Utah State Board of Education

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) DUE PROCESS COMPLAINT GUIDE

A UTAH STATE BOARD OF EDUCATION (USBE) TECHNICAL ASSISTANCE DOCUMENT

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IDEA Due Process Complaint Guide: Introduction

The purpose of this document is to provide guidance for parents, adult students, guardians, local education agencies (LEAs), and stakeholders to outlining the steps in the Due Process Hearing Complaints under Part B of the Individuals with Disabilities Education Act (IDEA) and the Utah State Board of Education (USBE) Special Education Rules (SpEd Rules).[1]

It is important to note disagreements happen and can be an opportunity for making improvements for parents, students with disabilities, educators, and LEAs. Due process complaints and due process hearing decisions may result in change which benefits both individual students and systems.

This technical assistance document is not intended to be exhaustive. Rather it is designed to provide a summary of relevant information contained in the Code of Federal Regulations, Title 34: Education, Part 300 (C.F.R.)[2] and the USBE's SpEd Rules[3] which mirror the C.F.R.

Please Note: This technical assistance document is not intended to provide any legal advice. Please consult with legal counsel about how to proceed in any legal situation. Although this section describes the IDEA procedures for due process hearings, it is not a substitute for competent legal advice. Parents considering a request for a due process hearing are encouraged to consult with an attorney who is knowledgeable in special education law. Parents are encouraged to contact the

[1] N.B.: Utah Board of Education Administrative Rules (Board Rules) fall under the Utah Admin. Code under title R277. These rules can be found in two places: the USBE Administrative Rules webpage or the Utah Office Administrative Rules webpage. Therefore, Board Rules R277-609 refers to the same rule as Utah Admin. Code R277-609. Similarly, though the Utah State Board of Education Special Education Rules (SpEd Rules) appear as a separate set of rules distinguished from Board Rules, they are in fact incorporated into Board Rules by reference (see Board Rules R277-750).
[2] 34 CFR Part 300 -- Assistance to States for the Education of Children with Disabilities. https://wwwecfr.gov/current /title-34/subtitle-B/chapter-III/prt-300.
[3] Utah State Board of Education Special Education Rules (2022). https://www.schools.utah.gov/specialeducation/programs/rulespolicies?mid=4962&tid=1.

Utah Disability Law Center, the Utah State Bar, or the USBE's Special Education section for further assistance.

What is a Due Process Complaint?

The IDEA and the USBE's SpEd Rules provide that parents, adult students, guardians, and public agencies may request a due process hearing (also referred to as a due process complaint or due process hearing request in the SpEd Rules and Part B of the IDEA) to resolve disputes related to the identification, evaluation, placement, or the provision of a free appropriate public education (FAPE) to a student with a disability. LEAs may also request a due process hearing in certain circumstances. A due process hearing complaint is a written request for a due process hearing.

A due process hearing involves a due process hearing officer (DPHO) acting as a judge to issue a legally reasoned decision following a hearing. Due process hearings frequently involve attorneys due to the more court-like nature of the proceedings. Some of the requirements of the parties include attending prehearing conferences, filing motions and responses, making objections, calling witnesses, submitting exhibits at the hearing, making opening and closing arguments, having knowledge of substantive laws and procedural rules, and adhering to IDEA timelines and orders from the DPHO.

A DPHO is not involved in the student's education at any point, and participants are not empowered to help craft a decision, solution, or remedy. Rather, all decision-making authority is vested solely in the DPHO. At the conclusion of the hearing, the DPHO makes a reasoned, legally based decision. The due process hearing decision is legally binding on the parties.

Under Utah law, prior to seeking a hearing or other formal proceedings, the parties to a dispute must first make a good faith effort to resolve the dispute informally at the school building level. Utah Code Annotated (U.C.A.) § 53E-7-208(2). If the dispute is not resolved, a party may request a due process hearing.

Depending on the circumstances of the dispute, this dispute resolution process may be rather time-consuming and may occur over the course of several months.

Due to the more complex nature and potential time involved, due process hearings can result in significant attorney's fees.

When you file a due process complaint, the USBE assigns an independent hearing officer to oversee the complaint and hearing. Due process hearing complaints can be made under Title 34 C.F.R. §§ 300.508–518, 300.537, and the USBE's SpEd Rules IV.G.-S.

Filing a Due Process Complaint

The Utah Legislature finds that it is in the best interest of students with disabilities to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parent(s), and public schools (U.C.A. 53E-7- 208(1)).

Who May File a Due Process Complaint?

A due process hearing request may be filed by a parent, adult student, or a public agency (such as a student's LEA). Filing a due process complaint starts a process that may lead to a formal hearing where a DPHO makes legal rulings and issues a decision.

- LEA
- Parent(s) of a student with a disability
- Adult student
- Parents of an adult student between the ages of 18-21 who hold student's education decision-making rights

What Issues Can Be Resolved with a Due Process Complaint?

Alleged violations of the IDEA related specifically to:

- Identification (Child Find)
- Evaluation
- Educational placement
- The provision of a FAPE

What Must Be Included in a Due Process Complaint?

The party filing a due process complaint must also forward a copy of the due process complaint to the USBE State Director of Special Education.

The IDEA and the USBE's Sped Rules require that a due process complaint include the following:

- The name of the student
- The address of the residence of the student
- The name of the school the student is attending
- In the case of a student or youth experiencing homelessness, available contact information for the student and the name of the school the student is attending
- A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem
- A proposed resolution of the problem to the extent known and available to the party at the time

Is There a Time Limit for Filing a Due Process Complaint?

A due process complaint must allege a violation that occurred not more than **two years** before the date the parent or LEA knew or should have known about the alleged action that formed the basis of the due process complaint. Exceptions to this rule include instances when a parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem and instances when the LEA withheld information from the parent that the IDEA requires LEAs to provide to parents.

How to File a Due Process Hearing Complaint?

The USBE has developed model forms to assist parents, adult students, public agencies, and LEAs in filing a due process complaint. These forms are available on the USBE website Request for Due Process Hearing. A due process complaint may be requested free of charge by submitting the appropriate form to USBE. The

dispute resolution section of Special Education Student and Family Rights on the USBE's website is linked here.

Student and Family Rights

Interested parties may initiate a due process complaint and request for hearing by completing the form and submitting it to the USBE.

Parties may also use one of the following methods to submit a due process complaint.

1. Fax to (801) 538-7991
2. In-person during regular business hours of Monday through Friday from 8 a.m. to 5 p.m.
    a. Utah State Board of Education
       250 East 500 South
       Salt Lake City, Utah, 84111-3204
3. Mail via United States Postal Service (USPS)
    a. Utah State Board of Education
       Attention State Director of Special Education
       PO Box 144200
       Salt Lake City, Utah 84114-4200

NOTE: Parties are not required to use USBE's forms to file a due process complaint.

What is the USBE's Role in Due Process Hearings?

The USBE bears the cost of the due process hearing procedures, including the costs of the DPHO, hearing location, court reporters, and hearing transcripts. If a party chooses to be represented by legal counsel, they are responsible for their own legal fees and other costs, such as expert witness fees.

Upon receipt of a due process complaint, USBE contacts the other party to ensure they also have a copy of the due process complaint. If the other party has not yet received a copy of the due process complaint, the USBE sends a copy to the other

party. Relevant timelines commence when both the USBE and LEA have a copy of the due process complaint.

Each DPHO decision and all resulting corrective actions ordered are tracked and completion verified by the USBE. A final letter to the LEA and the parent is sent when the due process complaint is closed out, upon completion of all aspects of the corrective action(s) from the DPHO's decision.

The USBE has the responsibility to make sure that the DPHO's decision is followed unless the decision is appealed. The USBE must also share a copy (with personally identifiable information removed) with the Utah State Education Advisory Panel (USEAP) and make the decision available to the public online. The USBE also offers due process hearing summaries on the USBE website for the convenience of the parties.

What Happens After a Due Process Complaint is Filed?

The USBE assigns an independent DPHO to the due process complaint.

Next, the USBE will send a letter to the complainant and the LEA with information about what they can expect to happen. The letter may include:

- The name and contact information for the DPHO assigned to the case
- Due process complaint timelines
- Notification of important things that happen in the due process complaint process
- Information about resolution meetings and the availability of mediation
- Information about any free or low-cost legal resources available e.g., the Disability Law Center (DLC). (The DLC is a helpful advocacy resource for Utah families. The Disability Law Center is a private, non-profit organization designated by the governor as Utah's Protection and Advocacy (P&A) agency)
- Information explaining that LEA will have **10 calendar days** to respond to the due process complaint. If the LEA filed the complaint, the opposing party will have **10 calendar days** to respond to the issues listed in the LEA's complaint
- Information explaining that LEA must schedule a resolution meeting to take place within **15 calendar days** of receiving the due process complaint, unless

the parties agree in writing not to have a resolution meeting, or to use mediation instead

- Information explaining that if due process hearing takes place, the DPHO must mail a copy of the hearing decision to each party no later than **45 calendar days** from the beginning of the hearing timeline or, if the hearing officer granted an extension to the hearing timeline, by the end of that extension

May a DPHO Make Adjustments to the 45 Calendar Day Hearing Timeline?

Yes. The hearing officer may grant a specific extension of the hearing timeline at the request of the parties. For example, the parties may request additional time to draft closing memorandums or there may be a delay in the court reporter's hearing transcription.

Overview of Due Process Hearing Procedures Under the IDEA and USBE's SpEd Rules

Notice Required (SpEd Rules IV.G.–H.)

The complaining party must provide to the other party and copy to the USBE, a hearing request that contains the name of the student, the address of the residence of the student, the name of the school the student is attending, a description of the nature of the problem relating to the proposed or refused initiation or change (including facts relating to the problem), and a proposed resolution of problem to the extent known and available to the party at the time.

- No resolution session or hearing may begin until this is completed
- The due process hearing request must be filed with the Superintendent or Executive Director of the LEA and copied to the USBE, Leah Voorhies, Deputy Superintendent of Student Achievement/State Director of Special Education
- The party receiving a due process hearing request must, within 10 days of receipt of the complaint, respond to the other party, specifically addressing the issues raised in the due process complaint

Sufficiency of Complaint (SpEd Rules IV.H.5., 34 CFR § 300.508.)

The due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 calendar days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements.

- Within five calendar days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements and must immediately notify the parties in writing of that determination

Resolution Process (SpEd Rules IV.J., 34 CFR § 300.510.)

If the complaint is filed by the parent(s) or an adult student, the LEA must hold a mandatory resolution session with the parent(s) or an adult student and relevant member(s) of the IEP team, initiated by LEA within **15 calendar days**; resolution should be completed within **30 calendar days** of receipt of the due process complaint, if resolution is possible.

- The purpose of the meeting is for the parent(s) of the student or adult student to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint
- The resolution meeting need not be held if parent(s) or adult student and the LEA agree in writing to waive the meeting, or parent(s) or adult student and the LEA agree to use the mediation process
- If the LEA has not resolved the due process complaint to the satisfaction of the parent(s) or adult student within **30 calendar days** of the receipt of the due process complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the expiration of this **30-day period**
- If the LEA is unable to obtain the participation of the parent(s) or adult student in the resolution meeting after reasonable efforts have been made (and documented), the LEA may, at the conclusion of the **30-day period**, request that a hearing officer dismiss the parent(s)' or adult student's due process complaint
- **The LEA shall inform the hearing officer and State Director of Special Education (or designee) of all scheduled and completed resolution meetings to ensure compliance with the resolution timeline**
- If the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's or adult student's due process complaint or fails to participate in the resolution meeting, the parent(s) or adult student may seek the intervention of a hearing officer to begin the due process hearing timeline
- If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is signed by both the parent(s) or adult student and a representative of the LEA who has authority to bind the

LEA and that is enforceable in any State court or district court of the United States
- If the parties execute an agreement pursuant to a resolution meeting, a party may void the agreement within three business days of the agreement's execution

Timeline (SpEd Rules IV.J.9., 34 CFR § 300.510.)

The **45-day timeline** for the due process hearing starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting
- After either the mediation or resolution meeting starts, but before the end of the **30-day period**, the parties agree in writing that no agreement is possible or
- If both parties agree in writing to continue the mediation at the end of the **30-day resolution period**, but later the parent or adult student or LEA withdraws from the mediation process.

Amendments (SpEd Rules IV.H.5.b., 34 CFR § 300.508.)

- A party may amend its due process complaint only if:
    - The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting
    - The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five calendar days before the due process hearing begins
- If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint

Prior Written Notice (SpEd Rules IV.H.6., 34 CFR § 300.508.)

If the LEA has not sent a prior written notice (PWN) to the parent(s) or adult student regarding the subject matter of the due process complaint contained in the parent's

or adult student's due process complaint, the LEA must, within ten calendar days of receiving the due process complaint, send to the parent(s) or adult student a response that includes:

- An explanation of why the LEA proposed or refused to take the action raised in the due process complaint
- A description of other options that the IEP team considered and the reasons why those options were rejected
- A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action
- A description of the other factors that are relevant to the LEA's proposed or refused action

Within **15 calendar days** of receiving notice of the parent(s)' or students' who is an adult due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent(s) or student who is an adult and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

- Includes a representative of the LEA who has decision-making authority on behalf of that agency
- May not include an attorney of the LEA unless the parent or student who is an adult is accompanied by an attorney

The purpose of the meeting is for the parent(s) of the student or student who is an adult to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

- If the LEA is unable to obtain the participation of the parent(s) or adult student in the resolution meeting after reasonable efforts have been made (and documented), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent(s)' or adult student's due process complaint

- The LEA shall inform the hearing officer and State Director of Special Education (or designee) of all scheduled and completed resolution meetings to ensure compliance with the resolution timeline
- If the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's or adult student's due process complaint or fails to participate in the resolution meeting, the parent(s) or adult student may seek the intervention of a hearing officer to begin the due process hearing timeline
- If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is signed by both the parent(s) or adult student and a representative of the LEA who has authority to bind the LEA and that is enforceable in any State court or district court of the United States
- If the parties execute an agreement pursuant to a resolution meeting, a party may void the agreement within three business days of the agreement's execution

Due Process Hearing Rights IV.L., (34 CFR § 300.512.)

The USBE's SpEd Rules outline the following regarding advocates and legal representation:

- Persons with special expertise, including advocates, may assist or accompany either party to a due process hearing
- The parties may:
    - Be represented by an attorney authorized to practice law in the State of Utah
    - Represent themselves, also referred to as pro se representation (Utah Bar Rules 14-102-111, 14-802(c)(8))
- Present evidence and confront, cross-examine, and compel the attendance of witnesses
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least **five business days** before the hearing
- Obtain a written or, at the option of the parent(s) or student who is an adult, electronic, verbatim record of the hearing; and

- Obtain written or, at the option of the parent(s) or student who is an adult, electronic findings of facts and decisions
- At least **five business days** prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing
- A hearing officer may bar any party from introducing the relevant evaluation or recommendation not disclosed at least **five business days** prior to the hearing at the hearing without the consent of the other party
- Parent(s) or student who is an adult involved in hearings must be given the right to:
    - Have the student who is the subject of the hearing present
    - Open the hearing to the public
    - Have the record of the hearing and the findings of fact and decisions provided at no cost to parent(s) or student who is an adult

Expedited Due Process Hearing Complaints

An expedited due process hearing is a hearing involving a due process complaint regarding a disciplinary matter and is subject to shorter timelines than a regular due process hearing. Expedited hearing requests must include the same information required for any other due process complaint.

An expedited due process hearing may only be requested in certain situations. This special type of due process complaint is used when parents or adult students disagree with an LEA's discipline-related decision affecting their student's placement (including an interim alternative educational setting [IAES] decision, or a manifestation determination review (MDR).

An MDR is a meeting with the LEA, the parent or adult student, and relevant members of the student's IEP team where all relevant information in the student's file, including the student's IEP is reviewed to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability
- If the conduct in question was the direct result of the LEA's failure to implement the IEP

Parents may file an expedited hearing request when they disagree with an LEA's decision about whether a student's behavior is related to their disability.

An LEA may file an expedited hearing request when it believes that a child's behavior could be dangerous to the child or others or to defend an independent education evaluation (IEE) conducted by the LEA. The LEA believes that maintaining the current placement of a student following a disciplinary procedure in 34 CFR §§ 300.530 and 300.531 is substantially likely to result in injury to the student or others.

Expedited due process hearings must occur within **20 school days** of the date the due process complaint is filed. The DPHO must make a determination within **10 school days** after the hearing takes place. These shortened timelines enable DPHOs to make prompt decisions about disciplinary matters while ensuring that the IDEA's due process protections are maintained.

Unless the parents, or adult student and LEA agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting must occur within **7 calendar days** of receiving notice of the expedited due process complaint; and the expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 calendar days** of the receipt of the expedited due process complaint.

Although the timeline for conducting an expedited due process hearing is quite short, the proceedings are still subject to all of the IDEA's due process hearing requirements.

What Happens After an Expedited Due Process Complaint Is Filed?

The USBE assigns a DPHO to the expedited due process complaint.

- A resolution meeting must occur within **7 calendar days**, unless the complainant and the LEA both agree in writing not to have a resolution meeting, or to use mediation instead
- If the dispute is not resolved within **15 calendar days**, the hearing timeline proceeds
- The hearing must be held within **20 school days** of the expedited hearing request being filed
- The DPHO must issue a decision within **10 school days** of the date of the hearing

Note: It is important to keep in mind expedited timeline differences, especially during or close to times when school is not in session, such as summer vacation and extended breaks.

Can the DPHO Extend the Expedited Due Process Hearing Timeline?

No. A DPHO cannot extend the resolution period, hearing date, or the time for issuing a decision for an expedited hearing request.

Frequently Asked Questions About Due Process Complaints

When and Where Does the Hearing Occur?

The due process hearing should occur at a time and place that is reasonably convenient to the parent and student involved. Due process hearings often take place over several days. They are also often held in public buildings with conference rooms that have enough space for multiple people, such as the USBE offices or LEA offices.

Who is Likely to Attend the Hearing?

Generally, parents and students, school staff, attorneys, witnesses, and others whom the parties invite may attend the due process hearing. In addition, a parent may choose to allow members of the public to observe the hearing.

When Might a Party Choose to File a Due Process Complaint?

A few examples of when a parent may choose to file a due process complaint:

- A parent disagrees with the results of a student's evaluation regarding their eligibility for special education and related services
- A parent thinks the individualized education program (IEP) developed by the IEP team does not meet their student's educational needs
- A parent believes the LEA is not providing the services required by the student's IEP
- A parent disagrees with the LEA's placement decision for the student
- A parent disagrees with an evaluation obtained by an LEA

An example of when an LEA may choose to file a due process complaint:

- An LEA determines to defend an IEE obtained by the LEA and disputed by the parent

- An LEA believes a student's behavior could be dangerous to the student or others

May the Parties Appeal the DPHO's Decision if They Disagree?

A decision made in a due process hearing conducted pursuant to the SpEd Rules is final, unless a party to the hearing appeals the decision in a civil action under 34 C.F.R. § 300.516 and the SpEd Rules IV.N. The action may be brought in any State court of competent jurisdiction or in a district court of the United States (C.F.R. § 300.516, and SpEd Rules IV.Q.).

Either party may appeal a due process hearing decision. It is important to know exactly how much time you have to appeal. Utah law requires a party challenging an IDEA due process hearing decision to file its appeal within **30 days** after the day on which the due process hearing decision was issued (U.C.A. § 53E-7-208(4)(a) (2022)).

What Should the LEA Do if They Receive a Due Process Complaint?

If the due process complaint was sent to an LEA but not to the USBE, the LEA should contact USBE's Dispute Resolution Specialists and upload a copy to the Utah Program Improvement Planning System (UPIPS) online program or fax it directly to USBE.

LEA Responsibilities:

- When the LEA receives a due process complaint, the LEA is required to:
    - Inform parents or adult student about the option of mediation;
    - Inform parents or adult student of free or low-cost legal services; and
    - Provide the parents or adult student with a copy of the Procedural Safeguards document for the first due process complaint in the school year.

Do I Need to Hire an Attorney to File a Due Process Complaint?

No, you do not need to hire an attorney to file a due process complaint. Parties are permitted to represent themselves, also referred to as pro se representation (Utah Bar Rules 14-102-111, 14-802(c)(8)). As mentioned above, the Disability Law Center is a helpful advocacy resource for Utah families.

Additional Resources

- Utah State Board of Education Special Education Rules
- Utah Code § 53E-7-208
- 34 CFR 300.507 -- Filing A Due Process Complaint
- Due Process Complaint Form
- Request for Due Process Hearing
- CADRE Due Process Parent Guide
- USBE Due Process Summaries (2026)