

If you have filed a due process complaint and the school has not already sent you prior written notice concerning the issues in your complaint, the school must, within ten (10) calendar days of receiving your complaint, send to you a response that includes:

(1) An explanation of why the school proposed or refused to take the action raised in the due process complaint;

(2) A description of other options the IEP Team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the school used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the school's proposed or refused action.

What are my due process rights?

When you request a due process hearing, you have the right to:

(1) Have a fair and impartial hearing before a three (3) member hearing panel (or a single hearing officer in the case of expedited hearings) appointed by the Department.

(2) Be represented by an attorney or accompanied and advised by individuals who have special knowledge or training about children with disabilities.

(3) Present evidence of your own and confront and cross-examine witnesses testifying against you.

(4) Require witnesses to be present.

(5) Prohibit evidence (including witness testimony) from being presented at the hearing unless it was disclosed to you at least five (5) business days before the hearing.

(6) Be told about evaluations and resulting recommendations that have been completed at least five (5) business days before the hearing.

(7) Receive a written or an electronic verbatim record of the hearing at public expense.

(8) Receive a written or an electronic decision from the hearing panel or officer.

(9) Have your child present at the hearing.

(10) Have the hearing open or closed to the public.

(11) Have the hearing conducted at a time and place that is reasonably convenient to you and your child.

Any questions regarding hearing rights should be directed to the due process hearing panel.

Does my child's placement change during the proceedings?

Except as described below, a child involved in any due process hearing or judicial proceeding regarding a due process complaint must remain in his or her current educational placement unless you and the school agree on another arrangement. This is often called the stay put rule. If the due process complaint involves initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are complete.

If the due process complaint involves an application for initial services under Part B of the IDEA from a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three (3), the school is not required to provide the Part C services the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then pending the outcome of the proceedings, the school must provide those special education and related services that are not in dispute (i.e., those which you and the school agree upon).

Finally, if the hearing panel agrees with you that a change of placement is appropriate, the new placement will be treated as if it were one you and the school agreed to for purposes of deciding your child's educational placement during any related court proceedings.

What is a resolution meeting?

Within fifteen (15) calendar days of receiving notice of your due process complaint, the school must convene a resolution meeting. A resolution meeting is a meeting between you and the school concerning your due process complaint. It provides you an opportunity to discuss your complaint with the school, and it gives the school a chance to resolve your dispute.

This resolution meeting occurs during the resolution period. The resolution period is a thirty (30) day period after the filing of a due process complaint but before the start of the forty-five (45) day hearing timeline. The forty-five (45) day hearing timeline starts after the resolution period and is the time allowed for the hearing and for the panel to issue a decision.

The resolution meeting must include you and the relevant members of your child's IEP Team who have specific knowledge of the facts identified in your due process complaint. You and the school determine the relevant members of the IEP Team to attend the meeting. However, the meeting must include a school district or charter school representative who has decision-making authority on behalf of the school district or charter school. The meeting may not include the school's attorney unless you are accompanied by an attorney.

You and the school must participate in the resolution meeting unless:

(1) You and the school agree in writing to waive the resolution meeting; or

(2) You and the school agree to use the mediation process offered by the University of Delaware's Special Education Partnership for the Amicable Resolution of Conflict (SPARC) Conflict Resolution Program.

What is the resolution period?

If you and the school agree to participate in the resolution meeting, the forty-five (45) calendar day timeline is suspended to give both parties a chance to resolve the dispute. If, however, the school has not resolved the due process complaint to your satisfaction within thirty (30) calendar days of its receipt, the forty-five (45) calendar day timeline recommences, and the due process hearing may occur. The thirty (30) calendar day period is referred to as the resolution period.

What happens if I do not participate in the resolution meeting?

If you and the school have not agreed to waive the resolution meeting or to use mediation instead, your failure to participate in the resolution meeting will delay the timelines for the due process hearing. If the school is not able to obtain your participation in the resolution meeting after making reasonable efforts to do so, the school may, at the end of the thirty (30) calendar day resolution period, request the hearing panel dismiss your due process complaint.

Otherwise, if you and the school agree in writing to waive the resolution meeting, then the forty-five (45) calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting, but before the end of the thirty (30) calendar day resolution period, if you and the school agree in writing that no agreement is possible, then the forty-five (45) calendar day timeline for the due process hearing starts the next day.

If you and the school agree to use the mediation process at the end of the thirty (30) calendar day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school withdraws from the mediation process, then the forty-five (45) calendar day timeline for the due process hearing starts the next day.

What if the school fails to hold the resolution meeting?

If the school fails to hold the resolution meeting within fifteen (15) calendar days of receiving notice of your due process complaint, you may request the hearing panel to order the forty-five (45) calendar day hearing timeline begin.

If you and the school resolve your dispute at the resolution meeting, you and the school must develop a legally binding agreement that is:

(1) Signed by you and a school district or charter school representative with authority to bind the school district or charter school; and

(2) Enforceable in any Delaware court of competent jurisdiction or in a District Court of the United States.

Either side may, however, void the agreement within three (3) business days of signing it.

What will the due process hearing decision contain?

The due process hearing decision must include findings of fact and conclusions of law. In addition, the hearing panel's decision on whether your child received a free appropriate public education must be based on substantive grounds. If you alleged the school violated the procedural requirements of the IDEA, the hearing panel may find that your child did not receive a free appropriate public education, but only if the procedural violations:

(1) Impeded your child's right to a free appropriate public education;

(2) Significantly impeded your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to your child; or

(3) Caused a deprivation of educational benefit.

Who makes sure the due process hearing decision is implemented?

Hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe. *See,* 34 C.F.R. §§ 300.511-300.514.

The Department, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision. The Department will continue to ensure implementation unless and until provided with a court order to "stay" implementation.

Can the due process hearing decision be appealed?

Yes. Delaware is a one tier state and offers one level of administrative review, conducted by the due process hearing panel or hearing officer. The hearing decision is final and binding on all parties unless it is appealed by filing a civil action in the United States District Court or in the Family Court of the State of Delaware. You must file any appeal with the court within ninety (90) calendar days from the date of the final decision. The courts or an attorney can provide you additional information about how to file a civil action.

Who pays for my attorneys' fees?

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as a parent of a child with a disability, if you are the prevailing party. The fees must be based on rates prevailing in the community in which the action arose for the kind and quality of services furnished. Fees may be reduced if:

(1) The court finds that you or your attorney unreasonably delayed the final resolution of the controversy;

(2) Your attorney's hourly fee exceeds the prevailing rate in the community for similar work;

(3) The time spent and legal services were excessive; or

(4) Your attorney did not provide appropriate information in the due process request notice.

Fees will not be reduced; however, if the court finds the state or the school unreasonably delayed the resolution of the action or there was a violation of the procedural safeguards section of the IDEA.

Attorneys' fees may not be awarded for any meeting of the IEP Team unless the meeting is convened because of a due process hearing or judicial action. A resolution meeting is not considered a meeting convened as a result of a due process hearing or judicial action. Attorneys' fees may also be denied if you reject a reasonable settlement offer made by the school at least ten (10) calendar days before the hearing begins and the hearing decision is not more favorable than the settlement offer.

Who pays for the school's attorneys' fees?

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees to the prevailing school or the state to be paid by your attorney if:

(1) Your attorney filed a complaint or judicial action that is frivolous, unreasonable, or without foundation; or

(2) Your attorney continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

The court may also award reasonable attorneys' fees to the prevailing school or the state, to be paid by you or your attorney, if the court finds your request for a due process hearing or subsequent judicial action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the costs of the proceedings.

State Complaint Procedure

Are there other ways to resolve disputes over my child's education?

Yes. In addition to due process hearings and mediation, the Department will investigate and resolve complaints alleging violations of Part B of the IDEA. State complaints may be filed by any person or organization. The Department also must resolve complaints charging that a school has failed to follow a decision previously rendered by a due process hearing panel or hearing officer.

What is the difference between due process hearing complaint and state complaint procedures?

The IDEA and Department of Education Regulations set forth separate procedures for state complaints and due process complaints and hearings. In general, any individual or organization may file a state complaint alleging a violation of Part B of the IDEA or Department of Education Regulations. However, only you or a school may file a due process complaint on any matter relating to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to a child.

In addition, the Department must resolve a state complaint within a sixty (60) calendar day timeline. However, a due process hearing panel must hear a due process complaint and issue a written decision within a forty-five (45) calendar day timeline (following the expiration of the thirty (30) calendar day resolution period).

How do I file a state complaint?

Any private or public organization, public agency, or individual, including one from another state, may file a signed written state complaint. Complaints must be in writing, signed by the complainant, and include:

(1) A statement that the school (or any other public agency) has violated a requirement of the IDEA or the Delaware Department of Education Regulations concerning the education of children with disabilities;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant, and legal representative, if any, or of individuals representing a public agency or private organization filing a complaint;

(4) If alleging violations with respect to a specific child:

- (a) The child's name and address of residence;
- (b) The name of the school the child is attending;
- (c) In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
- (d) A description of the nature of the problem of the child, including facts relating to the problem;
- (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time it is filed; and
- (f) A description of the attempts made to resolve the issues prior to the filing of the complaint, if the complainant wishes to provide this information. (Note, the Department will proceed with the investigation if the complainant declines to provide this information).

Complaints must allege a violation that occurred not more than one (1) year prior to the date the complaint is received by the Department. The complaint must be hand delivered, mailed, faxed, or emailed to:

Director, Exceptional Children Resources
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, Delaware 19901

(302) 739-4654 (Fax)
Email: dispute.resolution@doe.k12.de.us

The Department has developed a form to assist parents in filing a complaint. A copy of the Special Education State Complaint form is attached to the back of this Notice. The complainant may also contact (302) 735-4210 to request the form be mailed. This form, as well as other resources including the IDEA regulations, state regulations, and State Complaint case findings can be found online at:

https://education.delaware.gov/legacy/home/instruction-and-assessment/exceptional-children/special-education/for-families/rights-and-disputes/.

The complainant must also send a copy of the complaint to the school or other public agency serving the child at the same time the complaint is sent to the Department.

How does the Department handle my state complaint?

When the Department receives a complaint, it will:

(1) Conduct an independent investigation, including an on-site investigation, if it determines that one is necessary.

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(3) Provide the school with the opportunity to respond to the complaint, including the chance to make a proposal to resolve the complaint, and an opportunity for the complainant and school to agree to engage in mediation.

(4) Review all relevant information and make an independent determination as to whether the school is violating the IDEA or Delaware Department of Education Regulations.

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and includes findings of fact and conclusions, and the reasons for its final decision.

The Department must complete its investigation and issue its written decision within sixty (60) calendar days. The Department may permit an extension of time if exceptional circumstances justify a longer time, or the complainant and school agree to an extension of time to resolve the matter through mediation or other means. If the Department determines that the school failed to provide appropriate services, the Department must address how to remediate the denial of services and how to assure appropriate future provision of services for all children with disabilities.

The due process hearing system and the state complaint procedures are *not* mutually exclusive. You may use either the state complaint procedure or the due process hearing system to resolve disputes over your child's education. If the Department receives a state complaint that is already the subject of a due process hearing, the Department must set aside the parts of the complaint that are being addressed in the due process hearing until that hearing is over. In this case, the hearing decision will be binding on the Department's investigation. If a complaint contains some issues that are being addressed in the due process hearing and some that are not, the Department must continue its investigation of the ones that are not being considered in the due process proceedings. In addition, a state complaint alleging a school's failure to implement a due process hearing decision may also be resolved by the Department.

Procedures for Disciplining Children with Disabilities

Can my child be suspended or expelled?

Yes. Children with disabilities may be suspended, expelled, or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities, but subject to specific rules and requirements. You have the right to respond to certain disciplinary actions taken with your child.

School administrators can remove a child with a disability who violates a code of conduct from his or her current educational placement and move the child to an appropriate interim alternative educational setting as long as the behavior is not a manifestation of the child's disability.

Will my child receive services during a suspension or expulsion from school?

The school may remove a child with a disability from the child's current educational placement for a total of ten (10) school days in a school year without providing educational services.

Otherwise, if a child with a disability is removed from his or her educational placement for more than ten (10) school days in a school year, the school must provide services during any subsequent days of removal that will allow the child to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals of the child's IEP. If the removal is a change of placement for disciplinary reasons, the child's IEP Team determines the appropriate services needed. The school must also provide, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior so that it does not happen again.

What is a change of placement for disciplinary reasons?

A change of placement occurs if:

(1) The child is removed for more than ten (10) school days in a row in a school year; or

(2) The child has been subjected to a series of removals that constitute a pattern because:

  (a) The series of removals total more than ten (10) school days in a school year;
  (b) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  (c) Such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another; or

(3) The child has been subjected to a series of in-school removals totaling more than ten (10) school days and it deprives the child from meeting the goals set out in the IEP, progressing in the general curriculum (although in another setting), and receiving those services and modifications described in the IEP; or

(4) The child has been subjected to a series of removals from transportation resulting in the child's absence from school for more than ten (10) school days.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis.

What steps must the school take to change my child's placement for disciplinary reasons?

If the school decides to change your child's educational placement for disciplinary reasons, the school must notify you of its decision, provide you a copy of the *Delaware Procedural Safeguards Parent and Child Rights in Special Education*, and conduct a Team meeting to determine whether your child's misconduct was a manifestation of his or her disability. This is referred to as a manifestation determination. The meeting must take place immediately, if possible, or within ten (10) school days of the decision to take this type of disciplinary action. The school, the child's parent, and relevant members of the child's IEP Team must attend the manifestation determination meeting. The Team members must also review all relevant information in your child's file, including the IEP, any teacher observations, and any relevant information provided by you.

What happens at a manifestation determination meeting?

The Team members must answer two (2) questions:

(1) Was the behavioral incident in question caused by, or have a direct and substantial relationship to, your child's disability?

(2) Was the behavioral incident in question the direct result of the school's failure to implement the IEP?

If the Team answers yes to either question, the behavioral incident must be considered a manifestation of your child's disability.

If the Team determines the behavior was the direct result of the school's failure to implement the IEP, the school must take immediate action to remedy those deficiencies.

What if the behavioral incident was a manifestation of my child's disability?

If the Team determines the behavioral incident was a manifestation of your child's disability, the Team must either:

(1) Conduct a functional behavioral assessment (unless the school already conducted one before the behavior occurred) and implement a behavior intervention plan for your child; or

(2) If a behavior intervention plan has already been developed, review the plan, and modify it, as necessary, to address the behavior.

Except as described below under "Are there special circumstances when my child can be placed in an interim alternative educational setting?," the school must return your child to the placement from which he or she was removed, unless you and the school agree to another placement.

What if the behavioral incident was not a manifestation of my child's disability?

If the behavioral incident was not a manifestation of your child's disability, the school may apply the same disciplinary procedures to your child in the same manner and for the same duration as it would to children without disabilities, including suspension and expulsion.

Are there special circumstances when my child can be placed in an interim alternative educational setting?

Yes, when the behavior involves the possession of drugs or weapons, or the infliction of serious bodily injury. A school may remove a child with a disability to an appropriate interim alternative educational placement when: (1) the child carries a weapon to school, or has a weapon at school, on school premises, or at a function under the authority of the school or the state; (2) the child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, or a function under the authority of the school or the state; or (3) the child inflicts serious bodily injury upon another person while at school, on school premises, or a function under the authority of the school or the state. In these situations, the school may place the child in an interim alternative educational setting for up to forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability. The child's IEP Team determines the setting. The child must return to the regular placement at the end of the forty-five (45) school day removal period.

The interim alternative setting must enable the child to continue to participate in the general curriculum (although in another setting), and to progress toward meeting the goals set out in the child's IEP. It must also include, as appropriate, a functional behavioral assessment, and intervention services and modifications that address the behavior that led to the interim removal and are designed to prevent the behavior from recurring.

The parent of a child with a disability may file a due process complaint to request an expedited due process hearing if the parent disagrees with the school's decision to remove the child to an interim alternative educational setting because of drugs, weapons, or the infliction of a serious bodily injury.

Are there other reasons my child may be placed in an interim alternative educational setting?

The school may request an expedited due process hearing to place the child in an interim alternative educational setting for up to forty-five (45) school days if the school believes that maintaining the child in the current placement is substantially likely to result in injury to the child or others. The school can ask for additional expedited hearings and alternative placements at the end of the first such placement if it believes that continued removal is necessary.

What is an expedited due process hearing?

As a parent, you are a member of your child's IEP Team and will be invited to participate in any IEP Team meeting(s). Parents may request an expedited due process hearing if a disciplinary change in placement has exceeded 10 consecutive school days, or cumulative school days as the result of a pattern of behavior. Parents may also request an expedited hearing if the parent disagrees with the outcome of a manifestation determination. Parents may do this by checking the appropriate box on the Due Process Complaint Form and Request for Due Process Hearing and providing a description of why the case should be expedited.

Expedited due process hearings are very similar to the regular due process hearings, but are heard by a single hearing officer (instead of a three [3] person panel) and must occur within twenty (20) school days of the date the complaint is received by the Department without delays or extensions. The hearing officer must then render a decision within ten (10) school days after the hearing concludes. A resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint (unless the parents and school agree in writing to waive the resolution meeting or use mediation instead). The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) calendar days of the receipt of the due process complaint.

In an expedited due process hearing, the hearing officer may:

(1) Return the child to the placement from which the child was removed if the hearing officer determines the child's behavior was a manifestation of the child's disability, or the removal was a violation of the disciplinary rules; or

(2) Order a change in placement to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

A party may appeal the decision in an expedited due process hearing in the same way as decisions in other due process hearings.

Does my child's placement change during expedited due process proceedings?

When the parent or school have filed a due process complaint for an expedited due process hearing, the child must remain in the interim alternative educational setting pending the decision of the hearing officer (unless the parent and the school have agreed to another arrangement).

Does my child have any protections if not previously identified as needing special education and related services?

It depends. If your child has not been determined eligible for special education and related services and has violated the school's disciplinary rules, the child may assert any of the procedural safeguards if the school had knowledge that your child was a child with a disability before the misconduct or behavior occurred.

A school is considered to have knowledge if, before the behavior that brought about the disciplinary action, the following occurred:

(1) You expressed concern in writing that your child needs special education and related services to supervisory or administrative personnel of the school, or your child's teacher;

(2) You requested an evaluation related to eligibility for special education and related services; or

(3) Your child's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district director of special education or to other supervisory personnel.

A school would not be deemed to have such knowledge if you did not allow an evaluation of your child, you refused special education services, or your child has been evaluated and determined not to be a child with a disability under the IDEA.

If the school did not know about your child's disability prior to taking disciplinary action, it may discipline your child under the same measures and procedures applied to children without disabilities.

If you request an evaluation for special education services while your child is subject to disciplinary action, the school must conduct an expedited evaluation. Until the evaluation is completed, your child remains in the placement decided by the school, which may include suspension or expulsion without educational services. If your child qualifies for special education and related services, an appropriate special educational program must be provided to your child, including the procedural protections relating to disciplinary and other removals.

Can the school report my child's behavior to a law enforcement agency?

If your child has committed a crime, the school may report it to the appropriate law enforcement agency. State law *requires* schools to report certain school crimes to a law enforcement agency regardless of whether it involves a child with a disability. The school must give the law enforcement agency your child's special education and disciplinary records when it reports the crime, to the extent permitted under the Family Educational Rights and Privacy Act (FERPA). You can find more information about FERPA in this document in the section, Access to Educational Records.

Children Attending Private Schools

When is reimbursement required for private school tuition?

Part B of the IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school made a free appropriate public education available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been privately placed by their parents. Changes to federal law have limited the school's responsibility to provide services to students whose parents have chosen for them to attend private schools. Federal law now requires that schools spend only a proportionate share of federal IDEA funds in such circumstances.

The school and the state may agree to the placement of a child with a disability in a private school or facility in certain situations. Otherwise, if your child previously received special education and related services, you are entitled to reimbursement for costs associated with a private school placement only if a court or hearing panel determines that the school did not make a free appropriate public education available to your child in a timely manner, and the private school placement is appropriate.

When may reimbursement for private school costs be reduced or denied?

The court or hearing panel may reduce or deny reimbursement for private school costs if you did not make your child available for an evaluation (upon proper notice from the school) before removing your child from public school. The court may also reduce or deny reimbursement if it finds that you acted unreasonably in moving your child to the private school.

You may also be denied reimbursement if you did not inform the school that you were rejecting the special education placement proposed by the school and give notice of your concerns and intent to enroll your child in a private school at public expense. In this case, your notice to the school must be given either:

(1) At the most recent IEP meeting you attended before removing your child from the public school; or

(2) In writing to the school at least ten (10) business days (including holidays) before removing your child from the public school.

When can reimbursement not be reduced or denied?

A court or hearing panel must not reduce or deny reimbursement to you if you failed to notify the school of your plans to remove your child because:

(1) Giving notice would likely result in physical harm to your child;

(2) The school prevented you from giving notice; or

(3) You had not received a copy of this *Delaware Procedural Safeguards Parent and Child Rights in Special Education* or otherwise been informed of your responsibility to notify the school of your intention to remove your child from public school.

A court or hearing panel may, in its discretion, not reduce or deny reimbursement to you if you failed to notify the school of your plans to remove your child because:

(1) You are not literate or cannot write in English; or

(2) Giving notice would likely result in serious emotional harm to your child.

Appendix

Request for Special Education Mediation Form A-1
Due Process Complaint Form and Request for Due Process Hearing A-2
Special Education State Complaint Form A-3

Delaware Department of Education
Exceptional Children Resources
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Phone: (302) 735-4210
Fax: (302) 739-4654
https://education.delaware.gov/

Request For
Special Education Mediation Form

The Delaware Department of Education (Department) provides mediation to assist parents, school districts, and charter schools in resolving disputes concerning the provision of special education services under the Individuals with Disabilities Education Act (IDEA) and corresponding Delaware law. Mediation is provided at no cost to the parent, school district, or charter school. All parties must agree to try mediation before it can be attempted. Mediation may be requested by submitting the following written request to the Department:

Name of Person Requesting Mediation:

_____

Address: _____

_____

Telephone Numbers: _____

Email: _____

Name of Child: _____

School District/Charter School: _____

Name of School: _____

Relationship to Student (check one):

❒ Parent/Guardian ❒ Other _____

❒ School District or Charter School

Parent/Guardian Contact Information (if requested by someone other than Parent/Guardian):

_____

Address: _____

_____

Telephone Numbers: _____

Email: _____

Provide a brief description of the dispute involving special education and related services:

_____

_____

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Provide a brief description of the attempts made to resolve the dispute prior to requesting mediation:

_____

_____

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_____

Signature of Person Requesting Mediation:

_____ _____

(Signature) (Date)

Mail, hand-deliver, fax, or email your request to:

Director
Exceptional Children Resources
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, Delaware 19901
Fax: (302) 739-4654
Email: dispute.resolution@doe.k12.de.us

The Department accepts Mediation requests by email.

Delaware Department of Education
Exceptional Children Resources
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Phone: (302) 735-4210
Fax: (302) 739-4654
https://education.delaware.gov/

Due Process Complaint Form and Request for Due Process Hearing

The Delaware Department of Education (Department) provides this Due Process Complaint Form and Request for Due Process Hearing in accordance with the Individuals with Disabilities Education Act (IDEA), and federal and state regulations. ***A due process complaint may be filed by a parent or public agency relating to: (1) the identification; (2) the evaluation; (3) the educational placement; and/or (4) the provision of a free appropriate public education to a child with a disability.*** Parents or public agencies may, but are not required to use this form when filing a due process complaint. For additional information, please see the Department's *Special Education Due Process Information Guide* on the Department's website at: https://education.delaware.gov/ or contact (302) 735-4210. You may also refer to the Department regulations concerning due process hearings at Del. Admin. C. §§ 926.7.0 through 18.0 and federal regulations at 34 C.F.R. §§ 300.507 through 518.

(1) Name of Parent or Public Agency Filing the Complaint:

_____

Address:

_____

_____

Telephone Numbers:

_____

_____

Email:

_____

Relationship to Student (check one):

❒ Parent/Guardian ❒ Advocate ❒ Other _____

Parent/Guardian Contact Information (if requested by public agency):

Name(s):

_____

Address:

_____

_____

Telephone Numbers:

_____

_____

Email:

_____

(2) Student Information:

Student's Name: _____

Address:

_____

_____

School District/Charter School:_____

Name of School: _____

(Note: In the case of a homeless child or youth, please provide any available contact information for the child).

(3) Is This a Request for an Expedited Due Process Hearing?

❒ Yes ❒ No

Parents may request an expedited due process hearing if a disciplinary change in placement has exceeded 10 consecutive school days, or cumulative school days as the result of a pattern of behavior. Parents may also request an expedited hearing if the parent disagrees with the outcome of a manifestation determination. A school district or charter school may also request an expedited hearing if the school district or charter school believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

If you selected Yes, above, describe why this due process complaint should be expedited:

_____

_____

_____

(4) Provide a description of the nature of the problem, including facts relating to the problem:

_____

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(5) Provide a description of the proposed resolution of the problem (to the extent known and available to you):

_____

_____

_____

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_____

_____

(6) Signature of Parent or Public Agency Filing the Due Process Complaint:

_____ _____

(Signature) (Date)

To file your Due Process complaint, send it by U.S. Mail, hand-delivery, fax, or email to:

Secretary of Education
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, Delaware 19901
Fax: (302) 739-4654
Email: dispute.resolution@doe.k12.de.us

The Department accepts Due Process complaints by email.

Important Note:

You must also send a copy of the complaint to the opposing party at the same time you send it to the Secretary of Education. The opposing party may be the school district, charter school, or other public agency serving the student, or the parent or guardian of the student.

Delaware Department of Education
Exceptional Children Resources
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Phone: (302) 735-4210
Fax: (302) 739-4654
https://education.delaware.gov/

Special Education
State Complaint Form

The Delaware Department of Education (Department) provides this Special Education State Complaint Form in accordance with the Individuals with Disabilities Education Act (IDEA), and federal and state regulations. Persons or organizations who wish to file a state complaint may, but are not required to use this form. Note, all information requested by this form must be provided to the Department before an investigation can proceed, except for the areas noted as optional. You may use additional sheets as needed and attach relevant documents to support your allegations. For additional information on filing a state complaint, please see the Department's *Special Education State Complaint Information Guide* on the Department's website at: www.doe.k12.de.us or contact (302) 735-4210. You may also refer to the Department regulations concerning state complaints found at 14 Del. Admin. C. §§ 923.51.0 through 53.0 and federal regulations at 34 C.F.R. §§ 300.151 through 153.

(1) Name of Person or Organization Filing the Complaint:

_____

Address:

_____

_____

Telephone Numbers:

_____

_____

Email:

_____

Relationship to Student (check one):

❒ Parent/Guardian ❒ Advocate ❒ Other _____

Parent/Guardian Contact Information (if requested by someone other than Parent/Guardian):

Name(s): _____

Address:

_____

_____

Telephone Numbers:

_____

_____

Email:

_____

(2) Student Information, if Alleging a Violation with Respect to a Specific Student:

Student's Name: _____

Address:

_____

_____

School District/Charter School:_____

Name of School: _____

(Note: In the case of a homeless child or youth, please provide any available contact information for the child).

Provide a description of the nature of the problem, including facts relating to the problem:

_____

_____

_____

_____

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_____

_____

Provide a proposed resolution of the problem (to the extent known and available to you):

_____

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_____

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_____

_____

Optional: Provide a description of attempts made to resolve the problem(s) prior to filing this complaint:

_____

_____

_____

_____

(3) Provide a statement the school district, charter school, or other public agency violated a requirement of Part B of the IDEA or the Department special education regulations, and the facts upon which the statement is based. (Optional: Include the time frame in which the incident[s] occurred. Note that the alleged violation[s] must not have occurred more than one year prior to the date the Department receives the state complaint.)

_____

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_____

(4) Signature of Person or Organization Filing the State Complaint:

_____ _____

(Signature) (Date)

To file your State Complaint, send it by U.S. Mail, hand-delivery, fax, or email to:

Director
Exceptional Children Resources
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, Delaware 19901
Fax: (302) 739-4654
Email: dispute.resolution@doe.k12.de.us

The Department accepts state complaints by email.

Important Note:

You must also send a copy of the complaint to the school district, charter school, or other public agency serving the student at the same time you file the complaint with the Department of Education.