



ARIZONA DEPARTMENT OF
EDUCATION

Due Process Procedures

Dispute Resolution

Policies and Procedures



Due Process Complaint Filing Procedures

A party seeking to initiate a due process hearing must provide a due process complaint notice to the other party and forward a copy to the State Educational Agency (the Arizona Department of Education), which may be done via United States mail, fax, email, or [online](#). Upon receipt of the request for a due process hearing, the Arizona Department of Education (ADE) will assign a case number and forward the copy of the due process complaint and any supporting documentation to the Arizona Office of Administrative Hearings (OAH). OAH will provide ADE with the name of the appointed Administrative Law Judge (ALJ). The parties are then notified by ADE by way of a "Notice of Hearing" that outlines how the process works, the name of the ALJ, and other pertinent information. From that point on, all questions and correspondence are between the parties and the assigned ALJ.

The Public Education Agency (PEA) must inform the parent of any free or low-cost legal services and other relevant services available in the geographic area if requested by the parent, or if a due process complaint is filed. The public agency/PEA must also provide a Procedural Safeguards Notice (PSN) to the parent once a due process complaint is filed.

Due Process Complaint Notice

Statute of Limitations

There is a **two-year statute of limitations** on requests for a due process hearing. That is, the alleged action for which the party is filing for due process must have occurred not more than two years before the date the filing party knew or should have known about the alleged action that forms the basis of the due process complaint. There are exceptions when a parent's delay in filing a request was due to specific misrepresentations by the PEA that it had resolved the problem forming the basis of the due process complaint or where the PEA withheld information that was required to be provided to the parent under IDEA Part B.

Content of Due Process Complaint

The party requesting the due process hearing must file the due process complaint with the other party and forward a copy of the due process complaint to ADE. The party filing the due process complaint may submit the complaint to ADE using the online portal, may print and use the model form found on the [Arizona Department of Education's Dispute Resolution web page](#), or may submit it to ADE in the form of a letter or other format which can be sent via United States mail, email, or fax. (The party filing a due process complaint is not required to use the model form.)

Arizona Department of Education / Dispute Resolution
1535 West Jefferson Street, Bin #62 Phoenix, Arizona 85007
Phone: 602-542-3084 Fax: 602-364-0641
Email: [DR Inbox](#)
[Online English form](#)
[Online Spanish form](#)

A due process complaint must contain specific content set forth in federal law. The required content of a due process complaint is outlined below:

Content:

At a minimum, a due process complaint must include the following:

1. The name of the child
2. The address of the child's residence
3. The name of the school the child is attending
4. 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

5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem
6. A proposed resolution of the problem to the extent known and available to the complaining party at the time.

Sufficiency:

The due process complaint will be regarded as sufficient (i.e., that it meets the content requirements above) unless the party receiving the due process complaint files a written notice within 15-calendar-days of receiving the complaint to both the ALJ and the other party that the party believes the due process complaint does not meet the mandatory content. Within five calendar days of receipt of the notice, the ALJ must make a determination on the face of the due process complaint whether the due process complaint meets the mandatory content set forth in the law and must immediately notify both parties in writing of the determination regarding sufficiency.

Due Process Complaint Amendment

Once filed, the due process complaint notice can only be amended if the other party consents in writing to the amendment and is given an opportunity to resolve the due process complaint through a resolution session or by an order of the ALJ, except that an ALJ may only grant an amendment no later than five days before the hearing. The timelines for the resolution meeting and period and the hearing timelines start again when the amended complaint is filed.

Response to a Due Process Complaint

IDEA requires that the party against whom a due process complaint has been filed must, within 10-calendar days of receiving the complaint, send a response that specifically addresses each issue raised in the complaint.

Except, if the PEA is the non-filing party and it has not already sent a prior written notice to the parent concerning the subject matter of the due process complaint, the response must include the following:

1. An explanation of why the agency proposed or refused to take the action in the due process complaint
2. A description of other options considered by the child's Individualized Education Program (IEP) team and the reasons why those options were rejected
3. A description of each evaluation procedure, assessment, record, or report used as the basis for the proposed or refused action and
4. A description of other factors relevant to the proposed or refused action.

Filing this response does not prevent the PEA from also challenging the sufficiency of the due process complaint notice. A challenge to the sufficiency of the due process complaint does not extend the timeline for filing a response.

Resolution Process (the expedited resolution session/period is described below)

Resolution Session

A resolution session is only required if the parent is the complaining party.

Before the initiation of the due process hearing, and within 15 calendar days of receiving the due process complaint notice, the PEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint. The purpose of this meeting, also called a resolution session, is for the parent to discuss the complaint and the facts that form the basis of the complaint, so that the PEA has the opportunity to resolve the dispute that is the basis of the complaint without the need for a hearing. This meeting must occur unless waived in writing by both parties or unless both parties agree to mediation instead. The resolution period is 30 calendar days from the date the complaint is filed.

The resolution meeting must include a representative of the PEA who has decision-making authority on behalf of the agency, but may not include the PEA's attorney unless the parent is accompanied by an attorney. The parent and the PEA determine the relevant members of the IEP team to attend the meeting.

Resolution Period

If the PEA has not resolved the due process complaint to the parent's satisfaction within the resolution period (30-calendar-days from receipt of the due process complaint), then the due process hearing may occur. The 45-calendar-day timeline for issuing a final decision begins:

- at the expiration of the 30-calendar-day resolution period, or
- the day after the parties agree in writing to waive the resolution meeting, or
- the day after the resolution meeting or mediation starts but before the end of the 30-calendar-day period, the parties agree in writing that they are unable to resolve the dispute.

If both parties agreed to use the mediation process instead of the resolution meeting, but the matter is not yet resolved, both parties, at the end of the 30-calendar-day resolution period, may agree in writing to continue the mediation until an agreement is reached.¹ However, if either party withdraws from the mediation process, then the 45-calendar day timeline for the due process hearing starts the next day.

If, after making reasonable, documented efforts, the PEA is not able to obtain the parent's participation in the resolution meeting, the PEA, at the end of the 30-calendar-day resolution period, may request the ALJ dismiss the due process complaint. Documentation of such efforts must include a record of the PEA's attempts to arrange a mutually agreed upon time and place for the meeting, such as:

- Detailed records of telephone calls made or attempted and the results of those calls,
- Copies of correspondence sent to the parent and any responses received, and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

If the PEA fails to hold the resolution meeting within 15-calendar-days of the PEA's receipt of the due process complaint or fails to participate in the resolution meeting, the parent can ask the ALJ to order that the 45-calendar-day due process hearing timeline begin.

Resolution Agreement

If the parties resolve the issues raised in the complaint during the resolution period, they must execute a legally binding agreement, signed by both parties and enforceable in a state court of competent jurisdiction or in a federal district court. Either party may void the agreement within three business days of its execution.

Due Process Hearing

Pre-Hearing Conference

If the parties have waived the resolution session or, if after 30 days, the issues raised in the complaint have not been resolved to the complainant's satisfaction, the hearing process will commence. The ALJ must conduct a pre-hearing conference, either telephonically, virtually, or at a location that is reasonably convenient to the parent and the child involved, to:

- determine if the complaint is a legitimate due process complaint,
- ensure that all matters are clearly defined,
- establish the proceedings that will be used for the hearing,
- determine who will represent and/or advise each party, and
- set the time and dates for the hearing. [A.A.C. R7-2- 405(H)(1)]

General Rights of the Parties

Parties have the right to

- Be accompanied and advised by a lawyer and person(s) with special knowledge or training regarding the problems of children with disabilities,
- Present evidence and confront, cross-examine, and require 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,
- Produce outside expert witnesses,

¹ Mediation Agreements are Enforceable If the parties reach agreement through mediation, the written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

- Obtain a written or, at the parent's option, electronic, word-for-word record of the hearing, and
- Obtain written or, at the parent's option, electronic findings of fact and decisions.

Disclosure of Information

The parties to a due process hearing must disclose all evaluations completed by that date and recommendations that it intends to use at the hearing within five business days prior to the hearing or face the possibility of not being allowed to introduce that evidence in the hearing by the ALJ without the consent of the other party.

Parental Rights at Hearings

The parent must be given the right to

- Have the child who is the subject of the hearing present,
- Open the hearing to the public, and
- Have the record of the hearing, the findings of fact(s), and decisions provided at no cost.

Placement During Hearing

Except as provided in an expedited hearing, once a due process complaint is received by the other party, including during the resolution period and while waiting for the decision of any ALJ or court proceeding, unless the parent and the State Education Agency/Local Education Agency/Public Education Agency agree otherwise, the child must remain in his or her current educational placement. If the due process complaint involves an application for initial admission to public school, the child, with parental consent, must be placed in the public school until the completion of all such proceedings.

Burden of Proof

On November 14, 2005, the United States Supreme Court issued its decision in *Schaffer v. Weast*, holding that "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. In this case, that party is [the student], as represented by his parents. But the rule applies with equal effect to school districts: If they seek to challenge an IEP, they will in turn bear the burden of persuasion before an ALJ." Accordingly, in Arizona, the burden of proof in due process hearings is on the party who filed the due process complaint.

Hearing Decisions

Not later than 45-calendar-days after the expiration or adjustment of the 30-calendar-day period for resolution, a final hearing decision must be made, and a copy of the decision mailed to each of the parties. The ALJ may grant specific extensions of time beyond the 45-calendar-day time period at the request of either party for good cause shown. Each hearing must be conducted at a time and place that is reasonably convenient to the parent and the child.

The ALJ's decision on whether the child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, the ALJ may find that the child did not receive FAPE only if the procedural inadequacies

- impeded the child's right to FAPE
- significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child or
- caused a deprivation of educational benefit.

A decision made in a due process hearing (including an expedited due process hearing) is final, except that any party involved in the hearing (parent or public agency) may appeal the decision by bringing a civil action, as described below.

Expedited Due Process Hearing

The parent of a child with a disability may file a request for an expedited due process hearing if the parent disagrees with any decision regarding placement made under the special education discipline provisions or with the manifestation determination. A PEA may request an expedited due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

An expedited due process hearing must be conducted within 20 school days of the date the hearing request was received by the public agency, and the ALJ has 10 school days after the hearing to issue a decision. No extension of these timelines is allowed.

Resolution Process – Expedited Due Process Hearing

A resolution session is only required when the parent files the due process complaint. Unless the parent and the PEA agree in writing to waive the meeting or agree to use the mediation process instead, a resolution meeting must occur within seven (7) calendar days of the PEA's receipt of the due process complaint. Unlike non-expedited due process hearings, in an expedited due process hearing the resolution period is part of, and not separate from, the expedited due process hearing timeline. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15-calendar-days of the PEA's receipt of the due process complaint.

Placement During an Expedited Hearing

The student remains in the Interim Alternative Educational Setting (IAES) pending the ALJ's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.

No Sufficiency, Response or Amendment Processes- Expedited Due Process Hearing

Due to the shortened timelines that apply to conducting an expedited due process hearing, the sufficiency, the amendment, and the response provisions do not apply to expedited due process complaints. 34 C.F.R. §300.532(c)(1).

Appeal

Any party who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in controversy. In Arizona, the party bringing the action has the right to appeal (file a civil action) within 35-calendar-days after the receipt of the hearing decision. [A.A.C. R7-2- 405(H)(8)]

Contact Information

You may mail, email, or fax the copy of your due process complaint filed with the party public agency to ADE using the contact information below.

Arizona Department of Education, Dispute Resolution Unit

1535 West Jefferson Street, Bin #62 Phoenix, Arizona 85007

Phone: 602-542-3084 Fax: 602-364-0641

Email: [DR Inbox](#)

Web: [Due Process](#)

Glossary

Due Process Hearing: A fair and impartial administrative hearing conducted by the State Education Agency by an impartial hearing officer through the Arizona Office of Administrative Hearings (OAH). [A.A.C. R7-2-405(A)(1)]

Expedited Due Process Hearing: A due process hearing involving discipline procedures as set forth in the IDEA.

Administrative Law Judge (ALJ): Under 34 C.F.R. § 300.511(c)(1)(ii)-(iv), a hearing officer also must: (1) possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; (2) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (3) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

Mediation: An informal, problem-solving process for parents and public agencies to resolve their differences involving any matter under IDEA Part B, concerning special education through the intervention of a qualified and neutral person knowledgeable in laws and regulations relating to the provision of special education and related services and trained in effective mediation techniques.

Parent: Any of the following may be considered the "Parent":

- Biological or adoptive parent of a child
- Foster parent
- Guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State)
- Individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) and with whom the child lives
- Individual who is legally responsible for the child's welfare
- Surrogate parent who has been appointed in accordance with federal regulation.

Public Agency: The State Education Agency and Public Education Agencies.

Public Education Agency (PEA): A school district, charter school, accommodation school, state-supported institution, or other political subdivision of the State of Arizona that is responsible for providing education to children with disabilities.

Resolution Session: A meeting held by the public education agency (PEA) with the parent and relevant members of the IEP team after a parent files a request for a due process hearing. (Note: for expedited due process, the resolution session timeline is not separate, but runs concurrently with the due process hearing timeline.)

State Education Agency (SEA): The Arizona Department of Education.

Acronyms

AAC: Arizona Administrative Code

ALJ: Administrative Law Judge

ARS: Arizona Revised Statutes

ADE: Arizona Department of Education

CFR: Code of Federal Regulations

ADE/DR: Arizona Department of Education/Dispute Resolution

IDEA: Individuals with Disabilities Education Act

OAH: Office of Administrative Hearings

PEA: Public Education Agency

SEA: State Educational Agency