NORTH DAKOTA
DEPARTMENT OF
PUBLIC INSTRUCTION

SPECIAL EDUCATION
DUE PROCESS COMPLAINT
PROCEDURE MANUAL

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Contents

Introduction....4

What is a Special Education Due Process Complaint? 4

Who Can File a Due Process Complaint?....4

What Can Be Done Before Filing a Due Process Complaint? 5

Can a Due Process Complaint Be Filed for Any School Problem?....5

What Are the Timelines for Filing a Due Process Complaint?....6

Can the Petitioner Withdraw the Due Process Complaint at Any Time? 6

What Happens When the NDDPI Receives a Due Process Complaint? 6

What Information Must Be Included in a Due Process Complaint?....7

How Does a Petitioner File a Due Process Complaint? 8

Can a State Complaint Also Be Part of a Due Process Complaint? 8

What is the Placement of the Student During a Due Process Hearing? 8

What Rights Does Each Party Have in a Due Process Hearing? 9

How is a Due Process Hearing Conducted? 10

What Happens After a Hearing?....10

What is an Expedited Due Process Hearing? 11

How Does a Due Process Hearing Differ from an Expedited Due Process Hearing?....11

What Can an Administrative Law Judge Decide in an Expedited Due Process Hearing? 11

Due Process Complaint and an Expedited Due Process Hearing (Comparison Chart) 12

What is a Resolution Meeting?....14

Is There a Cost for a Due Process Hearing, Expedited Due Process Hearing, or Resolution Meeting? 15

Extension of Timelines 15

Mediation During the Resolution Period 15

Request for Due Process Complaint Form....17

Request to Withdraw the Due Process Complaint Form....19

IDEA Due Process Complaint Procedures.. 20

Glossary....24

Introduction

The Individuals with Disabilities Education Act (IDEA) requires that State Education Agencies (SEAs) adopt written procedures for investigating and resolving any due process complaint alleging that a public agency has violated a provision of the IDEA. This manual specifies the process used by the North Dakota Department of Public Instruction (NDDPI), Office of Specially Designed Services, to investigate and resolve due process complaints alleging that a public agency has violated a state or federal special education law requirement.

Due process is a formal way to resolve disputes. It starts with a written complaint, includes a resolution meeting, and proceeds to a formal administrative hearing if no agreement is reached. A due process hearing is like a trial. The parties present evidence through witnesses and documents presented before an Administrative Law Judge (ALJ) from the North Dakota Office of Administrative Hearings, who issues a written decision resolving the issues. That decision can be appealed in court.

Each stage of due process has time limits. A due process complaint involving disciplinary matters is subject to shorter timelines and becomes an expedited due process. The processes for a due process complaint and an expedited due process complaint are similar. Differences between the two are noted in this manual.

What is a Special Education Due Process Complaint?

A due process complaint may be filed by a parent or public agency when there is a disagreement about the identification, evaluation, or educational placement of a student with a disability or the provision of a Free Appropriate Public Education (FAPE) to the student with a disability. A due process complaint starts a formal process for resolving disputes that includes a resolution meeting, where the parties try to reach an agreement regarding the issues. If no agreement is reached, the matter proceeds to a due process hearing.

A parent does not need an attorney to file a due process complaint, but parents may choose to hire an attorney because of the formal legal nature of due process proceedings. Attorneys typically represent school districts.

During the due process hearing, both parties have an opportunity to present and cross-examine witnesses, have a record of the proceedings, and enter and object to evidence. Parties can subpoena witnesses, and testimony is given under oath. The ALJ will make the final legally binding decision. The ALJ is not permitted to talk to either party individually about the due process complaint or hearing to ensure a fair and impartial due process hearing.

Who Can File a Due Process Complaint?

A parent, public agency, or an adult student may file a due process complaint. The party filing a due process complaint is called the petitioner, and the party against whom the due process complaint is filed is called the respondent.

What Can Be Done Before Filing a Due Process Complaint?

The NDDPI encourages individuals to contact the school district with any concerns before filing a request for a due process complaint. If the school is made aware of any concerns, it can try to address the issues. This may help resolve any problems quickly while strengthening the working relationship between the parties.

Below is a suggested checklist to go through **before** filing a due process complaint:

- Contact the special education teacher or case manager to discuss concern(s).
- Notify the school principal of your concerns and request assistance.
- Contact the Special Education Unit Director or Coordinator.
- Contact the local advocacy or parent organization for support.
- Contact the NDDPI, Office of Specially Designed Services.
- Ask the NDDPI about IEP Facilitation (an optional process that ND provides to parents/guardians or school districts to help communicate during an IEP meeting by providing a trained facilitator).
- Ask the NDDPI about mediation (a voluntary process that brings people together to resolve disagreements or issues with the help of a trained mediator). Mediation is often a more direct and expeditious way to resolve issues related to a student.

Can a Due Process Complaint Be Filed for Any School Problem?

The short answer is no. Due process is not designed to address every dispute. Under the IDEA, a due process complaint concerns special education disputes and may be filed to address matters relating to the identification, evaluation, or education placement of a child with a disability or the provision of FAPE to the child 34 CFR §300.507(a).

Examples of school decisions that may not lead to a Due Process Complaint Hearing be the subject of a due process complaint include:

- Promotion or retention
- Grade assignment
- School assignment
- Teacher assignment
- Discrimination (there are other laws for this)

As stated, due process complaints must relate to the identification, evaluation, or educational placement of a student with a disability or the provision of FAPE to the student. The NDDPI does not handle civil rights complaints or violations related to discrimination. The Office for Civil Rights (OCR) of the United States Department of Education enforces several federal civil rights laws prohibiting discrimination in programs or activities that receive federal financial assistance. Conflicts related to civil rights complaints or discrimination should be sent to the OCR.

OCR complaints include discrimination in the areas of:

- Individuals with Disabilities
    - Inaccessible facilities

Unequal access to academic programs, extracurricular athletics, and accessible technology
    - Discriminatory discipline
    - Race, color, and national origin
- Sexual orientation
- Age

To contact OCR for information or assistance, go to their website or use the contact information below:

Denver Office
Office for Civil Rights
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
FAX: 303-844-4303; TDD: 800-877-8339
Email: OCR.Denver@ed.gov

What Are the Timelines for Filing a Due Process Complaint?

A due process complaint must allege a violation that occurred no more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint**,** unless**:**

- The parent was prevented from requesting the due process complaint because the school district misled that it had resolved the problem or
- The school district withheld information from the parent that, under IDEA, it was required to provide.

(34 CFR §300.507(a)(2).

Can the Petitioner Withdraw the Due Process Complaint at Any Time?

Yes. The Due Process Complaint can be withdrawn at any time by sending a written request to withdraw the Due Process Complaint to the NDDPI. The written request may include information as to why the Due Process Complaint is being withdrawn. The *Request to Withdraw the Due Process Complaint* form may be used and can be found on page 19.

What Happens When the NDDPI Receives a Due Process Complaint?

- The NDDPI reviews the due process complaint to verify that required information is included and that the party filing a due process complaint, or the attorney representing a party, has provided the due process complaint to the other party 34 CFR § 300.508(a)(1).
- The parent, school district, and special education unit will receive a letter from the NDDPI confirming receipt of the due process complaint. The NDDPI will contact the Office of Administrative Hearings (OAH) to request the assignment of an administrative law judge to preside over the due process hearing.

- Within a week, the NDDPI will send the petitioner, school district, and special education unit a letter notifying the parties that an ALJ has been assigned to their case.
- If the school district has not sent a prior written notice to the parent regarding the issues raised in the parent's due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, respond to the complaint. If the school district filed the complaint, the parent must respond to the issues listed in the complaint within ten calendar days of receiving the due process complaint (34 CFR § 300.508(e) 34 CFR § 300.508(f)).

- The school district must convene a resolution meeting within 15 calendar days of receiving the due process complaint unless the parent and the school district agree in writing not to have a resolution meeting or agree to use mediation instead (34 CFR 300.510).
- The OAH will correspond with the parties within a week of receiving the request to conduct a due process hearing, informing the parties of the due process hearing procedures and timelines.
- If a due process hearing takes place (because the parties were unable to resolve the dispute through the resolution process), the ALJ issues a final written decision and mails a copy of the decision to each party no later than 45 calendar days after the expiration of the 30 day resolution period or any properly adjusted time periods (34 CFR § 300.515).

What Information Must Be Included in a Due Process Complaint?

A due process complaint must include the following content:

- An allegation that an IDEA violation occurred not more than two years prior to the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint 34 CFR § 300.507(2).
- The signature and contact information for the petitioner,
- The name of the child,
- The address of the residence of the child,
- The name of the school the child is attending,
- In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending,
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts related to the problem and
- A proposed resolution of the problem to the extent known and available to the party at the time.

34 CFR § 300.508.

The party filing the due process complaint or the attorney representing a party must forward a copy of the complaint to the other party at the same time it is filed with the NDDPI.

When the NDDPI receives a due process complaint that is not signed or does not include the required information, the NDDPI will contact the petitioner to obtain the signature or other necessary information to complete the form/letter.

The following information is **optional**:

- The birthdate of the child,

- The child's address (if different than the petitioner's),
- The name of the school representative or contact,
- The name of the school district,
- Petitioner's relationship with the child

How Does a Petitioner File a Due Process Complaint?

- Call (701) 328-2277 or visit the NDDPI website at https://www.nd.gov/dpi/education-programs/special-education for forms to assist parents and public agencies in filing a due process complaint.
- Parents and public agencies may use the NDDPI Due Process form to file a due process complaint. For parties wanting to use the *Due Process Complaint* form, visit https://www.nd.gov/dpi/education-programs/special-education and click on Education Programs à Special Education à Special Education Dispute Resolution *Due Process Complaint* form. Complete the form and forward a copy of the due process complaint to the NDDPI and the other party against whom the complaint is made.
- Parents and public agencies may use another form or document to file a due process complaint, as long as the form or document that is used includes all of the required content for filing a due process complaint. Send a copy of the document setting forth the due process complaint to the other party and the NDDPI.
- Mail, email, or fax the due process complaint to:
  ND Department of Public Instruction (NDDPI)
  Office of Specially Designed Services
  Attn: Director of Specially Designed Services
  600 East Boulevard Avenue, Dept. 201
  Bismarck, ND 58505-0440
  Email: dpispecialed@nd.gov
  Fax: (701) 328-4149

Note: If the petitioner's native language is not English or the petitioner is unable to read or write, contact the NDDPI, Office of Specially Designed Services at (701) 328-2277 or email dpispecialed@nd.gov for additional information or assistance.

Can a State Complaint Also Be Part of a Due Process Complaint?

A party can file a state complaint and not file a due process complaint. If a state complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more are part of the due process hearing, the State must set aside any part of the state complaint that is being addressed in the due process hearing until the conclusion of the due process hearing. Any issue in the state complaint that is not a part of the due process hearing will be investigated and resolved in accordance with the time limit and procedures for state complaint procedures (34 CFR § 300.152(c)(1)). If an issue raised in a state complaint has previously been decided through a due process hearing involving the same parties, the due process hearing decision is binding on that issue (34 CFR § 300.152(c)(2)).

What is the Placement of the Student During a Due Process Hearing?

When a due process complaint is filed, the child must (unless the State or school district and the

parent(s) agree otherwise) remain in the current educational placement during the pendency of any administrative or judicial proceeding regarding the due process complaint (34 CFR § 300.518(a)). This term is often referred to as the "stay put" provision. While the placement may not be changed, this does not prevent the school from using its normal procedures for dealing with a child who is endangering him/herself or others.

If the due process complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the administrative and judicial proceedings (34 CFR § 300.518(b)).

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found to be eligible for special education and related services under Part B of the IDEA and parental consent has been given for the initial provision of special education and related services, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (34 CFR § 300.518(c)).

What Rights Does Each Party Have in a Due Process Hearing?

Parties involved in a Due Process Hearing have the right to:

- Be accompanied and advised by a lawyer and individuals with special knowledge or training regarding the problems of students with disabilities.
- 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 parent's option, electronic, verbatim record of the hearing.
- Obtain written or, at the parent's option, electronic findings of fact and decisions.

Parents involved in hearings must be given the right to:

- Have the child 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 available at no cost.

34 CFR § 300.512.

At least **five (5) business days** prior to a due process hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on those evaluations that the offering party intends to use at the hearing (34 CFR § 300.512(b)(1)). An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party (34 CFR § 300.512(b)(2)).

Parents who are parties to a due process hearing have the right to inspect and review all education records pertaining to the child for whom the hearing is held and with respect to the identification, evaluation, educational placement of the child, and the provision of FAPE to the child (34 CFR § 300.501).

How is a Due Process Hearing Conducted?

- Before the actual hearing, the ALJ may meet with the parties to attempt to arrive at a voluntary resolution of the matters in dispute. This prehearing conference aims to clarify procedural matters and specify the issues that will be heard. It is possible for the parties to work out their disagreement once issues have been formally defined. A prehearing conference is not required, but it is an option that provides an opportunity for the ALJ to advise all parties on how the hearing will be conducted. Establishing ground rules will result in a more efficient and focused evidentiary hearing. Immediately following the prehearing conference, the ALJ may make the conference a matter of record by writing a letter to all parties.
- In the event that a voluntary resolution of the dispute cannot be achieved, a due process hearing must be conducted in accordance with the procedures of the Office of Administrative Hearings and Chapter 28-32 of the North Dakota Century Code. If the parents' primary language is not English or if they are blind or have low vision, they must notify the NDDPI, who will collaborate with the OAH, so that an interpreter or reader may be engaged. All hearings must be conducted in fully accessible locations.
- Any party to the hearing has the right to be accompanied and advised by legal counsel and individuals with special knowledge or training regarding the problems of children with disabilities.
- Any party to the hearing has the right to present evidence, confront and cross-examine witnesses, compel witnesses, and 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.
- Parents must be given the right to open the hearing to the public and to have the child who is the subject of the hearing present.
- A record of the due process hearing must be made. The record will remain under the control of the NDDPI. Upon request, the parties have the right to obtain a copy of the recorded proceedings. Additional copies may be obtained at the expense of the requester, covering both the cost of the recording and postage, if appropriate.

What Happens After a Hearing?

Following the closing of the hearing, a final decision that states concisely and explicitly the findings of fact, and conclusions of law and order of the NDDPI will be sent by secure email and mailed to the parties involved in the hearing. The purpose of the decision is to summarize the pertinent evidence presented at the hearing and to draw a conclusion based on the evidence to decide the issue. The ALJ's responsibility is to decide what is legally appropriate for the student, not whether the parents' or the public education agency's position is correct. It is possible that, based on the record, the ALJ will issue a decision that is different from either party's position. As appropriate, the hearing decision will be written in English and in the primary language of the child's home if other than English, and, where appropriate, will be transcribed in braille or tape-recorded for parents who are visually impaired or blind. The NDDPI will pay the costs of having a decision written in the primary language of the child's home or transcribed in braille.

The ALJ must send the original written findings of fact, conclusions of law, and final order to the NDDPI. A decision made in a due process hearing is final, except that any party involved in the hearing who disagrees with the findings and decisions in the due process hearing may appeal the decision by bringing 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 with the authority to hear this type of case or in a

district court of the United States. The party bringing the action has 90 calendar days from the date of the due process hearing decision of the ALJ to file a civil action (34 CFR § 300.516).

If areas of noncompliance are identified, a Corrective Action Plan (CAP) will be developed. The NDDPI will ensure the public agency implements the CAP in a timely manner, according to the timelines indicated in the plan, not to exceed one year from the date the final order is sent.

EXPEDITED DUE PROCESS HEARING

What is an Expedited Due Process Hearing?

An expedited due process hearing involves a due process complaint regarding a disciplinary matter. An expedited due process hearing has shorter timelines than a regular due process hearing. If the parent of a child with a disability files a due process complaint in which he or she disagrees with any decision regarding placement for child with a disability who violates a code of student conduct, or a manifestation determination, the NDDPI is responsible for arranging an expedited due process hearing.

Likewise, if the school district files a due process complaint to request a due process hearing because it believes that maintaining the child's current placement is substantially likely to result in injury to the child or others, the NDDPI is responsible for arranging an expedited due process hearing.

How Does a Due Process Hearing Differ from an Expedited Due Process Hearing?

Following a due process hearing, a final decision must be reached no later than 45 days after the expiration of the 30 calendar day resolution period, unless the time periods are adjusted for reasons stated on page 14 (34 CFR § 300.515). An expedited due process hearing involves shorter timelines:

- The NDDPI is responsible for arranging the expedited due process hearing, which must occur within **20** school days of the date the due process complaint is filed. The ALJ must make a determination within **10** school days after the hearing.
- Unless the parents and school agree in writing to waive the resolution meeting or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

For more information, see the Comparison Chart *What is the Difference Between a Due Process Complaint and an Expedited Due Process Complaint* on page 13.

What Can an Administrative Law Judge Decide in an Expedited Due Process Hearing?

The ALJ has the authority to determine whether the child's removal from his or her placement violated the IDEA, whether the child's behavior was a manifestation of the child's disability, and whether

maintaining the child's current placement is substantially likely to result in injury to the child or others. In determining what is appropriate, the ALJ may,

- Return the child with a disability to the placement from which the child was removed if the ALJ determines that the removal was a violation of the requirements of IDEA, found at 34 CFR §300.530, or that the child's behavior was a manifestation of the child's disability; **or**
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for no more than 45 school days if the ALJ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- These procedures may be repeated if the school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. 34 CFR § 300.532(b)(3).

What is the Difference Between a Due Process Complaint and an Expedited Due Process Hearing?

	Due Process Complaint/Hearing Request	Expedited Due Process Hearing & Resolution Meeting
How the Processes Differ	A process used to resolve a formal complaint made by a parent or public agency (e.g., school district), who together are referred to as "the parties."	A special type of Due Process Complaint Hearing related to certain situations involving a student's discipline and placement.
Issue Addressed	Used to resolve disagreements relating to the identification, evaluation, placement, or provision of free appropriate public education (FAPE) of a child who needs or is suspected of needing special education and related services.	Used when parents disagree with a school district's discipline-related decision that affects their child's placement or whether the child's behavior is related to their disability. A public school district may use this process if it believes that a child's behavior could be dangerous to the child or others.
How to Request	Send a written *Request for a Due Process Complaint Notice* to the other party and the NDDPI, including a description of the problem, the facts related to the problem, and a proposed resolution to the issue, or complete the *Request for Due Process Complaint* form.	Send a written *Request for a Due Process Complaint Notice* to the other party and the NDDPI, including a description of the problem, the facts related to the problem, and a proposed resolution to the issue, or complete the *Request for Due Process Complaint* form.
Process	An Administrative Law Judge (ALJ) hears evidence in a courtroom-like setting and provides a decision. A formal record of the hearing (a written or electronic transcript) must be made and provided to the parent.	An Administrative Law Judge (ALJ) hears evidence in a courtroom-like setting and provides a decision. A formal record of the hearing (a written or electronic transcript) must be made and provided to the parent.
Time Frame	A Due Process Complaint must be filed within two (2) years of the date when the individual was aware of the alleged violation(s). If the requirement is not waived or mediation is not used, a resolution meeting must take place within 15 calendar days of the filing of a Due Process Complaint Hearing request. A written decision will be provided forty-five (45) calendar days after the initial thirty (30) day resolution period.	The resolution meeting must occur within seven (7) calendar days unless the parties agree in writing not to have the meeting or use mediation. The hearing timeline proceeds if the issue is unresolved within 15 calendar days. The hearing must be held within 20 school days of the request's filing. The decision must be issued within 10 school days of the hearing.
Result	In the decision, the ALJ determines whether violation(s) occurred and, if so, orders remedial action. Appeals must be filed within thirty (30) calendar days after the written decision. From the date that the Due Process Complaint is filed until the decision is final, your child stays in their current education placement unless you and the school district agree otherwise. The decision is legally binding, even if you disagree with the outcome. The NDDPI is responsible for ensuring the decision is followed unless it is appealed. The decision is made by an ALJ who is not involved in the child's education.	A written decision made by the ALJ with finds of fact and conclusions of law to quickly address decisions concerning the child's discipline and placement. The expedited hearing timeline is based on school days, and the resolution meeting period is based on calendar days. It is important to keep the timeline differences in mind, especially during or close to times when school is not in session, such as vacations and extended breaks. The resolution period, hearing, and decision timelines cannot be extended.
Cost	There is no cost to parents unless the parents hire an attorney.	There is no cost to parents unless the parents hire an attorney.

RESOLUTION MEETING

Within 15 calendar days of receiving notice of the parent's due process complaint and before the initiation of the due process hearing, the school district must convene a meeting with the parent and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process complaint (34 CFR § 300.510(a)(1)). The purpose of the resolution meeting is for the parent to discuss the due process complaint so that the school district has the opportunity to resolve the dispute (34 CFR § 300.510(a)(2)). The parent and school district decide which IEP team members should attend the resolution meeting.

The school district attorney may not attend unless an attorney accompanies the parent (34 CFR § 300.510(a)(1)(ii)). The intent to bring an attorney to the resolution meeting should be made known to the other party prior to the meeting.

The parties must participate in the resolution meeting unless both the school district and the parent(s) have agreed, in writing, to waive the resolution meeting or to use mediation to resolve the disputed issues (34 CFR § 300.510(b)(3)).

What is a Resolution Meeting?

- If the school district has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of receiving the complaint, the due process hearing may occur (34 CFR § 300.510(b))
- If the school district is unable to obtain the parent's participation in the resolution meeting after reasonable efforts have been made (and documented), then the school district may, at the conclusion of the 30 calendar day period, request that an ALJ dismiss the parent's due process complaint (34 CFR § 300.510(b)(4)).
- If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may ask the ALJ to begin the due process hearing due process hearing timeline (34 CFR § 300.510(b)(5)).
- The 30 calendar day timeline for the resolution meeting may vary due to the following reasons:
    - The parties have jointly agreed to waive the resolution meeting or to use mediation; and,
    - The parent who filed a due process complaint failed to participate in the resolution meeting, resulting in a delay in the timelines for the resolution process and due process hearing until the meeting is held. 34 CFR § 300.510(b)(3).

- The 45-calendar day timeline starts the day after one of the following events or after the 30 calendar day resolution period.
    - Both parties agree in writing to waive the resolution meeting.
    - The parties agree in writing that no agreement is possible after either the mediation or the resolution meeting starts but before the end of the 30 calendar day period.
    - If both parties agree in writing to continue the mediation at the end of the 30 calendar day resolution period, but later, the parent or school withdraws from the mediation process.

- If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement called a written settlement agreement. This document is:

    - Signed by both the parent and a school representative who has the authority to bind the school district; and
    - Enforceable in any State court or district court of the United States.
    - Subject to either party voiding the agreement within 3 business days of the agreement's execution.

34 CFR 300.510(d) and (e).

Is There a Cost for the Due Process Hearing, Expedited Due Process Hearing, or the Resolution Meeting?

The NDDPI is responsible for paying the costs incurred by the OAH for the ALJ's time and associated costs incurred by the OAH (travel, lodging, meals, etc.) for each due process hearing. Since a due process hearing is a legal proceeding, a party may choose to be represented by an attorney. The public agency or parents are responsible for payment of any legal services they may employ during the due process hearing, which may include attorneys' fees and expert witness fees.

Under North Dakota law, "In any judicial proceeding to enforce the rights of an individual with disabilities to receive educational services, the court may award reasonable attorney's fees and costs to a prevailing parent or the individual with disabilities." (N.D.C.C. § 15.1-32-22) Under the IDEA, reasonable attorneys' fees may be awarded to:

- A prevailing parent of a child with a disability.
- A prevailing school district against an attorney of a parent who:
    - Files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation; or
    - Who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- Against the attorney of a parent or the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation (34 CFR § 300.517(a)(1)).

The resolution meeting is provided at public expense, so there is no cost to either party.

Extension of Timelines

At the request of either party, an ALJ may grant specific extensions of time beyond the period set for issuing a final decision in a due process hearing (34 CFR § 300.515).

Mediation During the Resolution Period

Parties may choose to engage in mediation during the 30 day resolution period. The resolution period may be adjusted if both parties agree in writing to continue with the mediation process after the 30 day resolution period. If this occurs, the 45-day due process hearing timeline does not begin until one

of the parties withdraws from the mediation process or the parties agree in writing that no agreement can be reached through mediation (34 CFR § 300.510(c)(3).

DUE PROCESS COMPLAINT

NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION
SPECIALLY DESIGNED SERVICES
SFN 9461 (03-2017)

A due process complaint may be filed by a public agency, a parent, or a legal guardian for the purposes set forth in the guidelines and regulations for "Due Process and Review" published in the Annual Program Plan, Part B, Individuals with Disabilities Education Act as Amended by P.L. 108-446 [IDEA 2004] and distributed by the ND Department of Public Instruction. The regulations contained in this publication should be studied thoroughly before completing this Due Process Complaint. Whenever a due process complaint is received, the parties involved are provided a due process hearing to resolve the dispute. A due process hearing is a formal legal proceeding. A due process complaint should be considered only if all efforts at the local level for agreement have failed.

Have you considered the option of mediation for these issues? Yes ☐ No ☐

Parent Filing Due Process Complaint

A parent may file a due process complaint if:

The parent disagrees with a proposal or refusal by a local school district or another public agency operating an education program to initiate or change the identification, evaluation, or educational placement of the child with a disability or the provision of a free appropriate public education (FAPE) to the child (34 CFR § 300.507(a)).

School District Filing Due Process Complaint

A local school district or other public agency operating an educational program may file a due process complaint:

- When a parent refuses consent for initial evaluation.
- To demonstrate that the school district has conducted an appropriate evaluation.
- To demonstrate that the school district has offered a free appropriate public education.

Complete and return both pages to ND Department of Public Instruction, Office of Specially Designed Services, 600 E Blvd. Ave., Dept. 201, Bismarck, ND 58505-0440. Your due process complaint must include a detailed statement describing the problem(s), a proposed resolution of the problem. It must be signed by the party initiating the request (parent/guardian or school district). (Federal regulations at 34 CFR §300.508)

Name of Person Requesting the Hearing	Telephone Number	Date of Request	
Address	City	State	ZIP Code
Name of Child	Child's Date of Birth (optional)	Name of School Child Attending	
Child's Address (optional, if different than above).	City	State	ZIP Code

Statement

Description of Problem(s) including facts relating to the issue.
Proposed Solution(s) to the problem(s).

Signature of Person Requesting Hearing	Relationship to the Child	Date
Signature of Person Requesting Hearing	Relationship to the Child	Date

Signature and Declaration of Delivery

I assert by signing this document that a copy of this request was delivered (check one) to the other party involved in this conflict on the date indicated below.

Signature of Sender	Name of Other Party	Date
The copy of this request was (check one)	☐ mailed	☐ hand delivered

Return to:
ND Department of Public Instruction (NDDPI)
Office of Specially Designed Services
600 E. Blvd. Ave., Dept. 201
Bismarck, ND 58505
Email: dpispecialed@nd.gov
Office: (701) 328-2277
Fax: (701) 328-4149

NORTH DAKOTA
DEPARTMENT OF
PUBLIC INSTRUCTION

REQUEST TO WITHDRAW THE
DUE PROCESS COMPLAINT

I, _____, choose not to have the North Dakota Department of Public Instruction (NDDPI), Office of Specially Designed Services proceed with the Due Process Complaint concerning the special education services for my child at this time.

Please withdraw my *Due Process Complaint.*

_____
Signature of Parent/Guardian/Eligible Student

_____
Date

Please return by mail, email, or fax to:
Attn: Dispute Resolution Coordinator
ND Department of Public Instruction (NDDPI)
Office of Specially Designed Services
600 E. Blvd. Ave., Dept. 201
Bismarck, ND 58505
Email: dpispecialed@nd.gov
Office: (701) 328-2277
Fax: (701) 328-4149

IDEA DUE PROCESS COMPLAINT PROCEDURES

§300.507 Filing a Due Process Complaint

(a) General.

(1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)

(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

§300.508 Due Process Complaint

(a) General.

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

(1) The name of the child;

(2) The address of the residence of the child;

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

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), 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; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section and must immediately notify the parties in writing of that determination.
(3) A party may amend its due process complaint only if—
(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint.
(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—
(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
(iv) A description of the other factors that are relevant to the agency's proposed or refused action.
(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

§300.510 Resolution Process

(a) Resolution meeting.
(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA 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 due process complaint that—
(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child 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.
(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—
(i) The parent and the LEA agree in writing to waive the meeting; or
(ii) The parent and the LEA agree to use the mediation process described in §300.506.
(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.
(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.
(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events
(1) Both parties agree in writing to waive the resolution meeting;
(2) 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;
(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—
(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007]

§300.531(c) Expedited due process hearing

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing

consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

GLOSSARY

Administrative Law Judge (ALJ) – Employed by the Office of Administrative Hearings (OAH), a specially trained independent judge or hearing officer who conducts an orderly, fair, and impartial hearing.

Adult Student – A student with a disability who is at least 18 years old to whom rights have transferred under the Individuals with Disabilities Education Act (IDEA) and who is not under legal guardianship.

Allegation – A claim that a school district has violated a specific requirement of the IDEA.

Burden of Proof – Places the responsibility on each party to support their claims with evidence and persuasively argue their position before the ALJ.

Calendar Days – The days on the calendar, including weekends and holidays.

Due Process Complaint – A formal complaint made by a parent or school district to report that a public agency has not followed the IDEA requirements for an individual student.

Expedited Due Process Complaint – A special type of due process complaint/hearing request available only in certain situations relating to a student's discipline and placement.

Family Educational Rights & Privacy Act (FERPA) – The federal law that protects the confidentiality of a student's records in all public schools and local education agencies.

Free Appropriate Public Education (FAPE) – Includes the special education and related services in a student's IEP that the team determines are necessary to provide the student with appropriate education at public expense.

Individualized Education Program (IEP) – A written statement of the educational program designed to meet the individual needs of a student with a disability, developed by the IEP team.

Individuals with Disabilities Education Act (IDEA) – The federal law designed to ensure that all students with disabilities have the opportunity to receive a FAPE, which includes the special education and related services necessary to meet their unique needs.

Issue(s) – Term used in the special education complaint process to refer to the concern to be investigated.

Local Education Agency (LEA) – Also known as the school district.

Mediation – A voluntary dispute resolution option for which the NDDPI will provide neutral mediators for two parties.

The Office of Administrative Hearings (OAH) – OAH is an executive branch agency that provides independent Administrative Law Judges (ALJs) to preside at administrative hearings.

Parent – A biological or adoptive parent, a foster parent, a legal guardian, a properly appointed surrogate parent, or another person, as defined by the IDEA, who has the legal authority to make educational decisions for a student with a disability or who is suspected of having a disability.

Party – The key participants in special education complaints. A party includes the parent(s), as defined by the IDEA, an adult student, the school district, or the state education agency.

Petitioner – The party requesting a due process hearing.

Procedural Violation – Refers to a school district's failure to comply with the IDEA's process-based requirements.

Resolution – Refers to the outcome when two parties work through a conflict.

Respondent – The party against whom the due process hearing is filed.

School Days – Any day, including a partial day, that students are in attendance at school for instructional purposes.

State Education Agency (SEA) – Another term for the NDDPI.

Substantive Violation – Occurs when the educational services contained in the IEP area are insufficient to provide FAPE.