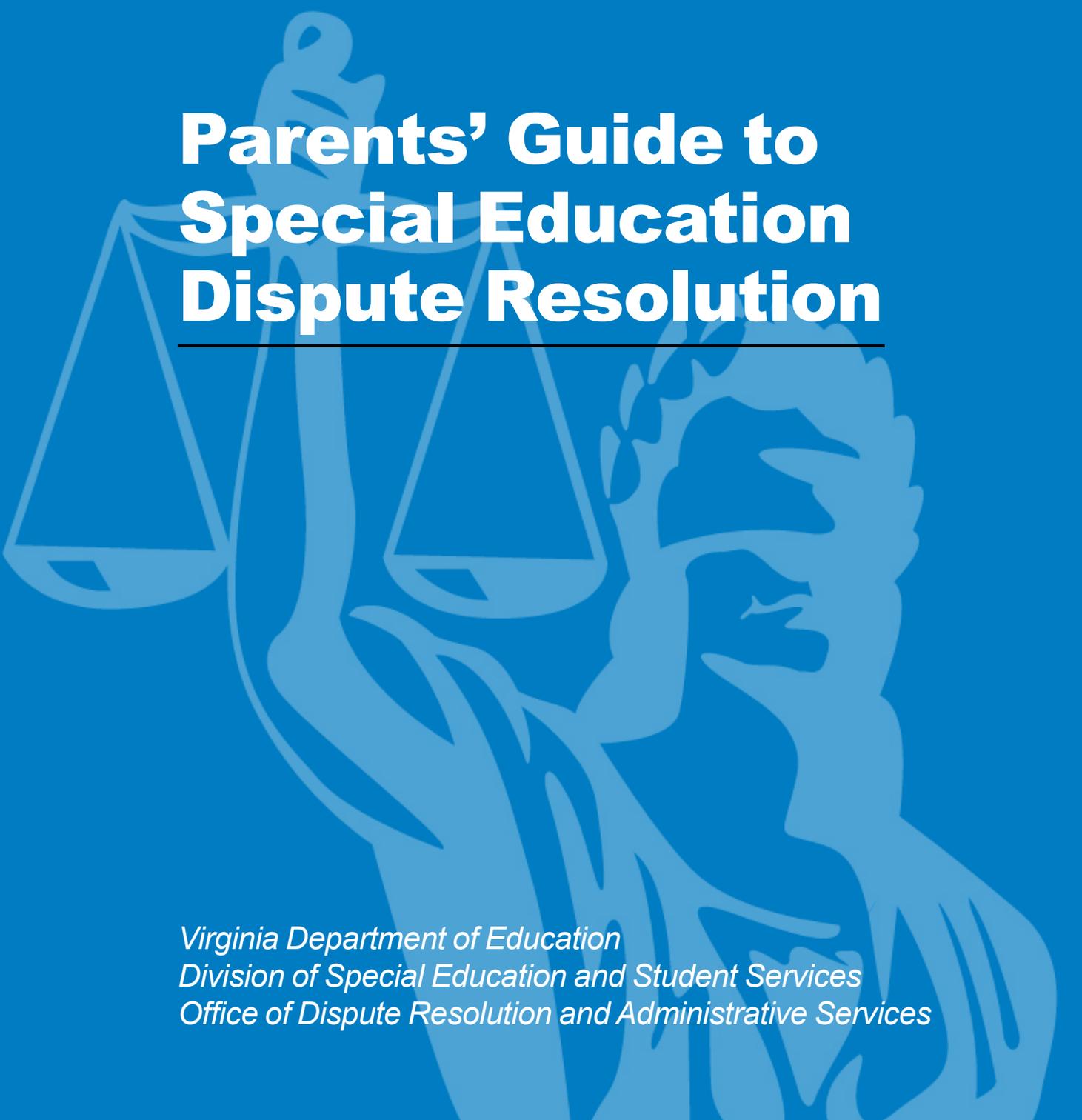

2008



**Parents' Guide to
Special Education
Dispute Resolution**

*Virginia Department of Education
Division of Special Education and Student Services
Office of Dispute Resolution and Administrative Services*

SPECIAL EDUCATION ACRONYMS AND ABBREVIATIONS



504	A section of the Rehabilitation Act of 1973	FAPE	Free Appropriate Public Education
ADA	Americans with Disabilities Act	FBA	Functional Behavioral Assessment
ADD	Attention Deficit Disorder	FAPT	Family Assessment Planning Team
ADHD	Attention Deficit Hyperactivity Disorder	FERPA	Family Educational Rights and Privacy Act
ADR	Alternative Dispute Resolution	FOIA	Freedom of Information Act
APD	Auditory Processing Disorder	HI	Hearing Impairment
APE	Adaptive Physical Education	HIPPA	Health Insurance Portability and Accountability Act of 1996
APR	Annual Performance Report		Hard of Hearing
ASD	Autism Spectrum Disorder	HOH	Interim Alternative Education Setting
ASL	American Sign Language	IAES	Individuals with Disabilities Education Act
AT	Assistive Technology	IDEA	Individuals with Disabilities Improvement Act of 2004 (otherwise called IDEA)
AYP	Adequate Yearly Progress	IDEIA	Individuals with Disabilities Education Law Reporter
BIP	Behavioral Intervention Plan	IDELR	Independent Educational Evaluation
CAPD	Central Auditory Processing Disorder		Individualized Education Program
CAP	Corrective Action Plan	IEE	Individual Services Plan
CFR	Code of Federal Regulations	IEP	Individual Family Service Plan
CSA	Comprehensive Services Act	ISP	Impartial Hearing Officer
CSB	Community Services Board	IFSP	Intelligence Quotient
DB	Deaf-Blindness	IHO	Local Advisory Committee (otherwise called SEAC)
DBVI	Virginia Department of Blind and Visually Impaired	IQ	Local Educational Agency (School division or SOP)
DD	Developmental Delay	LAC	Limited English Proficiency
DSM-IV-TR	Diagnostic and Statistical Manual of Mental Disorders, Fourth edition, Text Revision	LEA	Letter of Findings
ED	Emotional Disturbance	LEP	Least Restrictive Environment
EDGAR	Education Department General Administrative Regulations	LOF	Multiple Disabled
EHA	Education of the Handicapped Act	LRE	Manifestation Determination Review
EOC	End of Course	MD	Mental Retardation
ERS	Early Resolution System	MDR	No Child Left Behind Act of 2001
ESL	English as a Second Language	MR	
ESY	Extended School Year	NCLB	

NIMAC	National Instructional Materials Accessibility Center	SEAC	Special Education Advisory Committee (otherwise called LAC)
NIMAS	National Instructional Materials Accessibility Standard	SED	Serious Emotional Disturbance
NLD; NVLD	Non-verbal Learning Disability	SI	Sensory Integration
OCD	Obsessive Compulsive Disorder	SLD	Specific Learning Disability
OCR	Office for Civil Rights (at USED)	SLI	Speech Language Impairment
ODD	Oppositional Defiant Disorder	SP/L; S/L	Speech/Language
OHI	Other Health Impaired	SOL	Standards of Learning Test
OI	Orthopedic Impairment	SOP	State-Operated Program
ODRAS	Office of Dispute Resolution and Administrative Services (at VDOE)	SD	Severe Disability
O&M	Orientation and Mobility Services	SPED	Special Education
OSEP	Office of Special Education Programs (at USED)	SPP	State Performance Plan
OSERS	Office of Special Education and Rehabilitative Services (at USED)	SSEAC	State Special Education Advisory Committee
OT	Occupational Therapy	STO	Short-term Objective
PDD	Pervasive Developmental Disorder	TBI	Traumatic Brain Injury
PE	Physical Education	T/TAC	Training /Technical Assistance Center
PLOP	Present Level of Performance	USC	United States Code
PRC	Parent Resource Center	USED	United States Department of Education
PSD	Procedural Safeguards Document	VAAP	Virginia Alternative Assessment Program
PT	Physical Therapy	VAC	Virginia Administrative Code
PTSD	Post Traumatic Stress Disorder	VGLA	Virginia Grade Level Alternative Program
PWN	Prior Written Notice	VDOE	Virginia Department of Education
RTI	Response to Intervention	VI	Visual Impairment
SEA	State Educational Agency (otherwise called VDOE)	VR	Vocational Rehabilitation Services
		VSDB	Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton
		VSEP	Virginia Substitute Evaluation Program





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INTRODUCTION



Parents' Guide to Special Education Dispute Resolution

The *Individuals with Disabilities Education Improvement Act* of 2004 (IDEA 2004), and its implementing federal regulations of 2006, require each state to have regulations designed to protect the rights of children and their parents. These provisions define actions that parents may take when they disagree with the local school division regarding the identification, evaluation, educational placement and services of their child, or the provision of a free appropriate public education to their child. These actions include parents and school division entering into mediation to resolve the dispute; the parent filing a complaint that the school division has erred procedurally in meeting its special education obligations; and/or the parent or local school division filing a request for a due process hearing to have a hearing officer determine the appropriate outcome for the child.

This guide is designed to assist parents in understanding Virginia's dispute resolution systems of mediation, complaints, and due process hearings. It offers guidance in selecting an appropriate course of action and describes how to request and prepare for mediation, how to file and proceed with a complaint, and how to file and prepare for a due process hearing.

Staff in the Office of Dispute Resolution and Administrative Services are available to assist parents in further understanding these systems and addressing inquiries as to their application.¹ Information and this document are also available on the office's Web site: www.doe.virginia.gov/VDOE/dueproc

Office of Dispute Resolution and Administrative Services

Phone:	804-225-2013	FAX:	804-786-8520
Toll free voice:	800-422-2083	Toll free TDD:	800-422-1098

¹ The Virginia Department of Education also has a *parent ombudsman* available to assist parents with questions about the special education process and identifying options to resolve concerns. The parent ombudsman may be reached at (804) 371-7420, or at the above referenced toll free numbers.

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Definitions



Administrative Law: The procedures created by governmental bodies of the city, county, state or federal government involving rules, regulations, applications, licenses, permits, available information, hearings, appeals and decision-making. The rules and regulations are often special for each agency and are not usually found in the statutes but in those regulations. A member of the public must exhaust their administrative remedies, taking every step, including appeals, with the agency and its system before they can challenge the administrative ruling with a lawsuit in court.

Admissible: Evidence which the hearing officer or trial judge finds useful in making their ruling, and which cannot be objected to on the basis that it is irrelevant, immaterial, or violates the rules against hearsay and other objections.

Affidavit: Any written document in which the signer swears under oath before a legal representative or someone authorized to take oaths, that the statements in the document are true.

Appeal: Procedure in which a party seeks to reverse or modify a judgment or final order of a lower court or administrative agency, usually on grounds

that lower court misinterpreted or misapplied the law, rather than on the grounds that it made an incorrect finding of fact.

Assessment: A process or procedure employing mental, social, psychological, or educational tests, measurements, and/or observations to determine an individual's strengths and weaknesses.

Brief: Written argument that supports a case; usually contains a statement of facts and a discussion of law.

Burden of Proof: Duty of a party to prove its claim against the other party; in civil actions, the weight of this proof is usually described as a preponderance of the evidence, or proof that leads the hearing officer to find that the existence of the fact in issue is more probable than not.

Case Law: Decisions issued by federal and state courts; case law is used to guide the hearing officer in reaching his or her decision.

C.F.R.: The *Code of Federal Regulations* is an annual codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Child With a Disability: In a Virginia educational situation, refers to a person 2 to 21 years of age whose mental, physical or emotional difficulties interfere with instruction in regular classes, but who can receive appropriate educational opportunities from special education services and programs. Classifications may include such categories as: mentally disabled, specific learning disabled, autistic, emotionally disturbed, deaf/hard of hearing, visually impaired, physically impaired, dual sensory impaired, speech/language impaired, etc.

Class Action: A lawsuit filed by one or more people on behalf of themselves and a larger group of people who are similarly situated.

Closing Argument: The final arguments that are made by both sides after all of the evidence has been produced. It may include opinions on the law, comment on the opposing party's evidence, and usually requests a favorable judgment or verdict. The party requesting the hearing goes first.

Complaint: In court actions, refers to a legal document that outlines the plaintiff's claim against a defendant.

Confidential File: File maintained by the school that contains evaluations conducted to determine whether child is disabled, other information related to special education placement. Parents have a right to inspect the file and have copies of any information contained in it.

Cross-Examination: The opportunity for the attorney, lay advocate, or unrepresented party to ask questions of a witness who has testified on behalf of the opposing party. The questions on cross-examination are limited to the subjects covered in the direct examination of the witness.

Cumulative File: General file maintained by the school; parent has right to inspect the file and have copies of any information contained in it.

Damages: Monetary compensation that may be recovered by a person who has suffered a loss, detriment or injury to his person, property or rights, through the unlawful act or negligence of another; damages are not generally available under the IDEA.

Depositions: Testimony that is taken under oath, but outside of court.

Direct Examination: The first questioning of a witness during a trial or deposition.

Due Process: A legal term that, in an educational situation, refers to procedures and policies that ensure educational opportunities for all children. It is an impartial procedure used to resolve disagreements over issues related to special education services that arise between a parent and the school division.

Exhibit: Anything tangible that is produced and admitted in evidence during a trial.

Expert Witness: A person who is a specialist in a subject who presents their expert opinion without having been a witness to any occurrence relating to the lawsuit. It is an exception to the rule against giving an opinion in trial, provided that the expert is qualified by evidence of their expertise, training and special knowledge. If the expertise is challenged, the attorney for the party calling the "expert" must make a showing of the necessary background through questions in court, and the trial judge has discretion to qualify the witness or rule that they are not an expert, or is an expert on limited subjects.

Family Educational Rights and Privacy Act (FERPA): A Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Federal Register: The official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

Free Appropriate Public Education (FAPE): Is defined by the federal law as an education: (1) provided at the public expense, under public supervision and direction, and without charge to you; (2) meets the standards of the Virginia Department of Education; and (3) is provided in conformity with a written Individualized Education Program (IEP) developed for your child to confer an educational benefit and to be

implemented in a preschool, elementary, middle or secondary school program of the state. This education may be provided in a nonpublic or private school if there is no appropriate program available by the division.

Hearing Officer: An unbiased individual assigned to protect the rights of all involved parties in a hearing and who makes a decision to resolve disputes under IDEA.

Hearsay Rule: The basic rule that testimony or documents that quote a person who is not in court are not admissible. Because the person who supposedly knew the facts is not in court to state their exact words, the hearing officer or judge cannot determine the demeanor and believability of this witness, and the other party's lawyer cannot cross-examine them.

Hostile Witness: Technically an "adverse witness" in a trial who is found by the judge or hearing officer to be hostile to the position of the party whose attorney is questioning the witness, even though the attorney called the witness to testify on behalf of his/her client. When the attorney calling the witness finds that the answers are contrary to the legal position of his/her client or the witness becomes openly antagonistic, the attorney may request the judge to declare the witness to be "hostile" or "adverse." If the judge or hearing officer declares the witness to be hostile (i.e., adverse), the attorney may ask "leading" questions which suggest answers or are challenging to the testimony just as on cross-examination of a witness who has testified for the opposition.

IDEA: The Individuals with Disabilities Education Act. This is a 1990 amendment to the Education of the Handicapped Act (EHA) that provided additional services. The EHA was then named the IDEA. It guarantees all children with disabilities access to a free appropriate public education.

Independent Educational Evaluation (IEE): An assessment conducted by a qualified examiner who is not employed by the division providing an education to your child, but satisfies the same requirements of the VDOE and the division. This

assessment can be introduced as evidence in the due process hearing.

Individualized Education Program (IEP):

A written plan that includes a statement of a child's present levels of functioning, specific areas needing special services, annual goals and when required, objectives or benchmarks, related services, accommodations, modifications, supplementary services, training for staff, dates for implementation, transition services, etc., required for every child with a disability receiving special education services under the conditions of IDEA.

IEP Team: A group consisting of parents, a special education teacher, a general education teacher, the student (when appropriate), a representative of the school system qualified to provide or supervise special education services, and others as requested who meet at a conference to develop the IEP.

Irrelevant Evidence: Not important, pertinent, or germane to the matter at hand or to any issue before the court.

Lay Advocate: A non-lawyer with special knowledge or training concerning the problems of children with disabilities who represents parents and children in due process hearings and other non-judicial proceedings seeking enforcement of a disabled student's educational rights. Also called parent advocate.

Least Restrictive Environment: Refers to the principle that children with disabilities should be educated with non-disabled children in regular education settings to the maximum extent possible. Removal from the regular classroom occurs only when the student cannot gain educational benefit even with the use of supplementary aids and services.

Manifestation Determination Review: In connection with the discipline of a student, a determination of whether the misconduct at issue was either a manifestation of the disability or the result of an inappropriate placement.

Mediation: The process in which an objective third party attempts to bring two opposing parties to a mutually agreeable resolution.

Notice of Rights: Means that you have the right to receive a written copy of the procedural safeguards pertaining to your child when: (1) your child is referred for special education or you request the evaluation; (2) you file your first complaint with the Virginia Department of Education or request for a due process hearing in a school year; (3) your child receives a long-term removal from school; or (4) you request a copy. The written copy of your rights must be in your native language, unless it is clearly not feasible, or in your primary mode of communication, if your language is not written.

Opening Statement: The explanation of what will be proved during the trial or hearing by the attorneys, lay advocates, or unrepresented parties for both sides at the beginning of the “hearing”. It is factual presentation and not an argument. The defendant may delay the opening statement for the defense until the plaintiff’s evidence has been introduced.

Opinion: Formal written decision by judge or court; contains the legal principles and reasons upon which the decision was based.

Precedent: A court decision that will influence similar cases in the future.

Placement: The IEP team makes placement decisions for students with disabilities, based upon their educational needs. Placement can range from full-time regular classroom participation to residential placement.

Procedural Safeguards: Regulations and procedures that protect the individual’s legal rights during an action, including the following areas of protection: notice, consent, meetings, independent educational evaluation, records, mediation, hearings, due process hearing rights, appeals, placement during appeals, attorneys’ fees, discipline, private school placement, and state complaint procedures.

Pro Se: A party to a lawsuit who represents him/herself, acting on their own behalf.

Related Services: Those services needed by a child with a disability to help him or her benefit from special education.

Rebuttal Evidence: Evidence introduced to counter, disprove or contradict the opposition’s evidence, presumptions, or legal argument. The party requesting the hearing goes first.

Relevant: Having some reasonable connection with the evidence in a trial or hearing that has some value in proving a matter of fact as significant to the case.

Rules of Evidence: The rules that govern the presentation and admissibility of oral and documentary evidence at court hearings or depositions.

Section 504: The section of the Rehabilitation Act of 1973 which guarantees specific rights to disabled persons. It is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance.

Sequestration: The act of keeping witnesses apart from one another and outside of the hearing room. It is frequently ordered by a hearing officer at the request of one of the parties, and it is used to ensure that the testimony of each witness will not be tainted by what another witness said. An order of sequestration also forbids witnesses who have not yet testified from talking with witnesses who have testified.

Settlement: To protect the cooperative relationship between the parent and the LEA, they may attempt to resolve disagreements among themselves. Together they may reach an agreement and eliminate the need for a due process hearing.

Special Education: Specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities, including classroom instruction, instruction in physical education,

home instruction, and instruction in hospitals and institutions. The term also includes speech therapy or any other related service and vocational education if they consist of specially designed instruction at no cost to the parent.

Statutory Rights: Rights that are enacted by Congress and protected by statute, as opposed to constitutional rights that are protected by the Constitution.

Statute of Limitations: A law which sets the maximum period of time a person can wait before filing a lawsuit, or request for a due process hearing, depending on the type of case or claim.

Stay-Put: This is a provision of the IDEA that is in effect during a due process hearing or a judicial proceeding. The child remains in his/her current educational placement until the hearing or judicial proceedings are completed, unless the parent and school division agree otherwise.

Subpoena: An order of the court for a witness to appear at a particular time and place to testify. It is used to obtain testimony from a witness at both depositions and at trial. Failure to appear as required by the subpoena can be punished as contempt of court.

Subpoena Duces Tecum: A court order requiring a witness to bring documents in the possession or under the control of the witness to a certain place at a certain time. It is the common way to obtain potentially useful evidence, such as documents and business records, in the possession of a third party. It must specify the documents or types of documents or it will be subject to an objection that the request is too broad and burdensome. Failure to respond may cause the party served with the subpoena to be sanctioned for contempt of court for disobeying a court order.

Testimony: Oral evidence that is given under oath by a witness in answer to questions during a trial, hearing, or deposition.

Transcript: Official record taken during a trial or hearing by an authorized stenographer.



Options For Resolving Disputes

Conflict happens. But conflict doesn't mean that people aren't concerned about services for students with special needs...

There are times when individuals working with special education programs will simply not agree. There are a number of dispute resolution procedures designed for when parents and school personnel are unable to work out special education problems among themselves.

This manual will explain and describe mediation, complaints, and due process hearings

Before initiating any of these more formal dispute resolution mechanisms, consider whether you have done everything you can to work through the disagreement informally. Talk with your child's teacher, the IEP team, the principal, the local director of special education, or other designated special education staff. Working with school personnel often leads to the most immediate resolution of parental concerns.

Try, try again. Tips for working things out with school personnel

- ◆ Interact cooperatively. While this may be difficult, especially if you feel discouraged in your past communications with school personnel, a cooperative attitude leads to better outcomes with less confrontation.
- ◆ Bring an advocate or support person to meetings if you feel that you cannot maintain a cooperative atmosphere on your own.

- ◆ Keep an open mind, be respectful, and consider what school personnel are suggesting. Believe in the team approach. Everyone has the student’s best interests in mind. Each team member has valuable information and supports the student in some way within the educational system.

I’m done trying. Now what?

If you feel like you need to do more, there are three options:

- ◆ Mediation
- ◆ Complaints
- ◆ Due process

Mediation

Mediation is a voluntary dispute resolution process in which an impartial third party (a trained mediator) assists parents and school personnel in discussing and understanding each other’s views in a dispute. The mediator helps everyone participate in a productive discussion by encouraging new or collaborative thinking and problem solving. A successful mediation results in the participants coming up with mutually agreed upon solutions. Some key elements of mediation include:

- ◆ **Confidential:** what is said in mediation, stays in mediation. The parties sign a confidentiality agreement.
- ◆ **An agreement is enforceable:** if the parties reach an agreement in mediation, it is put into writing and is enforceable in court like any other written contract.
- ◆ **Low cost:** The Virginia Department of Education (VDOE) pays the mediators. There is no cost to parents or school divisions.

Complaints

A complaint is a written request for an investigation that is filed with the Office of Dispute Resolution and Administrative Services (ODRAS) when the parent alleges that the school division has violated one or more of the state and/or federal laws and regulations governing special education. ODRAS assigns a complaint specialist to investigate the allegations and issue a “Letter of Findings,” explaining why the school division is, or is not, in compliance with the law. If the school division is found to not be in compliance with the law, the complaint specialist will issue a “Corrective Action Plan” for the school division to follow so that it will be in compliance with the law.

Due process hearing

A due process hearing is an administrative hearing that is a lot like a trial in court. A hearing officer listens to both sides and decides who is right on issues concerning the identification, evaluation, placement and provisions of FAPE for a student. The hearing officer’s decision can be appealed in court.

But, if a complaint raises issues that are also the subject of a pending or concluded due process hearing, then the complaint is put on hold or dismissed, and the due process hearing decision will apply.

Choosing between the options

Disagreements concerning any of the following can be the subject of Mediation, a Complaint or a Due Process request:

- ◆ Identification of a child with a disability;
- ◆ Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
- ◆ Educational placement and services for the child; and
- ◆ Provision of a free appropriate public education (FAPE) to the child.



Frequently Asked Questions

When is it better to request due process, as opposed to filing a complaint?

SCENARIO:

John and Mary Brady feel they were denied meaningful participation at Jean’s IEP meeting, as evidenced by the fact that their concerns and suggestions were not incorporated into Jean’s IEP. They maintain that Jean’s IEP is still in dispute and the rest of the IEP Team ignores them.

In the context of a complaint, the concern is whether there is a violation of the letter of the law. Thus, the question is whether John and Mary were afforded an opportunity to participate in Jean’s IEP meetings. It is *not* an inquiry into the substance of parental contribution, or whether the parents felt their contribution and participation was meaningful. In the complaint process, VDOE’s mandate is to determine whether the team reached its decision regarding the development of appropriate IEP goals consistent with regulatory mandates in light of Jean’s ability and needs. The complaint process does not

give VDOE the authority to side with either the school division or the parents if there is an underlying dispute about the specific contents of the document.

The Bradys actually participated in Jean’s IEP meeting, so this is probably not a good issue for a complaint. Even if the school division was found in non-compliance, that wouldn’t mean that VDOE would order the school division to re-draft Jean’s IEP to incorporate the parents’ suggestions.

Disputes as to the substance of the document are appropriately addressed through due process.

If John and Mary believe that Jean cannot get a FAPE without the IEP content they suggest, they should file a request for due process. In the event of an identified non-compliance, VDOE would most likely direct the school division to reconvene the IEP team and document that the Bradys were given sufficient opportunity to present their suggestions, and that their right to full parental participation was not compromised.

When is it better to file a complaint, as opposed to requesting due process?

SCENARIO:

John and Mary Brady are upset because they disagree with the testing recently done by the school psychologist. Their main complaint is that the test that was used was designed for children younger than Jean. They request an independent educational evaluation (IEE). The school division refused to pay for the IEE because an IEE was done four years earlier when Jean was first evaluated and found eligible for services.



In the context of this complaint, the questions are whether John and Mary are entitled to an IEE in response to the recent testing, and whether the test that was recently administered to Jean was appropriate. These questions can be resolved through the complaint process. The complaint process vests VDOE with the authority to investigate these issues and order the school division to comply with the law relating to testing procedures and IEEs.

SCENARIO:

Candy Brady's IEP calls for her to receive 30 minutes of speech therapy per week. At the end of the first nine weeks of the school term, Candy has received only four 30-minute sessions of speech. Mary wants to file a complaint, but John believes they should file for due process.

The complaint process vests VDOE with the authority to investigate these issues and order the school division to comply with the law.

The school division has violated state and federal

laws by failing to implement Candy's IEP as written. This is a violation of special education procedures. If the Bradys file a complaint (like Mary wants to do), the school division will be found in non-compliance and Candy will likely get compensatory speech therapy services in order to make up for the missed sessions.

If the Bradys file for due process (like John wants to do), the Bradys will also have to prove that Candy suffered some loss of educational benefit as a result of the violation. Also, going to due process will be much more time consuming and costly for the Bradys than

There is no limit on the types or number of issues that can be raised in mediation.

filing a complaint. Mary should make sure that John reviews Chapters 3 and 4 of this manual thoroughly before any final decision is made.



Mediation can address any disagreement

There is no limit on the types or number of issues that can be raised in mediation. For this reason, it is generally helpful to try mediation first.

Partnerships between parents and school personnel are essential when addressing the child's educational needs, both academic and behavioral. When those partnerships are challenged by disagreements, resolution of the dispute becomes equally essential. Mediation, complaint resolution, and due process hearings afford parents and school personnel options in resolving those differences, so that everyone can then refocus on the partnership in the best interest of the child.

Mediation

*What? Why? When? Who? How?
Frequently asked questions about mediation.*

What is mediation?

- ◆ Voluntary and non-adversarial dispute resolution process
- ◆ Facilitated by an impartial and trained mediator
- ◆ Focused on the needs of the child
- ◆ Where parents and school personnel meet to negotiate
- ◆ Attempts to avoid or minimize confrontation
- ◆ In a confidential and informal setting
- ◆ To arrive at a mutually agreed upon solution

Why mediate?

- ◆ Safe environment to express yourself
- ◆ To have a say in the outcome
- ◆ To understand where the school is “coming from”
- ◆ To preserve productive and collaborative relationships
- ◆ At no cost to you or the school

Other benefits

- ◆ Parent and educators work together to develop the final agreement
- ◆ Parent and educators work together to determine the outcome
- ◆ Parent and educators have a better understanding of differing points of view
- ◆ Mediation can be requested at any time but does not rule out the use of the complaint process or a due process hearing
- ◆ Written mediation agreements often result in higher rates of satisfaction
- ◆ Successful mediation helps to preserve good relationships between the parties involved
- ◆ Successful mediation helps to foster the likelihood that future disagreements can be successfully resolved

When to mediate?

- ◆ Any time you feel that having an impartial third person in the room would be helpful in working through a disagreement with school personnel
- ◆ Before filing for due process
- ◆ After filing for due process
- ◆ When further discussions with school personnel appear pointless
- ◆ When you feel like you're at your wits end
- ◆ When you feel like no one is listening to you

Examples of situations that are appropriate for a mediation request

1. Parents and school personnel disagree on the amount of instructional time that the student should spend in the regular education setting. While the disagreement has not been resolved, both groups feel that resolution might be possible with the support of an impartial mediator.
2. While parents and school personnel do not agree on the type of evaluation that is needed for the child, both parties are willing to negotiate and explore different ways to approach the evaluation.

Who are these mediators?

- ◆ Selected, appointed, and trained by VDOE
- ◆ Professional
- ◆ Paid by VDOE
- ◆ Not VDOE employees
- ◆ Neutral
- ◆ Unaffiliated with any school division
- ◆ Unaffiliated with the parents of any case to which they are assigned

A trained mediator has the following responsibilities

- ◆ Takes an active role in helping to define the issues
- ◆ Facilitates open communication between parents and school educators
- ◆ Creates an environment where parties can understand each other's views
- ◆ Supports and encourages productive thought
- ◆ Promotes the discussion of alternatives
- ◆ Keeps discussions focused on the issues
- ◆ Helps identify options
- ◆ Helps examine possible terms of agreement
- ◆ Assists in drafting the written agreement



Frequently Asked Questions

Who can request mediation? How do you request mediation?

A request for mediation must be made by both the parent and the school division. The parent may contact the school, or the school may contact the parent to initiate this joint request. When the joint decision is made to request mediation, the school division will send the request to the VDOE. The school division uses a standard form to request the mediation. The school will ask the parent to sign this form. Once VDOE gets the written request, it then assigns a mediator to schedule and assist in the mediation.

How does mediation affect a due process request?

A due process hearing will not be delayed awaiting the outcome of mediation. However, if mediation is being pursued in the resolution period before a due process hearing, the parties may agree in writing to extend the resolution period that is described in Chapter 4. If an agreement is reached through mediation that resolves the due process issues before a scheduled due process hearing takes place, then the hearing officer will be notified and will dismiss the hearing.

How does mediation affect a complaint?

A complaint will not be delayed awaiting the outcome of mediation. However, if mediation is being pursued, the parties may agree in writing to extend the complaint period. If an agreement is reached through mediation that resolves the complaint issues before a Letter of Findings is issued, then the complaint can be withdrawn.

Do attorneys or advocates participate in the mediation session?

Generally, attorneys and advocates are not present at mediation sessions. When they do attend, they are present in an advisory role. Parents and school personnel will speak to represent their own concerns. Parents can bring an attorney or advocate if they want.

How do I prepare for mediation?

- ◆ Review relevant documents
- ◆ Make sure school personnel have copies of any information that they may not have seen. You should do this several days before the meeting.
- ◆ Think about the basic things your child needs to benefit from the instruction s/he receives
- ◆ Be prepared to be open to alternative ideas offered at the mediation

What happens to my child while negotiations are ongoing?

The student continues to receive the program which was last agreed upon. This is known as “stay put.” The parties can agree to alter the current program, or agree to maintain it, regardless of whether there has been a due process request.

Remember that mediation involves someone who facilitates the discussion and mediation agreement between the parent and school personnel. This helps to forge the partnership between parents and the school people with whom the parent will continue to work as the child progresses in school.



A CASE STUDY

How Mediation Works

The parents of Carrie, a 12-year-old girl with autism, mood swings, and aggressive behavior, requested mediation with the school. The school personnel agreed, notified the school division's director of special education services, and contacted the Virginia Department of Education for a mediator to be assigned. The VDOE's Office of Dispute Resolution and Administrative Services contacted one of its eight mediators to schedule the mediation. The mediator made arrangements with Carrie's mom and the local special education director for the mediation session. Carrie's mom, the special education director, and Carrie's special education teacher attended the mediation. The mediator began by clarifying expectations for the session:

"We're here to identify and address your concerns in a productive way. I am here to guide communication and the process, not to determine right or wrong or to make judgments."

As the discussion developed, Carrie's teacher shared several incidents where Carrie had assaulted school staff, and reported that Carrie was failing all her classes. As a result, the school believed that a residential program would be uniquely equipped to address these behaviors so that upon completing the residential program, Carrie could return to her public school. Carrie's mom was aware of Carrie's behaviors at school and that she was failing her classes; however, she favored a homebound program, but was tired in the evening when the teachers were available to come to their home to provide Carrie with the instruction.

The mediator explored each option with the participants:

- ◆ What features characterize a residential program?
- ◆ What would a successful homebound program look like?

During the consideration of the residential placement option, Carrie's mom raised a strong objection. In probing this objection, it became clear that Carrie's mom feared that a residential placement for her daughter would involve her having to give up custody of Carrie.

The special education director then explained that the placement of Carrie in a residential placement is for educational reasons and that mom could visit several proposed residential placements before deciding, with the school's approval, the best fit for Carrie. In addition, the special education director assured Carrie's mom that she could visit Carrie, that Carrie would be permitted to come home on weekends, and most importantly, that she did not have to give up custody of Carrie.

This explanation addressed Carrie's mom's concerns and eased her reluctance to consider a residential school for Carrie. The mediation proceeded with a discussion of available residential programs and ended in an agreement to undertake a joint search for the program which would meet Carrie's unique educational needs.

Complaints

A day in the life... Follow a complaint from start to finish.

A complaint is a written statement filed with the Office of Dispute Resolution and Administrative Services (ODRAS) alleging that a school division has violated one or more of the state and/or federal laws and regulations governing special education.

When ODRAS receives a written correspondence alleging a violation of law

ODRAS first classifies the document as either an “inquiry,” or as a “complaint” requiring formal investigation.

“Inquiry”

- ◆ An inquiry is a correspondence that does not allege a specific violation of special education laws and regulations or does not contain the required filing elements of a complaint.
- ◆ If a written correspondence is classified as an inquiry, the person who sent the inquiry will receive a written response within seven (7) business days.

Vs. “Complaint”

- ◆ If the issue presented in the correspondence is determined to be appropriate for a complaint investigation, ODRAS issues a Notice of Complaint within seven (7) business days of receipt of the complaint.

- ◆ The Notice of Complaint outlines the issues raised in the complaint and the applicable state and/or federal special education regulations involved. It is issued to the person who made the complaint (complainant), the local school division superintendent and director of special education, along with a copy of the Complaint Resolution Procedures and all supporting documentation submitted by the complainant.

Issues not handled by the complaint process

- ◆ Allegations of violations of civil rights related to disability. These issues are addressed to the Office for Civil Rights in the United States Department of Education. Office for Civil Rights, Washington, D.C. Metro Office, P. O. Box 14620, Washington, D.C. 20044-4620; 202-208-2545.
- ◆ Claims related to the implementation of Section 504 of the Rehabilitation Act of 1973. These issues are addressed to the Office for Civil Rights.
- ◆ Claims related to the Americans with Disabilities Act (ADA). Depending on the issue, matters may be addressed to the Office for Civil Rights, U.S. Department of Justice, or the Equal Employment Opportunity Commission.
- ◆ Claims of abuse or neglect. These issues should be reported to the local social services department.
- ◆ Matters under the sole authority of the local school division, such as:
 - employment of teachers
 - assignment of teachers
 - methods of teaching
 - pupil assignment
 - management of school property

These issues may be addressed to the local superintendent and school board.

Let's say that you are ready to prepare your complaint. Let's see what questions might need to be answered as you think about this process.



Frequently Asked Questions

Other than parents, who can file a complaint?

Any individual (including an individual from another state) or organization may file a complaint. If the complaint is received from someone other than the child's parent, ODRAS must notify the parent that the complaint has been filed on their child's behalf. ODRAS will acknowledge receipt of that complaint; however, if the parent has not given the complainant permission to represent the child's interest, ODRAS will only communicate with the parent during the course of the investigation. This means ODRAS staff will not discuss the case with the filing party and will not provide the filing party with a copy of the decision in the case.

How long do I have to file a complaint?

The allegations in a complaint must be based on an action that occurred not more than one (1) year prior to the date ODRAS receives the complaint.

Is there a form I am supposed to use?

A complaint does not have to be submitted on a special form. However, there is a special form available at VDOE's Web site – www.doe.virginia.gov/VDOE/duproc, or you can copy the reproducible form in the Appendix at the back of this manual.

What information does the complaint need to include?

The complaint must include all the information asked for in the form. You can also refer to the sample provided in this Chapter to get an idea of what information you need to include. You should also be sure to send additional documentation that relates to or supports your complaint. If the complaint does not contain all the required information, ODRAS will return the complaint with instructions on how to refile it with sufficient information.

Where do I send it?

By mail to: Virginia Department of Education
Office of Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, VA 23218-2120

Or to the same office, by fax: (804) 786-8520

Be sure to send a copy of the complaint and any supporting documentation to the school division at the same time you send it to ODRAS. Federal regulations governing special education require this be done.

What is the time frame for resolving a complaint?

All formal complaints filed with ODRAS must be resolved within 60 calendar days. This time frame may be extended due to exceptional circumstances or by agreement of the parties based on current attempts (like mediation) to resolve the complaint issues. The parent or the school may appeal the ODRAS findings within 30 calendar days of the decision. The appeal decision must be issued within 30 calendar days from the date ODRAS receives the appeal.

May a complaint be withdrawn?

A complaint may be withdrawn at any time prior to the issuance of the Letter of Findings (LOF). The intent to withdraw the complaint must be presented in a signed, written statement. Once the statement is received by ODRAS, the parties will be notified that the case has been closed.

What happens if a complaint addresses issues that are also the subject of a due process hearing?

Because a decision in a due process hearing is binding, that process trumps the complaint process. So, if a complaint issue has been decided in a previous due process hearing, that issue cannot be the subject of a new complaint investigation. If a complaint issue becomes the subject of a due process hearing before a LOF is issued, ODRAS will put the complaint on hold until the due process hearing has been completed. If the due process hearing does not resolve the complaint issue, then ODRAS will restart its investigation and resolve the outstanding issue.

What is a systemic violation, and how does it relate to the complaint process?

A complaint may be filed that alleges a violation that impacts more than one student in one school or throughout the school division. This type of complaint is labeled a systemic violation. Examples of potential systemic violations include a violation of the length of the school day requirements for children receiving special education or violation of the class size requirements.

Is ODRAS' decision final? What if I disagree?

Upon completing its investigation, ODRAS issues a Letter of Findings (“LOF”). If either the parent or the school disagrees with the LOF, an appeal may be filed within 30 calendar days. If an appeal is filed, any Corrective Action Plan (“CAP”) that was ordered as part of the LOF is put on hold until the conclusion of the appeal.

Who reviews the LOF on appeal?

The complaint appeal reviewer reviews the entire complaint file and the LOF on appeal. This person is an independent reviewer who is appointed by ODRAS. This person is not a VDOE employee. Complaint appeal reviewers are trained as special education hearing officers; however, they do not serve as hearing officers in due process cases when they are acting as complaint appeal reviewers. The complaint appeal reviewer may affirm ODRAS’ findings, reverse them, or remand (return) the issue(s) for further investigation. On remand, ODRAS follows the complaint appeal reviewer’s instructions for the review and issues an addendum to the LOF. Those findings may also be appealed to the complaint appeal reviewer.

What happens to the CAP during a complaint appeal?

If there is a CAP required as part of the LOF, it is put on hold until the conclusion of the appeal. The complaint appeal reviewer has the authority to change or eliminate the CAP.

Here are some examples

To help you understand how the complaint process works, let’s follow two families as they present their complaints to ODRAS:

1. Wei Lin Chang has been having trouble in school for the past few years. She was diagnosed with a learning disability in the fourth grade, but there have been problems with the implementation of her IEP. Also, Wei Lin’s mother is not happy with some of Wei Lin’s teachers.
2. Robby Ricardo’s IEP calls for him to receive speech therapy services, but his school has not been able to hire a speech therapist. Robby did not receive speech therapy services for almost an entire grading period.



WEI LIN'S MOTHER SENDS A LETTER TO ODRAS

February 1, 2006

ATTN: Complaints Specialist
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218-2120

Re: Problems with Anytown City Public Schools

Dear Complaints Specialist:

My daughter, Wei Lin Chang, is a sixth-grade student at Colonel Mustard Middle School in Anytown City. Two years ago, she was diagnosed with a learning disability but they did not implement my daughter's IEP during her fourth grade year while she was in elementary school. Things have gotten better in the middle school and they are following her IEP but I think she would be further along if they had not denied services when she was in the fourth grade. I would like the school to provide compensatory services for what she missed. Also, I do not think Wei Lin should be in the English class she is assigned to now. I do not think this teacher likes Wei Lin and I would like to have her class changed.

Sincerely,

Kyong Chang

Kyong Chang
2563 Idle Way Road
Anytown, Virginia 23966
(804) 496-8935

The complaint specialist reviews this letter, and classifies it as an inquiry. The complaint specialist sends the following letter back to Mrs. Chang:

February 14, 2006

Ms. Kyong Chang
2563 Idle Way Road
Anytown, Virginia 23966

Re: Wei Lin Chang
Anytown City Public Schools (ACPS)

Dear Ms. Chang:

This letter acknowledges that the Office of Dispute Resolution and Administrative Services within the Virginia Department of Education (VDOE) received your correspondence on February 4, 2006.

This office is charged with the responsibility of investigating and resolving all valid special education complaints on behalf of eligible students with disabilities when the complaint alleges a violation of the applicable state and federal laws and regulations. The 2006 implementing regulations of the Individuals with Disabilities Education Improvement Act of 2004 outline the required components of a valid state special education complaint at 34 CFR §300.153.

This office has reviewed your correspondence to determine if it meets the content requirements of the federal special education regulations. Upon review, your letter is being returned to you for the following reason(s):

The complaint does not allege that the local education agency or VDOE has violated a requirement of federal and/or state special education laws and/or regulations.

The complaint does not include the signature of the person filing the complaint.

The complaint does not include the contact information for the person filing the complaint.

The complaint does not include the contact information for the student.

The complaint is time-barred as it addresses an action occurring more than one year prior to the date the complaint was received.

The complaint includes insufficient facts to support the alleged violations.

The complaint was not simultaneously forwarded to the local school division.

The complaint does not include a proposed resolution.

Other:

In your complaint, you state that you would like to have your child's classroom assignment changed. Please note that assignment of students to a particular class is within the local school division's discretion. This office has no authority in this matter.

This office cannot move forward to investigate your concerns until the above noted deficiencies are addressed. If appropriate, the complaint may be resubmitted to this office for action. All resubmitted complaints will be treated as new complaints and are subject to review. In the interim, we will file this correspondence as an inquiry, and will await any subsequent correspondence.

For your review and reference, a copy of the state Complaint Resolution Procedures and model complaint form are enclosed. Electronic versions of these documents can be found on our office's Web site at www.doe.virginia.gov/VDOE/duerproc/. Should you have any questions, please contact this office at (804) 225-2013.

Sincerely,
Name
Complaint Specialist
Dispute Resolution and Administrative Services

cc: Special Education Director

ROBBY'S MOTHER FILLS OUT A REPORT AND SENDS IT TO ODRAS

Virginia Department of Education
 Division of Special Education and Student Services
 Office of Dispute Resolution and Administrative Services
 P. O. Box 2120
 Richmond, Virginia 23218-2120
 (804) 225-2013

SPECIAL EDUCATION COMPLAINT FORM
 (Please type or write legibly. Sign and date)

1. Name of Person Filing Complaint: Linda Ricardo
 Address: 123 Main Street
Hometown City, Virginia 23226
 Telephone Numbers: Home (414) 756-2211 Office (414) 898-5267
 Relationship to Student: Parent Citizen Attorney Advocate

2. Full Name of Student: Robby Ricardo
 School: Hometown Elementary
 School Division: Hometown City Public Schools
 Student's Address: 123 Main Street
Hometown City, Virginia 23226
In case of a homeless child or youth, please include any available contact information for the child.

3. Subject(s) the Complaint Involves: (Please include the disability area involved, and give a brief summary of what you allege to be the violation(s) of the special education regulations):

Our son, little Robby, is a first-grade student with the disability of MR. We believe that Hometown City Public Schools has failed to implement Robby's IEP.

4. List persons you have already talked with to resolve this complaint, and their response to your request.

Principal of Hometown Elementary and Robby's teacher, Ms. Cooper.

5. Provide a description of the nature of the problem, including facts relating to the problem here. Use additional sheets, if needed. Please number specific areas of concern, if you can. Please include dates, where available. (NOTE: COMPLAINTS MUST ADDRESS AN ACTION THAT OCCURRED NOT MORE THAN ONE YEAR PRIOR TO THE DATE THE COMPLAINT IS RECEIVED BY THE VDOE.)

Robby's current IEP says that he should receive speech therapy every day for 30 minutes. During a parent conference, I discovered that Robby had not received his speech therapy for an entire month. I believe that Robby is behind because he did not get speech services until the middle of the first grading period. I was told that the school was not able to hire a speech therapist until November.

NOTE: YOU MAY INCLUDE COPIES OF ANY DOCUMENTATION THAT SUPPORT YOUR ALLEGATIONS AS AN ATTACHMENT TO THIS FORM.

6. Provide a proposed resolution of the problem to the extent known and available.

I request that Robby be given compensatory services for the speech services that he was not provided.

A COPY OF THE COMPLAINT MUST BE SIMULTANEOUSLY FORWARDED TO THE SCHOOL DIVISION.

Linda Ricardo
 Signature (Required)

2/1/06
 Date

The complaint specialist reviews this form and issues a Notice of Complaint. The Notice of Complaint is sent to Mrs. Ricardo, to the local division superintendent and director of special education:

VIRGINIA DEPARTMENT OF EDUCATION DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES	
<u>NOTICE OF COMPLAINT</u>	
School Division Hometown City Public Schools 3245 City Street Hometown, Virginia 23111	Name of Parent Ms. Linda Ricardo
Division Superintendent Dr. Will Learn	Parent's Address 123 Main Street Hometown City, Virginia 23226
Special Education Director Dr. Aileen Franco	Name of Student Robby Ricardo
Date Complaint Received February 4, 2006	Complainant (if other than parent) N/A
Notice of Complaint Date February 13, 2006	Findings Due Date April 5, 2006
Early Resolution Date March 3, 2006	LEA Response to Complaint Due Date March 3, 2006
Complaints Specialist/Case Manager Assigned by Region	Complaints Department Phone # (804) 225-2013

The Office of Dispute Resolution and Administrative Services in the Virginia Department of Education (VDOE) has received a complaint alleging that Hometown City Public Schools (HCPS) has violated federal and state laws and regulations governing special education programs. This notice of complaint gives official notice to all parties that a formal written complaint has been filed with our office and confirms that it is sufficient pursuant to federal special education regulations. A copy of the complaint is enclosed for review and resolution by the school division.

ISSUE(S) AND REGULATIONS:

Issue 1. Individualized Education Program (IEP) – Implementation.

Ms. Ricardo alleged that HCPS violated state and federal regulations by failing to implement provisions of Robby’s IEP.

Specifically, Ms. Ricardo alleged:

- that Robby’s current IEP provides that he receive speech therapy 5 times per week for 30 minutes;
- that Robby did not receive speech therapy during the months of September, October and part of November; and
- that she was “told that the school was not able to hire a speech therapist until mid-November.”

Applicable Regulations:

- The 1999 implementing regulations of the Individuals with Disabilities Education Act (IDEA), at 34 C.F.R. §§ 300.341, 300.350 and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective March 27, 2002 (the Virginia Regulations), at 8 VAC 20-80-62.A and B require school divisions to ensure that an IEP is developed and implemented for each child with a disability that they serve. The regulations further mandate that school divisions provide special education and related services to a child with a disability in accordance with the child’s IEP.

EARLY RESOLUTION REQUIREMENTS:

Our complaint system has an Early Resolution System that supports both parties working cooperatively to resolve this matter prior to the due date for the school division’s response without formal investigation by our office. We believe early resolution will benefit both parties and that it is in the best interest of students. Early resolution may include use of the statewide special education mediation system. We have enclosed a brochure for the complainant that describes mediation that is voluntary on the part of both parties. Both parties are asked to keep our office informed of changes in the status of this complaint.

If this complaint is resolved within the 10-day timeline, the school division must furnish a written response, including the following:

1. A record of contacts with the complainant;
2. A statement of the proposed resolution; and
3. A signed statement indicating that the complainant has agreed to the resolution and the details of the resolution.

If the complaint is not resolved, the school division must furnish a written response, including all requested documentation in the areas noted below, by the designated due date, as indicated above. The school division must simultaneously provide a copy of the response, along with all submitted documentation, to the complainant if the complaint was filed by the parent or parents of the student, a student who has reached the age or majority, or their attorney. If the complaint was filed by another individual, the school division must provide a copy of the response and documentation to the complainant only if a release is signed by the parent or parents or the student who has reached the age of majority has been provided.

For technical assistance in resolving the complaint, please contact your VDOE Regional School Division Technical Assistance Specialist or one of the VDOE Training and Technical Assistance Centers (T/TACs).

INFORMATION/DOCUMENTATION REQUESTED:

- A chronology of events related to these allegations, including any related documentation;
- A statement, including any supporting documentation, outlining HCPS’ position regarding each issue and Ms. Ricardo’s complaint allegations;
- A copy of Robby’s current IEP, and any addenda, and the IEPs and addenda for the 2005-2006 school year;
- Documentation as to Robby’s receipt of speech therapy for the time period noted; and
- A copy of any correspondence, and records of any other communications between the school division and Ms. Ricardo regarding each issue and complaint allegation.

Both the division’s response and supporting documentation must be provided by the response due date in order to be considered for review by this office. Should the supporting documentation not be included, our review will rest on the documentation submitted by the response due date.

Please mail all documentation to our office, so that it is received by **March 3, 2006**, at the following address:

Office of Dispute Resolution and Administrative Services
 Virginia Department of Education
 P.O. Box 2120
 Richmond, Virginia 23218

The complainant and the school division may submit *additional information*, either orally or in writing, about the allegations in this complaint. This information must be received by the Office of Dispute Resolution and Administrative Services no later than 10 business days after our receipt of the school division’s response to the complaint. **The parties are advised to copy all response submissions to each other.**

 Complaints Specialist

 Date

Attachments – Copy of Complaint
 Complaint Resolution Procedures
 Mediation Brochure

c: Name of the Special Education Director
 Name of VDOE Technical Assistant for Region

Once the parties receive the Notice of Complaint, three things happen (in this order):

1. **Early Resolution System:** The school division has ten (10) business days to provide a formal response or to resolve the issues through the Early Resolution System (ERS). ERS may be approached in one of two ways:

- ◆ The school division may meet with the parents to address the issues raised in the complaint and attempt to resolve the issues, or
- ◆ The parties may request mediation.

If the parties agree to a resolution within the ten (10) day period, a signed resolution statement must be submitted to ODRAS to show that the matter is resolved. ODRAS will review this statement to ensure that both parties have agreed to the resolution and that all issues raised in the complaint have been satisfied.

2. **Complaint Response:** If the school division and the parents are unable to resolve issues through ERS, the school division's response to the complaint is due. The school division must:

- ◆ submit a written response to the complaint,
- ◆ submit documentation in response to the issues and the requirement of documentation cited in the notice of Complaint, and
- ◆ provide a copy of the response and documentation to the complainant at the same time as they are sent to ODRAS.

No later than ten (10) business days after the school division's response to the complaint is received by ODRAS, the parent and the school division may submit additional information, either orally or in writing, about the allegations in the complaint.

3. **ODRAS Investigation:** Upon receiving the required response and documentation, ODRAS will:

- ◆ review all documentation submitted by the parent and the school division,
- ◆ visit the school division for an on-site review, if necessary, and
- ◆ determine whether the school division complied with procedural requirements outlined in state and/or federal regulations.

ODRAS will then issue a Letter of Findings (“LOF”)

The LOF will detail whether the school division is in compliance or non-compliance with all applicable regulations. A copy of this document will be sent to the parent and to the school division.

“Compliance” If the school division is found in compliance, the complaint file will be closed unless there is an appeal. No corrective action will be due.

“Non-Compliance” If the school division is found in non-compliance, the LOF will specify any corrective action due and the date for its completion.

HERE’S THE LOF ODRAS SENT TO ROBBY’S MOTHER

<p>VIRGINIA DEPARTMENT OF EDUCATION DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES</p> <p><u>LETTER OF FINDINGS</u></p>	
<p>School Division Hometown City Public Schools 3245 City Street Hometown, Virginia 23111</p>	<p>Name of Parent Ms. Linda Ricardo</p>
<p>Division Superintendent Dr. Will Learn</p>	<p>Parent’s Address 123 Main Street Hometown City, Virginia 23226</p>
<p>Special Education Director Dr. Aileen Franco</p>	<p>Name of Student Robby Ricardo</p>
<p>Date Complaint Received February 4, 2006</p>	<p>Complainant (if other than parent) N/A</p>
<p>Notice of Complaint Date February 13, 2006</p>	<p>Findings Due Date April 5, 2006</p>
<p>Complaint Appeal Date May 5, 2006</p>	<p>Corrective Action Plan Due Date May 6, 2006</p>
<p>Complaints Specialist/Case Manager Assigned by Region</p>	<p>Complaints Department Phone # (804) 225-2013</p>
<p>On-Site Visit Date: N/A</p>	

At the time of this complaint, Robby was seven years old and eligible for special education and related services as a student with the primary disability category of Mental Retardation (MR). During this current school year, Robby received special education and related services in the Hometown City Public Schools (HCPS).

ISSUE(S) AND REGULATIONS:

Issue 1. Individualized Education Program (IEP) – Implementation.

Ms. Ricardo alleged that HCPS violated state and federal regulations by failing to implement provisions of Robby’s IEP.

Specifically, Ms. Ricardo alleged:

- that Robby’s current IEP provides that he receive speech therapy 5 times per week for 30 minutes;
- that Robby did not receive speech therapy during the months of September, October and part of November; and
- that she was “told that the school was not able to hire a speech therapist until mid-November.”

Applicable Regulations:

- The 1999 implementing regulations of the Individuals with Disabilities Education Act (IDEA), at 34 C.F.R. §§ 300.341, 300.350 and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective March 27, 2002 (the Virginia Regulations), at 8 VAC 20-80-62.A and B require school divisions to ensure that an IEP is developed and implemented for each child with a disability that they serve. The regulations further mandate that school divisions provide special education and related services to a child with a disability in accordance with the child's IEP.

Findings:

The Office of Dispute Resolution and Administrative Services finds the school division to be in ***non-compliance*** regarding the implementation of Robby's IEP.

Analysis:

- The parents alleged that during a parent conference in November 2005, they found out that Robby had not been receiving speech services according to his IEP.
- HCPS, in their response to the complaint, acknowledged that Robby's current IEP provides that he receive speech therapy 5 times per week for 30 minutes.
- The school division further responded that "during the 2004 – 2005 school year, two of our speech therapists resigned from their positions. Immediately after these positions were vacated, HCPS began efforts to recruit and fill these slots. Due to recent difficulties in hiring speech therapists, we were unable to fill the positions prior to the 2005-2006 school year. However, we did fill the positions, as the parents stated, and Robby's therapist began working with him on December 1, 2005."
- The above-cited regulations require that school divisions provide special education and related services to a child with a disability in accordance with the child's IEP.
- HCPS acknowledged that a speech therapist was not available to Robby for the months of September, October, and November.
- For the foregoing reasons, this office finds HCPS to be in non-compliance with state and federal regulations with respect to this issue.

CORRECTIVE ACTION PLAN:

In order to resolve this matter, the Office of Dispute Resolution and Administrative Services requests that the following actions be taken:

- HCPS will provide an assurance statement that it will schedule an IEP meeting, no later than May 30, 2006, to discuss the need for compensatory services due to the lack of implementing this IEP provision.

Please submit these corrective actions to our office by **May 6, 2006**.

APPEAL INFORMATION:

Please note that the findings in this Letter of Findings are specific to this case. While general rules are cited, findings in other cases may differ due to distinctions in the specific facts and issues in each case.

Either party to this complaint has the right to appeal these findings within 30 calendar days of our office's issuance of the Letter of Findings. If not appealed by May 5, 2006, our file on this complaint will be closed if no Corrective Action Plan is required; otherwise, the school division must submit the requested Corrective Action Plan by the date indicated.

Enclosed is a copy of the appeal procedures. Written appeals should be sent directly to:

Director's Name
Director – Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218

A copy of the appeal, along with any submitted documentation, must be sent simultaneously to the non-appealing party. Questions regarding these procedures should be addressed to (Director's name and E-mail address).

/s/ Complaints Specialist

Attachment – Appeal Procedures

c: Name of the Special Education Director
Names of VDOE Technical Assistant for Region

Corrective action plan

Since the school division was found in non-compliance, the school division must develop a CAP to correct the identified violations, and submit the CAP to ODRAS by the due date stated in the LOF.

- ◆ **If no appeal is filed:** ODRAS reviews the CAP and approves it if it responds to the request(s) made in the LOF. The case is then closed.

Appealing

Parents or the school division may disagree with the decisions in the LOF. Either party has the right to appeal the findings to VDOE and to have an independent reviewer appointed by the VDOE. The filing of an appeal regarding a complaint must be based on one of two issues:

1. **Newly discovered information.** This is information that was not provided to ODRAS with the initial complaint or response. It should be included with the appeal; or
2. **An error in fact or law on which the findings were based.** The appeal must point out what findings are in dispute and why they are contrary to the facts or applicable law.

For example

Newly discovered information could be information not available to the party during the complaint process. It does not include information that could have been provided to ODRAS, but wasn't. Neither party can use the appeal to "fix" shortcomings in their case. "More" or "better" evidence that wasn't supplied previously will not always qualify as "newly discovered."

An error in fact could be where the complaint specialist misreads a fact in the record. For example, the LOF finds the school division in compliance based on the child receiving services as of September 1 when the record is clear that the child did not begin receiving services until December 1.

An error in law could be where the complaint specialist applies the wrong regulation to the facts. For example, the LOF applies the regulation applicable to transfer students when the student is coming from a private school where s/he did not have an IEP.

How long do I have to file an appeal?

The request for an appeal must be filed within thirty (30) calendar days of the date VDOE issues the LOF. The due date will be identified in the LOF and there are no exceptions to the identified date.

Where do I send it?

The request for an appeal, with documentation, must be filed, in writing, with the VDOE:

By mail to: Virginia Department of Education
Office of Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, VA 23218-2120
Or to the same office, by fax: (804) 786-8520

Be sure to send a copy of your complaint appeal request and any supporting documentation to the school division at the same time you send it to ODRAS.

MEANWHILE, ROBBY'S MOM APPEALS THE LOF

Name of the Director
Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218-2120

May 4, 2006

Dear (Name of the Director),

I am writing in reference to the case of Hometown City Public Schools (HCPS) and Robby Ricardo, my son. I would like to appeal the decision of the corrective action plan “penalty” your department allowed HCPS to implement. I feel that the corrective action plan is not as severe as it should be. They are permitted the opportunity to “do again” or correct their mistake. My son is being punished for it by not getting the services he needed.

I am very upset with the way my son is being treated. Why should my child have to suffer the consequences of the school division’s carelessness? Also, to put the icing on the cake, now they have decided to give him a 504 plan, when they didn’t find him eligible for any services before. What has changed? Why wait until now? Why didn’t they provide him services under 504 from the start? These are some questions that I would like to have answered.

Please process my request as quickly as possible. My child has already suffered enough. Thank you in advance.

Respectfully yours,
Linda Ricardo
c: Name of the local superintendent or special education director

Upon receipt of this letter, ODRAS notifies the parties of the appeal request and assigns a complaint appeal reviewer. The complaint appeal reviewer is provided with a copy of the appeal request, the LOF and the complaint file (which includes all the information in the file, including all the information submitted by the parties, the LOF, and the CAP, if any).

- ◆ The party not initiating the appeal may file a written response directly to the reviewer within five (5) business days.
- ◆ The complaint appeal reviewer will issue written findings within thirty (30) calendar days from the receipt of the appeal. If the CAP is appealed, the reviewer has the authority to revise the plan.

The complaint appeal reviewer issues the following opinion in response to Mrs. Ricardo's appeal

Note the following components of the attached appeal reviewer's decision:

- ◆ Identifies the date the appeal reviewer received the appeal request.
- ◆ States the issue that is under review.
- ◆ Identifies what VDOE found.
- ◆ Reminds the parties the standards upon which the appeal reviewer must base her/his decision.
- ◆ Reviews the issue in light of the standards.
- ◆ Renders a conclusion.



Complaint Appeal Reviewer, Esquire

Ms. Linda Ricardo
123 Main Street
Hometown City, Virginia 23226

Dr. Will Learn
Division Superintendent
Hometown City Public Schools
3245 City Street
Hometown, Virginia 23111

Re: Robby Ricardo
Hometown City Public Schools (HCPS)
Complaint Appeal Decision (LOF 4/5/06)

Dear Ms. Ricardo and Dr. Learn:

This matter comes before the reviewer on the parent’s appeal of the Letter of Findings issued by the Virginia Department of Education (VDOE) on April 5, 2006. The appointment for this appeal was made on May 8, 2006, pursuant to Virginia’s Special Education Complaint Appeals Procedures adopted by the Virginia Department of Education on May 4, 2006. The complaint appeal decision is due not later than June 7, 2006.

The complaint, filed February 4, 2006, alleged that HCPS, with respect to Robby Ricardo, violated applicable federal and state laws and regulations governing special education programs by failing to implement provisions of Robby’s IEP.

VDOE found HCPS was in non-compliance and required a corrective action plan. The parent appealed the Letter of Findings, asserting that the corrective action plan was too lenient. The school division had until May 15, 2006, to file its responsive position statement. The school division filed no responsive statement. The parties are familiar with the underlying facts of the complaint, and they will only be repeated or recited herein to explain this decision, as necessary.

On appeal, the complaint appeals officer may consider (a) newly discovered information, or (b) an error in fact or law on which the complaint findings were based. When the appeal involves the corrective action plan, the complaint appeals officer has the authority to revise the plan, in accordance with 8 VAC 20-80-78 C.5.

In finding HCPS in non-compliance, VDOE specifically reviewed the nature of the violation and imposed a specific correction plan targeting the school division’s non-compliance. The corrective action plan included the specific school involved, Hometown Elementary School. While the parent urges a harsher “penalty” for HCPS than she perceives in the corrective action plan, the complaint system is not intended to impose punishment. The purpose is to correct violations, and to provide remediation when appropriate. Ms. Ricardo points to no facts within the complaint record or newly discovered information that would indicate the corrective action plan will be ineffective or inappropriate. While the parent expresses a valid concern and justified frustration at the school division’s non-compliance, the complaint system is not intended to punish school divisions. There is no basis to find that compensatory services are warranted under these circumstances, and there is nothing in the record to indicate that the delay actually or directly caused Robby’s academic failures. The corrective action plan required by VDOE is tailored specifically for the violation.

Accordingly, upon careful consideration of the complaint and appeal presented, I affirm VDOE’s Letter of Findings dated April 5, 2006.

Respectfully submitted,

/s/ Complaint Appeal Reviewer, Esquire

Due Process Hearings

Filing for due process sets in motion a technical and time sensitive legal proceeding. . .

DEA calls for a system of due process hearings that are used to resolve disagreements between parents and school divisions over special education matters. Requesting a due process hearing is a serious legal matter. Preparing for the hearing can be emotionally draining and time-consuming. But even if attempts at mediation and early resolution have failed, you need to know what steps will occur.

Do I need to hire a lawyer?

Parents are not required to hire an attorney to represent them at a due process hearing. However, the school division is likely to be represented by an attorney.

I think I need a lawyer to help me. How do I find one?

- ◆ In the Appendix to this Manual there is a list of agencies that may be able to provide you with low-cost assistance. If they can't help you, they might be able to refer you to someone who can.
- ◆ The Virginia State Bar has a lawyer referral service. It can be reached at 1-800-552-7977 or TDD# 804-775-0502.
- ◆ Your local phone book may also have listings for attorneys practicing in education or special education law. Some localities also have lawyer referral services through a local bar association or legal aid office.

- ◆ The Internet is a great resource tool and there are many Web sites that have lawyer “search” tools that can help you locate a lawyer who practices special education law in your area. For example, www.lawyers.com, www.findlaw.com, www.marhub.com.

I can't find an attorney. Do I have any other options?

IDEA allows non-attorney advocates to assist parents in due process hearings. Your local legal aid office, Virginia Office for Protection and Advocacy (VOPA), Virginia's Parent Educational Advocacy Training Center (PEATC), your local phone book and the Internet can be helpful resources in locating an advocate to assist you. Contact information is available for VOPA, PEATC, and other advocacy options, in the attached Appendix.

Can I represent myself?

IDEA permits parents to represent themselves (and their children) in due process hearings. When a parent represents him/herself, this is referred to as acting “pro se.” If you decide to act *pro se*, you need to be mindful of several things:

- ◆ You will be acting as your own attorney and will be required to perform functions that are often performed by an attorney, such as examining and cross-examining witnesses, making legal arguments, presenting your case, and responding to information requests made by the school division and the hearing officer.
- ◆ The focus of the hearing needs to be on the child and the child's education. This is not a time to pursue personal vendettas or issues with school personnel. Parents need to be able to present their case without raising personal issues or getting emotional.
- ◆ Preparing for a due process hearing is very time consuming and requires a great deal of organizational skills. The hearing itself may take several days. Some parents discover that they have work or personal commitments that prevent them from devoting entire days to preparing for and attending a due process hearing.
- ◆ Special education law is very technical and complicated. It is easy for a non-lawyer to get confused. Just because something “doesn't seem right,” does not always mean that the school division is denying your child FAPE. Be clear about what you are looking for and be clear about why the law is on your side. Even if you don't hire a lawyer, it might be helpful to talk to one to get a better understanding if your reading of the law is correct.

If I do not have an attorney

If you have hired an attorney, s/he will be expected to handle things in connection with the due process hearing, such as prepare for and attend the pre-hearing conference, analyze the relevant law, and present your issues to the hearing officer. However, the following steps help identify what to expect and your responsibilities when you do not have an attorney.

How do I prepare for the due process hearing? Before you file

Stop and consider . . . have you absolutely done everything you can to resolve concerns and problems with the school division? Many due process hearings can be avoided if everyone communicates in a productive way. Early resolution or mediation is in the best educational interests of the child because you will have to work with the school division and its staff long after the hearing is over.

Preparing to file

A due process hearing will involve a lot of paperwork. Make sure your paperwork is organized and available before you file because you won't have much time to get organized once you start the ball rolling. . . .

- ◆ Review materials in your child's educational record. Under the Family Educational Rights and Privacy Act (FERPA), parents have a right to see the educational record that the school maintains on their child. If parents request a copy of the record, the school division may charge a fee, unless charging the fee would effectively prevent the parents from being able to see their child's educational records. Parents may not be charged for a copy of their child's IEP.
- ◆ Not every record, document, letter and e-mail pertaining to your child will be necessary to prove your case.
- ◆ Locate and sort through whatever records, documents, letters and e-mails you have.
- ◆ Separate everything into two piles: what you think you need to prove your case, and what you don't think you'll need.
- ◆ Be familiar with what is in both piles. The school division may want to see documents that are in your "don't need" pile, and you will have to be able to respond to the school division's request (even if your response is "I don't have that document," or "I don't have any document like that").

- ◆ Organize your “do need” pile of documents chronologically. That is usually the easiest way to keep track of a lot of documents. You might even want to get an accordion file (one of those cardboard, expandable files) that has sections for each month (January, February, etc) and separate the documents by month. Get a separate accordion file for each year. This will make it easy to find what you are looking for.

Identify the specific issue

What can be considered in due process hearings?

A due process hearing can address any of these four issues:

1. **Identification:** refers to whether a child has a disability under IDEA and, if the child is identified as having a disability, decisions about the nature or severity of the disability.
2. **Evaluation:** the type of assessment instruments used to determine the performance of the child. Other areas of disagreement in this area concern the appropriateness of the evaluation procedures used, parental agreement with the evaluation, and the opportunity for an independent educational evaluation.
3. **Educational Placement and Services:** the type of school environment appropriate to the child and which school or facility closest to the child’s home provides the necessary resources, or those supportive services that are provided to the child to benefit from special education.
4. **Provision of FAPE:** special education and related services designed to meet the child’s unique needs.

Examples of how these issues come into play . . .

Identification: Trudy Huxtable is a fourth-grade student who has struggled with reading throughout all her years in school. She has had extensive remedial help in school, and her parents, Dr. Horace and Louise Huxtable, have provided her private tutoring since the third grade. The school division recently completed an evaluation to determine if Trudy is eligible for special education services. The school staff decided that Trudy is not eligible for special education services because her performance in reading does not show enough of a deficit to call her “learning disabled.” Further, she is achieving passing grades (Cs and Ds) in all subjects and has passed standard tests.

Dr. and Mrs. Huxtable disagree with the finding of ineligibility. They believe Trudy has a learning disability and they are extremely frustrated. They believe that Trudy has more potential and could be achieving at a much higher level with special education support. They

believe that the only reason Trudy is passing her classes is because of the intensive tutoring support they have been providing all these years.

Dr. and Mrs. Huxtable file for a due process hearing, requesting that Trudy be found eligible as a learning disabled student.

Evaluation: Dora Smith is a ninth-grade student who is failing three of her six classes. She has shown a pattern of difficulty in math and science subjects. The school division evaluated Dora for a reading disability. She was found not eligible for services on the basis of the evaluation results.

Dora’s parents believe that she is eligible for special education support and they contend that she wasn’t really tested for the “right” disabilities.

Dora’s parents file for a due process hearing, requesting that Dora be fully evaluated to rule out other specific and non-specific learning disabilities.

Placement: Max Lopez is an eighth grader who was recently hospitalized in a mental health facility for a diagnosed mental health disorder. After his discharge, his IEP was amended to provide for homebound services through the end of his eighth grade year. In drafting his IEP for ninth grade, his mother points out to the team that Max is still very emotionally fragile and is scared to return to school. Mrs. Lopez thinks the solution is for Max to continue to receive homebound services for his ninth grade year. The rest of the IEP team proposes placement in a small, private residential school for boys that is a two-hour drive from his home.

Max’s parents request a due process hearing to continue Max’s homebound placement, contending that even though a private residential placement may be less restrictive than a homebound placement, Max cannot receive FAPE in any placement outside the home.

Educational Services: TJ Evans suffers from a neurological disorder and has been screened for speech, physical and occupational therapy services. The speech therapist and occupational therapist recommend services. The physical therapist believes that TJ does not need further evaluation and does not need physical therapy services because she believes that TJ can adequately access the school environment. TJ’s parents disagree, contending that TJ needs physical therapy services. They file for due process seeking to have physical therapy services added to TJ’s IEP.

FAPE: Manny Garcia is identified as a student with autism. Manny has been attending a special needs pre-school/kindergarten program in the mornings for several years. Manny’s parents have paid for Manny to attend a therapy center to receive ABA (Applied Behavioral

Analysis) in the afternoons. Now that Manny will be entering first grade, Manny’s parents are requesting that the school place Manny at the ABA therapy center at public expense, and that they be reimbursed for what they spent on ABA services in the past. They refuse to sign the IEP proposed by the school that calls for Manny to receive ABA at his home school in a self-contained classroom for two hours per day. The school division tells the Garcias that it cannot place Manny at a “therapy center” that is not a school. Manny’s parents request a due process hearing contending that the school division’s IEP is inappropriate and they wish to be reimbursed for their expenses associated with ABA services for Manny.

Expedited due process hearings

An expedited due process hearing is generally used to challenge disciplinary actions. If both parties agree, it is also available to address the four issues of identification, evaluation, educational placement and services, and provision of FAPE. An expedited due process hearing that challenges a disciplinary action can also address any of these three issues:

1. **A manifestation determination** that the child’s behavior was (or was not) caused by or had a direct or substantial relationship to the disability.
2. **A manifestation determination** that the child’s behavior was (or was not) a direct result of the failure to implement the IEP.
3. **Any decision regarding placement** under the disciplinary procedures.

What happens to my child’s placement during this whole process?

Once a due process hearing request is made, the student will remain in the current or last agreed-upon placement. This is referred to as “stay put.” However, parents and the school division can always agree to a change in placement. If there is a question about placement, this can be discussed during the pre-hearing conference.

There are circumstances when the school division is permitted to change the student’s placement without the parents’ consent. For example, if the student has had a weapon or drugs, or is considered to be dangerous to him/herself or others, then the school division may remove the student immediately to another placement. Generally, expedited hearings are used to challenge these changes in placement.

Requesting a due process hearing

A due process hearing request must be in writing. It must be filed within 2 years of the date you or the school division knew or should have known about the issue. An exception to this timeline applies if you were prevented from requesting the hearing due to:

- ◆ The school division telling you that the issue had been resolved when in fact it had not; or
- ◆ The school division has withheld information from you that was required under the federal law and regulations governing special education.

Is there a form I am supposed to use?

A request for a due process hearing does not have to be submitted on a special form. However, there is a special form available at VDOE's Web site – www.doe.virginia.gov/VDOE/dueproc, or you can copy the reproducible form in the Appendix at the back of this manual. Or, you can get a copy of the form from the school division.

What information does the request need to include?

If you are not using VDOE's form, make sure your request includes:

- ◆ The child's name
- ◆ The child's address
- ◆ The name of the child's school
- ◆ A description of the disagreement, including facts relating to the dispute
- ◆ A proposed resolution of the problem.

Special circumstance: If the child is homeless, the request must include available contact information for the child, and the name of the school the child is attending.

Where do I send it?

- ◆ You must submit your request to the school division, and
- ◆ Also to VDOE

By mail to: Virginia Department of Education
Office of Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, VA 23218-2120
Or to the same office, by fax: (804) 786-8520

Then what?

After a due process hearing request is filed, the school division has five major things it has to do quickly:

1. inform the parent(s) of their right to mediation
2. inform the parent(s) of the availability of any free or low-cost legal and other relevant services in the area
3. provide the parent(s) with a procedural safeguards notice if one had not been provided prior to the request for a hearing
4. obtain the name of a hearing officer within 5 business days of receipt of the request for a hearing
5. schedule a resolution session within 15 calendar days of receiving the request for a hearing

In expedited hearings the school division must do things even faster:

- ◆ Obtain the name of a hearing officer within 3 business days
- ◆ Schedule a resolution session within 7 calendar days

And, if the matter isn't resolved sooner, then the hearing will actually take place within twenty (20) school days from the date the request is received.

The Hearing Officer

Who are these hearing officers?

- ◆ Experienced, licensed lawyers
- ◆ Trained by VDOE
- ◆ Not VDOE employees

- ◆ Appointed by the Virginia Supreme Court²
- ◆ Unaffiliated with any school division
- ◆ Unaffiliated with the parents of any case to which they are assigned

Specific information about a hearing officer can be obtained from VDOE's Web site (www.doe.virginia.gov/VDOE/dueproc) or by asking the school division or VDOE.

What, exactly, does the hearing officer do?

The hearing officer acts like a judge and has three basic responsibilities with regard to the due process hearing:

- ◆ To guide and monitor the due process hearing to comply with state and federal mandates. This includes arranging at least one pre-hearing conference and making sure the hearing is held within the required time frame.
- ◆ To hear testimony and collect evidence. This includes maintaining an organized record of the hearing process and managing witnesses and the presentation of documents during the hearing.
- ◆ To issue a decision. The hearing officer's decision must be in writing and address four required matters:
 1. whether the school division gave the parents proper notice of procedural safeguards
 2. whether the child has a disability
 3. whether the child needs special education and related services
 4. whether the school division is providing FAPE to the child

In an expedited due process hearing relative to a disciplinary action, the hearing officer's decision must also address:

- ◆ Whether the school division has adequately demonstrated that the child's behavior had a direct or substantial relationship to the child's disability; and,
- ◆ Whether the behavior was the direct result of the failure to implement the IEP.

² VDOE's draft revised special education regulations propose to change this requirement and move several of the responsibilities, such as appointments, to the VDOE.

In cases where the school division is considering a change in placement due to a disciplinary matter, the hearing officer must also determine,

- ◆ Whether the school division's decision is correct.

The hearing officer is also authorized to award relief to a prevailing party, or to dismiss the case, if appropriate.

For example, the hearing officer can:

- ◆ order the school division to implement an educational program
- ◆ order the student to be placed in a particular program or school
- ◆ order the school division to conduct an evaluation
- ◆ order tuition reimbursement or award of compensatory education

How long does it take to get the hearing officer's decision?

The hearing officer's decision is due within 45 calendar days of the date the due process request is received by the school division, or 45 days following the resolution period. In an expedited hearing, the hearing officer's decision is due within 10 school days after the hearing.

What if I don't like the hearing officer who has been appointed?

There are three grounds on which you can base a request to have a different hearing officer appointed to hear your case:

- ◆ The hearing officer has a personal or professional interest that would conflict with his/her objectivity in the hearing,
- ◆ The hearing officer represents school divisions or parents in special education or disability matters, or
- ◆ The hearing officer is an employee of a parent rights or disability rights organization.

If parents believe that the assigned hearing officer cannot conduct a fair and impartial hearing, they can request the disqualification of the hearing officer.

1. The first thing to do is to say something to the hearing officer. This should be done as soon as possible at the initial pre-hearing conference, if not before. You will have to explain to the hearing officer the facts that suggest there is a conflict of interest.
2. If the hearing officer decides to continue in the case and you believe that a conflict remains, you have two (2) business days to file a complaint with the Supreme Court of Virginia.³

Is there a form I am supposed to use?

There is no form for filing a complaint seeking disqualification of a hearing officer. The request has to be a sworn, written statement called an “affidavit.”

What information does the affidavit need to include?

The affidavit must clearly state why you believe the hearing officer cannot conduct a fair and impartial due process hearing. You must reference the reasons for disqualification listed above.

Where do I send it?

1. You must file your affidavit with the Executive Secretary of the Supreme Court of Virginia, by mail to:

Supreme Court of Virginia, Executive Secretary
100 North 9th Street, Third Floor
Richmond, VA 23219⁴
2. You must also send a copy of the affidavit to the hearing officer,
3. A copy to the school division, and to VDOE’s ODRAS.

Then what?

If the hearing officer is disqualified, a new hearing officer will be appointed to the case. If the hearing officer is not disqualified, then s/he will stay on the case to its conclusion.

³ VDOE’s draft revised special education regulations propose to move this responsibility to the VDOE.

⁴ VDOE’s draft revised special education regulations propose to change this request to have the affidavit filed with VDOE.

Who do I tell if I think the hearing officer did a bad (or great) job?

You can file a complaint with VDOE. Be sure to explain, in writing, what mistakes you think the hearing officer made. VDOE will investigate and take action if appropriate. This kind of complaint is handled as a personnel matter within VDOE and, in some cases, the Supreme Court of Virginia.

ODRAS sends out an evaluation questionnaire to parties at the conclusion of the due process hearing. This is another way to let VDOE know if you think the hearing officer didn't handle the case properly. You should fill out this questionnaire even if you think the hearing officer did a great job and did nothing wrong. These evaluations (good or bad) are important to assist ODRAS in evaluating the hearing officer's management of the hearing and the hearing process itself.

What's this "Resolution Session?"

After a due process hearing request is filed, the school division and parent have 30 days to resolve the dispute. This is called the "resolution period." Following receipt of the due process hearing request, the school division has 15 days to schedule a resolution session. This is a:

- ◆ Meeting
- ◆ With the parents
- ◆ And relevant member(s) of the IEP team who have specific knowledge of the facts included in the due process notice
- ◆ To provide the school division the opportunity to resolve the disagreement.

MANDATORY! This meeting is mandatory unless both the parents and the school division agree to waive it. If a parent does not show up at this meeting, the school division can ask the hearing officer to dismiss the due process hearing request.

OK to substitute mediation. The parties can agree to use the mediation process in place of the resolution meeting.

- ◆ The resolution session must take place within 15 days of the school division's receipt of the parent's due process notice. If this doesn't happen, the parent may ask the hearing officer to start the 45-day timeline.
- ◆ In expedited hearings, the resolution session must take place within 7 days of the school division's receipt of the parent's due process notice.
- ◆ The 45-day timeline for the due process hearing does not start to run until after the 30-day resolution period is over.

- ◆ In expedited hearings, the resolution period is 15 days instead of 30. And the 20-day timeline for the expedited hearing continues to run.
- ◆ However, if the parties waive resolution and do not agree to mediate instead, then the 45-day timeline for the due process hearing begins.
- ◆ Both parties can agree in writing to continue the resolution period beyond 30 days to complete the mediation process.
- ◆ No lawyers allowed! The parents get to decide whether lawyers will participate. The school division's attorney can't come unless the parent's attorney is there, too.
- ◆ If a settlement agreement is reached during a resolution meeting, then the parties must execute a legally binding agreement. The agreement is enforceable in state or federal court.
- ◆ A party may void the agreement within 3 business days of the date it is entered into. If the agreement is voided, then the case proceeds as if the parties had not reached an agreement.

Oops . . . I've changed my mind

You can withdraw a due process hearing request prior to the hearing. Whether you change your mind, reach an agreement with the school division, or for almost any other reason, you can ask the hearing officer to dismiss the due process request without considering the merits of the case.

Let's say that you decide to move forward with the hearing request.

What must you consider?

Even if you have a lawyer or advocate, it is good to know what the steps are in the process.

The Pre-hearing conference

After a due process hearing request is filed, the hearing officer has five (5) business days from the date of his/her appointment to set the date, time and location of the pre-hearing conference. In an expedited hearing, the hearing officer has two (2) business days to complete this task. The pre-hearing conference is important. It can be held in person or by telephone conference call. This is when the hearing officer establishes:

- ◆ What issue(s) will be heard.
- ◆ When and where the hearing will be held. The location should be convenient to all parties. Hearings are often held in a conference room at the school, the school division's administrative offices, a local library, or government building.
- ◆ When witness lists and exhibits are due. Generally, all exhibits (for example, documents that the parties intend to use as evidence to help prove their case) must be disclosed to the other party no later than five (5) business days before the hearing. In expedited cases, the disclosure deadline is shorter.
- ◆ Who will go first at the hearing and which side has the burden of proof. Usually, this will be the party that requested the due process hearing.
- ◆ Whether any witnesses will be allowed to testify by telephone.
- ◆ Whether the parents want the hearing to be open or closed to the public.
- ◆ Whether the parents want their child to attend the hearing.

To be ready for the pre-hearing conference, parents should:

- ◆ Be able to clearly identify all of the issues that they want to present at the hearing. In other words, be able to tell the hearing officer what you want him/her to decide.
- ◆ Have a resolution or solution in mind for each issue. In other words, be able to tell the hearing officer what you want him/her to do.
- ◆ Review the timelines for the hearing and be ready to give available dates within the timelines. In other words, be able to tell the hearing officer when you can, and can't, participate in the hearing.

Observation of the hearing officer

As part of VDOE's responsibility to ensure that pre-hearing conferences and hearings are managed properly, ODRAS' director, coordinator of due process services, or a hearing officer evaluator appointed by ODRAS observes the pre-hearing conferences and hearings. The hearing officer will introduce this evaluator at the beginning of the pre-hearing conference and hearing. The evaluator does not interfere with the pre-hearing or hearing. The evaluator's sole purpose is to assess the hearing officer's management of the hearing process.



Frequently Asked Questions

Can I call the Hearing Officer to ask questions or talk about my case?

No. Not unless the school division attorney or the school division representative is also on the line. Parents and the school division are required to communicate with the hearing officer on an equal basis. Neither party is allowed to communicate, or attempt to communicate, with the hearing officer without the other party being present. One-sided communications like this are referred to as “ex parte” and are prohibited in almost all situations. The hearing officer should enforce this rule, but both parties are “on their honor” not to violate it.

The “ex parte rule” makes good sense. The purpose of the rule is to prevent one side from gaining, or seeming to gain, an advantage over the other.

If you need to communicate with the hearing officer, you should either:

1. send a written correspondence (a letter or e-mail) to both the hearing officer and the school division attorney, asking for a telephone conference; or,
2. call the school division attorney to discuss the matter and, if you can’t work it out, try to place a conference call to the hearing officer while you are both on the line.

The school division has told the hearing officer that my due process request is insufficient. What does that mean?

If the school division has challenged the “sufficiency of notice,” the hearing officer will look at your due process hearing request and determine whether the information contained in your request is detailed enough to let the school division understand your complaints. You do not have to do anything in response to the school division’s challenge. If the hearing officer determines that your request is “insufficient,” then one of two things will happen: either the hearing officer will let you amend your request, or the hearing officer will dismiss your case. If your case is dismissed, you can still fix your request and simply re-file it. For this reason, if there is a problem with the information contained in your request, the hearing officer will likely let you fix it.

A sufficiency challenge is not permitted in *expedited cases*.

During the pre-hearing conference, the Hearing Officer asked about “stipulations.” What is that?

When lawyers use the term “stipulation” they are talking about facts that the parties agree on. A “list of stipulations” is simply a list of facts that the parties do not dispute. Theoretically, the more stipulations the parties can make, then the fewer facts are in dispute. Of course, this is not always the case. There are always some facts relevant to the case that will not be in dispute. For example:

- ◆ Your child’s birth date
- ◆ Your child’s medical diagnosis, if any
- ◆ Your child’s medical and academic history
- ◆ The authenticity of certain documents
- ◆ The chronology of events leading to a dispute
- ◆ The dates on which certain events took place, or documents signed

Any fact to which you can stipulate is one less fact on which you need to present evidence. Therefore, the more stipulations you can make, the faster the hearing will go. Since this will save everyone time in the long run, it is helpful to work with the school division to come up with as many stipulations as possible. This will also help to identify which important facts are actually in dispute.

Most of my witnesses are school employees. Will they be allowed to testify?

Yes. The school division cannot prohibit its employees from testifying at the due process hearing. In fact, you may discover that the school division is planning on calling the same witnesses you are. For this reason, it will probably be helpful for you to talk with the school division attorney about witnesses early on. The school division will probably volunteer to make its employees available. But the sooner you can let them know, the better, since the school may have to arrange for substitutes, etc.

The hearing officer said something about witness lists. Do I have to tell the school division who my witnesses are going to be?

Yes. You will have to generate a witness list with the names of any witness you may want to call to testify at the hearing. You will have to give a copy of this list to both the hearing officer and the school division attorney by the deadline the hearing officer sets during the pre-hearing conference. Anyone who is not on the list will not be allowed to testify. If you don’t give a copy of the list to the school division attorney by the deadline, you may not be allowed to call any witnesses. It is very important that your list is complete and that you provide it to the school division attorney on time.

You do not need to call every witness you put on your list.

In addition, you should consider putting on the bottom of your witness list “We reserve the right to call as a witness any witness identified by the school division. We reserve the right to call as a rebuttal witness any person not identified by either party.”

How do I contact non-school division witnesses or get documents the school doesn't have?

Ask the hearing officer to issue a subpoena. A “witness subpoena” is a legal request to require a witness to come testify at a certain time and place (like a due process hearing). A subpoena can also be used to request that a person or entity (like a school or doctor’s office) produce specific documents at a certain time and place. This kind of a subpoena is called a “subpoena duces tecum,” which (roughly translated from the Latin) means “a command to bring it with you.”

An example of a subpoena form is included in the Appendix.

If you are going to ask the hearing officer to issue a subpoena, keep the following things in mind:

- A subpoena must be “served” in person. This means that you may have to hire (i.e., pay) a private process server to hand deliver the subpoena to the person you want to testify or produce documents.

- Serving a subpoena also takes time. And, for a subpoena to be enforceable, the person who is expected to comply with it must get it far enough in advance to be reasonably expected to respond. Generally, ten (10) days advance notice is considered reasonable. But this means that you have to ask the hearing officer to issue the subpoena enough in advance of the hearing that the person who is expected to comply with it will be served with it at least ten days before the hearing. Because of these time frames, you should probably ask the hearing officer to issue any subpoenas you might need at the pre-hearing conference, or soon thereafter. Do not wait until right before the hearing date, because by then it will be too late!

I disagree with some of the information or witnesses the school division wants to subpoena or wants me to provide. What can I do about that?

You can object to the hearing officer issuing a subpoena. Some hearing officers will give you the chance to make objections to the issuance of a subpoena before they issue it. If you disagree with a subpoena that has already been issued, you can file what is called a “motion to quash” with the hearing officer. In your motion, you must explain to the hearing officer your reasons for disagreeing with the subpoena. If the school division wants you to give it information (like documents) and you think you should not have to, then discuss the matter with the hearing officer. The hearing officer will decide if you have to provide the information or not.

Is there anything I should do to get my witnesses “ready” for the hearing?

You should definitely talk to your witnesses before you put them on your witness list. They should be prepared to testify. You should review with the witness what you will ask them and help them understand why the school division may disagree with what they say (because the school division attorney will have a chance to ask them questions, too).

There are two kinds of witnesses, **fact witnesses** and **expert witnesses**. **Fact witnesses** talk about things they have observed or experienced. **Expert witnesses** have some special expertise and they give their opinions and then must explain how and why they formed that opinion. It is helpful for an expert witness to understand both sides of the issue and be able to explain why the expert thinks one side is right and the other side is wrong.

Witnesses should be told to answer questions truthfully and to testify based on their personal knowledge and independent recollection. Witnesses should be told that if they do not know the answer to a question, they should respond, “I don’t know.” They should not attempt to guess.

How am I supposed to prepare my exhibits? What am I supposed to do with all this paper?

At the hearing, **any document you refer to, or want a witness to refer to or explain, will have to be identified as an exhibit.** This is a rule that is used in court to help keep track of all of the documents that are relevant to a case. For a hearing, lawyers will generally prepare four identical binders that contain all of the relevant documents, and each document will be labeled as an “Exhibit” with a number (e.g., “Exhibit 1”, “Exhibit 2”, etc.) There will be four identical binders: one for the school division, one for the parents, one for the hearing officer, and one for the witness. This way, everyone can be looking at the same document, at the same time, while the witness is talking about it.

However, putting together these binders can be a nightmare for even the most experienced lawyer or paralegal. And, it is likely that both the school division and the parents will want to use the same documents. So, chances are, the school division’s binder will look a lot like the parent’s binder.

The easiest way to handle this is to talk to the school division attorney, in advance of the deadline to exchange documents, and see if s/he is willing to prepare the set of binders (put them together and pay for the copies) and include all the documents that both sides want. This will avoid the problem of duplicate documents and ensure that the binders are prepared in line with the hearing officer’s expectations. There is also the added bonus that you will avoid the time and expense of preparing the binders yourself.

If you are unable to make arrangements with the school division, or simply prefer to organize the documents yourself, then you should organize your documents chronologically and then label each separate document (“Parents’ Exhibit 1”, etc., or in shorthand “P-1”, “P-2”, etc). For documents that have multiple pages, the label should read, for example, “P-1, page 1 of 4”, “P-1, page 2 of 4”, etc.

There must be special rules that I don’t know about if I’m not a lawyer?

Even though various rules that govern court proceedings are not strictly applied in due process hearings, you will hear reference to the Rules of Evidence. In court proceedings, there are strict “Rules of Evidence” that are actual laws that apply to how evidence is presented. These rules do not strictly apply in due process hearings, but the principles behind the rules are important, and the hearing officer has the discretion to apply these rules if there is a dispute between the parties as to particular evidence. For example:

- ◆ **Hearsay** evidence is not allowed in court, but is allowed in a due process hearing. Hearsay evidence is anything less than direct evidence from a witness; for example, a letter can be hearsay evidence, or a witness testifying about what someone told him/her can also be hearsay evidence. Direct evidence is always better than hearsay evidence.
- ◆ **Leading questions** are generally not allowed. A leading question is one that calls for a “yes” or “no” answer, or where the question suggests the answer. The exception to this rule is when you are cross-examining a witness. Then you can ask leading questions (“Wouldn’t you agree” or “Isn’t it true”).
- ◆ **“Objection!”** This is a technical term, and not just an obnoxious way for someone to interrupt your train of thought. When one side thinks that the other side is violating a Rule of Evidence, the way to bring this to the hearing officer’s attention is to say “Objection!” and then state the basis for the objection. An example would be if you were questioning one of your witnesses and used a leading question. The school division attorney might say “Objection. Leading.” Then it is the hearing officer’s job to sustain (agree with) or overrule (disagree with) the objection. If the hearing officer sustains the objection, you will probably be asked to “rephrase your question.” If the hearing officer overrules the objection, your witness can answer the question. You are entitled to make objections, too, but this can be tricky when you don’t have a working knowledge of the Rules of Evidence.

Preparing your questions before the hearing will help guide you when it comes time to ask the witnesses questions.

IMPORTANT: If the hearing officer makes an evidentiary ruling, or if the school division attorney makes an objection that you don’t understand, you should ask the hearing officer to explain to you what is going on so that you can respond. You are entitled to an

explanation, and hopefully the hearing officer will be able to provide an explanation that a non-lawyer (like yourself) can understand.

Remember to listen

Everyone involved in a hearing is expected to be polite, respectful and courteous. That means that only one person is talking at a time. If someone is talking (the hearing officer, a witness, etc.) do not interrupt them. Wait until they have finished speaking before commenting or asking a question. Not only is this the polite thing to do, but it is practical, too, because the court reporter is recording every word that is said, and s/he can't write down what two people are saying if they are talking at the same time.

Can I have an advocate help me?

Absolutely! The regulations permit a parent to have someone who is knowledgeable about special education or the child's disability assist the parent during the due process proceedings, including attending the hearing with the parent. A list of possible advocacy groups is available in the Appendix to this Manual.

What do I need to know about the hearing process?

The next pages serve to walk you through the hearing process itself: what to expect, how to further prepare, what to ask, and otherwise, what you need to know. Even if you are represented by an attorney or assisted by an advocate, it is wise to know this information in advance of going to the hearing.

The Hearing

A due process hearing is relatively informal compared to a court hearing, but you can expect a typical format.

- ◆ The room: the hearing will probably be held in a conference room with everyone sitting around a big table.
- ◆ Seating around the table: the hearing officer will sit at one end of the table, and the court reporter usually sits near the hearing officer. A chair near the hearing officer and the court reporter will be held, where each witness will sit when testifying. The school division attorney and school representative(s) will sit on one side of the table, and the parent(s) will sit on the opposite side of the table. If you have an advocate, s/he will sit next to you. Usually, the VDOE evaluator will sit apart from the parties and the hearing officer, so as not to confuse the evaluator's role from that of the hearing officer.

- ◆ The hearing officer will start the hearing by making an introductory statement identifying the parties and the issues, and any other matters s/he feels are necessary at that time.
- ◆ Whether the hearing is open or closed, fact witnesses (other than the school representative and the parents) will be asked to leave the room so that they don't hear what other witnesses have to say. Expert witnesses are generally allowed to remain in the hearing room.
- ◆ The party requesting the hearing will give an opening statement. Then the other party will also give an opening statement. Opening statements are a summary of the evidence that will be presented: a snapshot or preview of what the case is about. Be brief! The opening statement is not evidence in the case and it is not the time to argue your case.
- ◆ After both sides have made an opening statement, the party requesting the hearing will be asked to call its first witness. All of the witnesses for one side will have a chance to testify before the other side begins to put on its case.
- ◆ Once the responding party has finished presenting its case, the party requesting the hearing will be asked if it wants to present any "rebuttal." Rebuttal testimony is a chance to respond to something in the other side's case. For example, let's say a school division witness testifies that "the parents told me that they would not consent to OT services." You are sitting right there and want to let the hearing officer know that you disagree with that statement: you never told that witness such a thing. The appropriate way to respond to that testimony is for you to take the stand as a rebuttal witness and testify, "Neither I nor my spouse ever told anyone that we would not consent to OT services."
- ◆ The responding party will have a chance to "rebut" the requesting party's rebuttal evidence. The hearing officer will probably not permit any side more than one chance at rebuttal.
- ◆ Closing argument: the party requesting the hearing will give the first closing argument, and then the responding party will have a chance to make its closing argument. This is the time to summarize the facts of the case that you believe require the hearing officer to decide the case in your favor. This is also the time to present any legal arguments you believe support your position.
- ◆ The hearing officer may permit the party requesting the hearing to rebut the responding party's closing statement. If you give the first closing statement, and the school division attorney says something in closing that you feel the need to respond to, you may ask the hearing officer to permit your rebuttal. A good rule of thumb is that you should not ask for the opportunity for rebuttal if the only thing you really want to say is "you are all wrong." The hearing officer knows you disagree with everything the other side has said, so don't ask for rebuttal if you are only going to use the opportunity to repeat yourself or attack the other side's credibility.
- ◆ The hearing officer will make a brief closing statement, concluding the hearing and advising the parties of any matters that need to be addressed.

- ◆ The hearing officer may ask each side to prepare a “brief” that details each party’s final argument. You have the right, as one of the parties, to submit such a brief that basically outlines your argument, what regulations your argument relies on, what court cases you may use to support your argument, and what you would like to see as the outcome.
- ◆ You also have the right to request a written or electronic verbatim record of the hearing. This is free of charge to you. You may ask for this at the end of the hearing.

Then what?

The hearing officer will prepare a final written report that is sometimes referred to as a decision. The hearing officer will send a copy of this decision to the parties and to VDOE. The decision will explain which party prevailed on each of the issues raised. The decision will also explain what the school division, parent, and/or student are expected to do as a result. The decision will also outline the parties’ appeal rights.

The official record of the hearing is kept by the school division and maintained as a part of the child’s educational record.

How long does it take to get the hearing officer’s decision?

The hearing officer’s decision is due within 45 calendar days of the date the due process request is received by the school division or 45 days following the resolution period. In an *expedited hearing*, the hearing officer’s decision is due within 10 school days after the hearing. The hearing officer will tell you when you can expect to get the decision.

Appealing

Parents or the school division may disagree with the hearing officer’s decision. But the decision is binding unless either party appeals. Either party has the right to appeal the findings to a state or federal court.

An attorney can advise you about filing options, filing requirements, and the timelines involved.

An appeal is not a “do-over.” The appeal must point out what findings are in dispute and why they are contrary to the facts or applicable law. An appeal is not a chance to re-do your case or fix mistakes that you made at the hearing.

For Example:

If the hearing officer found in favor of the school division because the psychologist who testified for the parents did not express an opinion on an important issue, you cannot use an appeal to correct that omission in order to get a different result.

An error in law, which is a ground for appeal, could be where the hearing officer applies the wrong regulation to the facts.

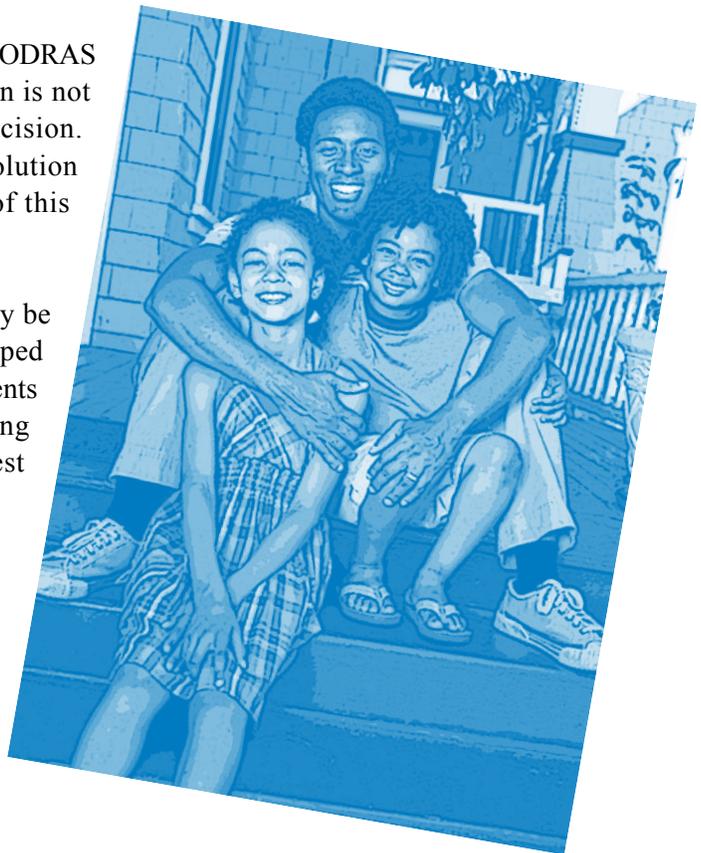
How long do I have to file an appeal?

The hearing officer will advise the parties of their appeal rights. You may have as few as ninety (90) days from the date of the hearing officer's decision to file an appeal. You should contact VDOE or an attorney to determine current deadlines. However, keep in mind that getting all the paperwork prepared for filing can take some time, so make sure that you don't wait until the last minute!

What if I prevail in the due process hearing and my school division does not follow the hearing officer's decision? What can I do?

You have the right to file a complaint with ODRAS (see Chapter 3) that the school division is not implementing the hearing officer's decision. ODRAS will follow its complaint resolution procedures as outlined in Chapter 3 of this manual.

Even though a due process hearing may be time and emotionally intensive, it is hoped that resolution of the issue supports parents and school administrators re-energizing their PARTNERSHIP in the child's best educational interests.



Additional Resources

After reading this manual, do you still have questions or concerns?

If you have additional questions or concerns about the dispute resolution process, first contact the Virginia Department of Education's Office of Dispute Resolution and Administrative Services (ODRAS). ODRAS can be reached by mail at:

Virginia Department of Education
Office of Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, Virginia 23218-2120

Phone contact information is noted in the Introduction to this manual.

Internet Resources, Legal Advocacy Groups, and Other Special Education Resources

Special education laws and their interpretations change frequently. Please consult the following resources in order to confirm the accuracy and currency of the information contained in this manual.

- ◆ Individuals with Disabilities Education Act, (IDEA) as amended, 1997 (20 U.S.C. §1400 et. seq.)
- ◆ Section 504 of the Rehabilitation Act of 1973, as amended.
- ◆ Individuals with Disabilities Education Law Reporter (IDELR), available at law school libraries, some law offices, and the Department of Education (reference use only).

- ◆ Regulations Governing Special Education Programs for Children with Disabilities in Virginia: www.doe.virginia.gov/VDOE/Instruction/Sped/varegs.pdf
- ◆ Complaint Procedures for Special Education: www.doe.virginia.gov/VDOE/dueproc
- ◆ The Special Education Due Process Hearing A Handbook for Parents and School Administrators: www.doe.virginia.gov/VDOE/dueproc
- ◆ Statewide Special Education Mediation Services: www.doe.virginia.gov/VDOE/Instruction/ssems.html
- ◆ Hearing Officer System Rules of Administration, Supreme Court of Virginia
- ◆ Due Process Hearing Request Form: www.doe.virginia.gov/VDOE/dueproc
- ◆ Special Education Complaint Form: www.doe.virginia.gov/VDOE/dueproc
- ◆ Legal Advocacy Center (unnamed) Due Process Video (2004): www.virginialac.org
- ◆ Virginia Department of Education IEP ToolKit: www.doe.virginia.gov/VDOE/Instruction/Sped/toolkit_main.html
- ◆ Virginia Assistive Technology System: www.vats.org/
- ◆ Parent Educational Advocacy Training Center: www.peatc.org/
- ◆ Virginia Office for Protection and Advocacy (VOPA): www.vopa.state.va.us/
- ◆ Speech-Language-Hearing Association of Virginia: www.healthcaresource.com/shav/
- ◆ Virginia Academy of School Psychologists: www.vaspweb.org/
- ◆ Virginia Occupational Therapy Association: members.aol.com/VOTA1/index.htm
- ◆ Virginia Physical Therapy Association: www.vpta.org/
- ◆ Virginia Psychological Association: www.vapsych.org/
- ◆ Training/Technical Assistance Centers (T/TAC): www.ttaonline.org
- ◆ Virginia Association of the Deaf: www.vad.org/
- ◆ Commonwealth Autism Service: www.autismva.org/
- ◆ Virginia Federation of the Council for Exceptional Children: virginiacec.homestead.com/homepage.html
- ◆ Learning Disabilities Association of Virginia: www.ldavirginia.org/
- ◆ LD Online: www.ldonline.org

ADDITIONAL RESOURCES

- ◆ Curry School of Education/UVA: curry.edschool.virginia.edu/curry/dept/cise/ose/
- ◆ Legal Advocacy Center: www.virginialac.org
- ◆ The EDLaw Center: www.edlaw.net/frames.html
- ◆ Children and Adults with Attention-Deficit/Hyperactivity Disorder (CHADD): www.chadd.org
- ◆ Council of Parent Attorneys and Advocates: www.copaa.net
- ◆ Educational Resources Information Center (ERIC): www.ericae.net
- ◆ Office for Civil Rights: www.ed.gov/offices/OCR.htm
- ◆ Special Education Resources on the Internet: www.SERIweb.com
- ◆ Legal Advice for Free: www.legaladviceforfree.com
- ◆ Findlaw: www.findlaw.com
- ◆ IDEA Practices: www.ideapractices.org
- ◆ PACER Center: www.fape.org
- ◆ National Information Center for Children and Youth with Disabilities (NICHCY) www.nichcy.org
- ◆ American Bar Association, Commission on Mental and Physical Disability Law
740 15th Street, N.W., 9th Floor
Washington, DC 20005
Phone: (202) 662-1570
Fax: (202) 662-1032
Web: cmpdl@abanet.org

The ABA's Commission on Mental and Physical Disability Law (Commission) was established to promote the ABA's commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities and to promote their full and equal participation in the legal profession. The Commission offers access to a list of attorneys who handle disability-related matters.

- ◆ Center for Special Education Advocacy (CSEA)
4600 Cox Road, Ste. 205
Glen Allen, Virginia 23060
Phone: (804) 967-2556

CSEA offers a referral service for parents who have children with disabilities and are in need of legal assistance.

- ◆ Children’s Law Center
T.C. Williams School of Law
University of Richmond, Virginia 23173
Phone: (804) 289-8921
Fax: (804) 287-6489

The Children’s Law Center (CLC), affiliated with the T.C. Williams School of Law at the University of Richmond, handles special education law and due process cases in the Richmond Metro Area (including Hanover, Henrico, and Chesterfield counties). The Center assists low-income families with special education issues and may consider representing parties in neighboring counties on a case-by-case basis.

- ◆ Council of Parents, Attorneys and Advocates (COPAA): www.copaa.net
1321 Pennsylvania Avenue, S.E.
Washington, D.C. 20003-3027
Phone: (202) 544-2210
E-mail: copaa@copaa.net

The COPAA offers a list of members who can assist parents of children with disabilities.

- ◆ Endependence Center (EC): www.endependence.org
6320 North Center Drive
Norfolk, Virginia 23502
Phone: (757) 461-8007
E-mail: cward@endependence.org

EC offers a referral service for parents who have children with disabilities and are in need of legal assistance. In addition, EC will advise parents in the filing of special education complaints, and represent parents in special education hearings.

- ◆ Just Children (JC)
c/o Legal Aid Justice Center
617 West Main Street, 3rd Floor
Charlottesville, Virginia 22903
Phone: (434) 977-0553
Fax: (434) 977-0558

JC, affiliated with the Legal Aid Justice Center, assists low-income families with special education law issues and cases in Albemarle, Greene, Louisa, and Nelson Counties and Charlottesville City. The center may consider representing parties in neighboring counties on a case-by-case basis.

ADDITIONAL RESOURCES

- ◆ Legal Aid Justice Center (LAJC)
101 W. Broad Street, Suite 11
Richmond, Virginia 23220
Phone: (804) 643-1086

LAJC assists low-income families with special education law issues and cases in its service area. LAJC may consider representing parties in neighboring counties on a case-by-case basis.

- ◆ Legal Aid Society, Roanoke Valley
416 Campbell Avenue, S.W.
Roanoke, Virginia 24016
Phone: (540) 344-2088
Fax: (540) 342-3064

The Legal Aid Society of Roanoke Valley (LAS Roanoke) assists low-income families with special education law issues and cases in its service area. LAS may consider representing parties in neighboring counties on a case-by-case basis.

- ◆ Parent Educational Advocacy Training Center (PEATC)
100 N. Washington Street, Ste. 234
Falls Church, Virginia 22046
Phone and TDD: (703) 536-3023
Spanish: (703) 569-6200
Toll free in Virginia: (800) 869-6782
Fax: (703) 693-3514
E-mail: partners@peatc.org

- ◆ Parent Educational Advocacy Training Center (PEATC Richmond)
2922 West Marshall Street
Richmond, Virginia 23230
Phone: (804) 819-1999
Fax: (804) 819-1990

PEATC assists parents and professionals in translating the legal rights of children with disabilities into genuine opportunities for full participation in school and community life.

- ◆ Rappahannock Legal Services, Inc. (RLS); Potomac Legal Aid Society:

www.users.erols.com/rlsfred/html

910 Princess Anne Street, 2nd Floor

Fredericksburg, Virginia 22401

Phone: (540) 371-1105

Fax: (540) 371-1114

E-mail: rlsfred@erol.com

RLS and PLAS assist low-income families with special education law issues and cases in its service area. RLS and PLAS may consider representing parties in neighboring counties on a case-by-case basis.

- ◆ Richmond Metro Pro Bono Services

The Bar Association works in participation with the Central Valley Legal Aid Society to recruit and train volunteers from the legal professions for legal services to those unable to afford a lawyer. Additional Richmond Metro Pro Bono services that might be able to offer assistance:

Henrico Bar Association Pro Bono Volunteers; Phone: (804) 282-8494

Legal Aid Hotline; Phone: (804) 788-8214 or 788-8395

Virginia Poverty Law Center; Phone: (804) 782-9430

VSU Young Lawyers Board Match; Phone: (804) 897-1515 or 788-8200

- ◆ Southwest Virginia Legal Aid Society (SWLAS)

227 W. Cherry Street

Marion, Virginia 24354

Phone: (540) 783-8300

E-mail: svlas@netva.com

SWLAS assists low-income families with special education law issues and cases in its service area. SWLAS may consider representing parties in neighboring counties on a case-by-case basis.

- ◆ The Law Center for Children
c/o Legal Services of Northern Virginia-Main Office

6066 Leesburg Pike, Ste 500

Falls Church, Virginia 22041

Phone: (703) 778-6800

Fax: (703) 778-4790

Assists families in the areas of education, public benefits, health and family law.

ADDITIONAL RESOURCES

- ◆ Virginia Legal Aid Society, Inc. (VLAS): www.vlas.org
513 Church Street
Lynchburg, Virginia 24503
(804) 528-4722

VLAS of Lynchburg, a nonprofit law firm, provides free civil legal services to eligible low-income residents in 20 counties and seven cities in central, southside, and western Tidewater Virginia. VLAS serves these communities by providing free information, advice, and representation in areas that include special education. In addition, VLAS represents and provides legal advocacy to expelled or suspended students with disabilities on issues that include provision of special education services.

- ◆ Virginia Legal Aid Society, Suffolk Office
140 W. Washington Street
Suffolk, Virginia 23434
Phone: (757) 539-3441

VLAS of Suffolk assists low-income families with special education law issues and cases in its service area. VLAS may consider representing parties in the neighboring counties on a case-by-case basis.

- ◆ Virginia Office for Protection and Advocacy (VOPA): www.vopa.stat.va.us
202 N. 9th Street, 9th Floor
Richmond, Virginia 23219
Phone: (804) 225-2042 (Voice/TTY)
(800) 552-3962 (Voice/TTY) (Toll-Free in Virginia)
E-mail: generalvopa@dsa.state.va.us

VOPA assists with disability-related problems, such as abuse, neglect, and discrimination. VOPA helps people with disabilities obtain services and treatment. VOPA also provides advocacy services and/or legal representation for individuals, including students with disabilities.

- ◆ Virginia State Bar
Virginia Lawyer Referral Services (VLRS)
Phone: (804) 775-0808
Toll free: 800-552-7977

VLRS provides the name and telephone number of a lawyer in your community who has indicated a particular interest in handling special education law issues and cases.

Appendix



*This Appendix contains the following sample forms**

- ◆ Mediation Request Form;
- ◆ Special Education Complaint Form;
- ◆ Due Process Hearing Request Form and Implementation Plan;
- ◆ Due Process Implementation Plan Form;
- ◆ Witness Subpoena Form;
- ◆ Subpoena Form for Production of Documents (Other than Confidential Health Care Records)
- ◆ Subpoena Form for Production of Documents (Confidential Health Care Records);
- ◆ Witness Subpoena and Subpoena for Production of Documents (Subpoena Duces Tecum) Form

* For the most current forms, please visit the website at www.doe.virginia.gov/VDOE/dueproc.



**VIRGINIA DEPARTMENT OF
 EDUCATION**
**STATEWIDE SPECIAL EDUCATION MEDIATION SYSTEM
 SERVICES REQUEST FORM**

I. STUDENT INFORMATION

- Student's Name: _____ Student's Grade/Program*: _____
- Student's Age: _____ Student's School Division: _____

II. BACKGROUND INFORMATION

Please provide requested information. Enter NA (not applicable) where appropriate.

- Date(s) of previous mediations: _____
- Date of complaints filing: _____

IF A DUE PROCESS HEARING HAS BEEN REQUESTED:

- Date of due process hearing request: _____
- Date of expedited hearing request: _____
- Hearing Officer's name: _____

Regulations permit both the parent and school division to agree that mediation will be used instead of a Resolution Session. Please initial here if you both agree.

Parent's Initials

School division representative initials

**III. MEDIATION REQUESTS need to be jointly requested
by the school division and the parent(s) as evidenced by the signatures below.**

PARTIES' NAMES AND SIGNATURES

SCHOOL PERSONNEL		PARENT/GUARDIAN	
Signature _____	Print Name _____	Signature _____	Print Name _____
Signature _____	Print Name _____	Signature _____	Print Name _____

IV. CONTACT INFORMATION	
SCHOOL REPRESENTATIVE	PARENT/GUARDIAN
Name: _____	Name: _____
Mailing Address: _____	Mailing Address: _____
_____	_____
Phone Number: _____	Phone Number: _____
Fax Number: _____	Fax Number: _____
E-mail: _____	E-mail: _____

<u>V. SUPPORT NEEDS</u>
<u>Translation Needs</u> (Please specify)
<u>Interpreter Needs</u> (Please specify)
<u>Accessibility Needs</u> (Please specify)
<u>VI. SUBMISSION INFORMATION</u>
Name of Individual Completing Form: _____
Date of Submission: _____

* **If the student is currently enrolled in a special education program, attach the most recent IEP.**

SEND FORM TO:
 Mr. Art Stewart
 Office of Dispute Resolution and Administrative Services
 Division of Special Education and Student Services
 Virginia Department of Education
 P. O. Box 2120
 Richmond, VA 23218-2120
arthur.stewart@doe.virginia.gov
 Telephone: 804-786-0711 | FAX: 804-786-8520

Revised 4/4/2008



VIRGINIA DEPARTMENT OF
EDUCATION

Division of Special Education and Student Services
Office of Dispute Resolution and Administrative Services
P. O. Box 2120
Richmond, Virginia 23218-2120
(804) 225-2013

SPECIAL EDUCATION COMPLAINT FORM
(Please type or write legibly. Sign and date)

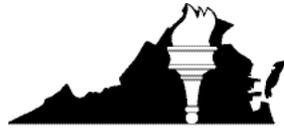
1. Name of Person Filing Complaint: _____
Address: _____

Telephone Numbers: Home () _____ Office () _____
Relationship to student: Parent Citizen Attorney Advocate

2. Full Name of Student: _____
School: _____ School Division: _____
Student's Address: _____

*In case of a homeless child or youth,
please include any available contact information for the child.*

3. Subject(s) the Complaint Involves: (Please include the disability area involved, and give a brief summary of what you allege to be the violation(s) of the special education regulations):



VIRGINIA DEPARTMENT OF
EDUCATION
REQUEST FOR DUE PROCESS HEARING
 (Virginia Department of Education Form¹)

If due process is requested by or on behalf of a student, please submit this form to the Superintendent, Special Education Director or other representative of the Local Educational Agency, who shall then forward such request form to the Virginia Department of Education. If due process is requested by the Local Educational Agency, please submit this form to the parent(s), representative, or student and the Virginia Department of Education.

(Please type or write legibly, sign and date)

1. Child's Name: _____
 Age: _____ Date of Birth: _____
2. Child's Home Address²: _____

 (City) (Zip)
3. City/County School Division: _____
4. School Child Attends: _____
5. Name of Parent(s)³ Initiating Hearing: _____
 Address: _____

 (City) (Zip)
 Telephone Numbers: Home () _____ Office () _____
6. Parent's (Parents') Representative, if any (i.e., Attorney, Advocate, etc.)
 Name: _____
 Address: _____

 (City) (Zip)
 Telephone Number: _____

¹ The use of this form is not mandatory; however, much of the information requested by this form is necessary in order to initiate a due process hearing. Please note that the failure to use this form may not be used to delay or deny a parent's right to a due process hearing.

² If a homeless child or youth, then provide available contact information.

³ Parent includes student at age 18, if parental rights have been transferred to the student, and any other individual who meets the definition of parent in the special education regulations.

REQUEST FOR DUE PROCESS HEARING

7. Description of the nature of the problem (What are the issues? What's wrong?) _____

8. Facts relating to the problem (What happened that caused the problem?) _____

9. A proposed resolution of the problem to the extent known and available to the parents.

(Please attach additional pages to provide additional information as necessary.)

NOTE: New issues may not be raised at the due process hearing that are not raised in this Notice, unless the other party agrees.

MEDIATION

Federal law requires that when a parent requests a hearing, the school division must inform the parent of the availability of mediation. Mediation is offered at no cost to the parties. Mediation is encouraged and may be beneficial in your case. Please be advised, however, that mediation is a voluntary system for resolving disputes. Both parties must agree to mediate their issues prior to the initiation of the mediation process. Any request for mediation cannot delay the appointment of a due process hearing officer or the scheduling of a due process hearing. Please indicate your decision below concerning your acceptance or rejection of the offer of mediation.

_____ I request mediation

_____ I decline mediation

Signature of Parent(s)

Date

Virginia Department of Education – Revised June 2005. Based on the *Individuals with Disabilities Education Improvement Act of 2004*, mandates effective July 1, 2005.

Rev 1/04



Division of Special Education and Student Services
 Office of Dispute Resolution and Administrative Services
 P. O. Box 2120, Richmond, Virginia 23218-2120
 (804) 225-2013

Implementation Plan

Complete and mail this form to the Coordinator of Due Process Services at the address above within 45 calendar days of the case disposition. All five sections of this form must be completed. Any required documentation such as mediation agreements, settlement agreements, and IEPs will be treated as confidential and subject to FERPA and FOIA protections. This form is available electronically at <http://www.doe.virginia.gov/VDOE/dueproc/>.

» Section 1: Party Information

Instructions: Provide the following information for the parties involved in the due process hearing.

School division:
Division superintendent:
Name of child:
Name of parent(s):

» Section 2: Resolution Information

Instructions: Provide the following information about the outcome of the due process hearing. Check the applicable box below for the case disposition. If none apply, explain on a separate sheet.

- | | |
|---|---|
| <input type="checkbox"/> Dismissal: mediation agreement | <input type="checkbox"/> Decision in favor of LEA |
| <input type="checkbox"/> Dismissal: settlement agreement | <input type="checkbox"/> Decision in favor of parents |
| <input type="checkbox"/> Dismissal: withdrawal of hearing request | <input type="checkbox"/> Split decision |

Name of hearing officer:
Date of decision or dismissal order:

» Section 3: Supporting Documentation

Instructions: Attach the following supporting documentation for the implementation of the decision or agreement and its effect on special education services (in accordance with 8 VAC 20-80-76.1.16 of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*):

1. A short statement describing how and when the decision or agreement will be implemented.
2. The settlement or mediation agreement.
3. The revised IEP if the decision or agreement affects the child's educational program.

» Section 4: Case Manager Information

Instructions: Provide the following information about the person charged with implementing the plan.

Name of case manager:
Position of case manager:

» Section 5: Required Signature

Division Superintendent's signature: _____	Date: _____
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- c: Parent(s) of child
 Attorney or advocate for parent(s)
 Case manager
 Hearing officer



SPECIAL EDUCATION DUE PROCESS HEARING

IN RE: _____ (Student) / _____ (School Division)

WITNESS SUBPOENA

TO: _____ (Person to be subpoenaed/Witness)

Address: _____

Phone: _____

By virtue of the authority vested in me, the undersigned Hearing Officer, in accordance with the provisions of Title 22.1-214.1 of the *Code of Virginia*, 1950, as amended, you are hereby commanded to **appear and give testimony** in a special education due process hearing involving the above-named student at the following time and place:

_____ (date) Hearing begins at _____ (You will be called to indicate the approximate time for your testimony to minimize unnecessary waiting.)

Location of hearing: _____

If for some compelling good cause it is impossible for you to comply with this subpoena on the date given, you are directed to immediately advise _____, (name of party or attorney requesting subpoena), at the following address and phone number: _____

FAILURE TO COMPLY WITH THIS SUBPOENA IS A VIOLATION OF THE LAW. THIS SUBPOENA IS ENFORCEABLE IN THE APPROPRIATE CIRCUIT COURT.

Hearing Officer

Dated

c: Parent/Parents' Attorney/Advocate
School Division/School Division Attorney



SPECIAL EDUCATION DUE PROCESS HEARING

IN RE: _____ (Student) / _____ (School Division)

SUBPOENA FOR PRODUCTION OF DOCUMENTS
(Other than Confidential Health Care Records)

TO: _____ (Person who must respond to subpoena)

Address: _____

Phone: _____

By virtue of the authority vested in me, the undersigned Hearing Officer, in accordance with the provisions of Title 22.1-214.1 of the *Code of Virginia*, 1950, as amended, you are hereby commanded to **produce the following records** or to make them available to _____ (name of party or attorney requesting subpoena), on or before _____ (date).

Pertaining to the student, _____ (name); date of birth: _____;

The records required to be produced are as follows:

(attach additional pages as necessary)

APPENDIX

You are directed to make arrangements with _____ (name of party or attorney requesting subpoena), as to the method by which you both wish to proceed in order to comply with this subpoena. _____ (name of party or attorney requesting subpoena), address and telephone number are:

If for some compelling good cause it is impossible for you to comply with this subpoena on the date given, you are directed to immediately advise _____, (name of party or attorney requesting subpoena), at the address and phone number listed above.

**FAILURE TO COMPLY WITH THIS SUBPOENA IS A VIOLATION OF THE LAW.
THIS SUBPOENA IS ENFORCEABLE IN THE APPROPRIATE CIRCUIT COURT.**

Hearing Officer

Dated

c: Parent/Parents' Attorney/Advocate
School Division/School Division Attorney



SPECIAL EDUCATION DUE PROCESS HEARING

IN RE: _____ (Student) / _____ (School Division)

SUBPOENA FOR PRODUCTION OF DOCUMENTS
(Confidential Health Care Records)

TO: _____ (Person who must respond to subpoena)

Address: _____

Phone: _____

By virtue of the authority vested in me, the undersigned Hearing Officer, in accordance with the provisions of Title 22.1-214.1 of the *Code of Virginia*, 1950, as amended, you are hereby commanded to **produce the following records** or to make them available to _____ (name of party or attorney requesting subpoena), on or before _____ (date).

Pertaining to the student, _____ (name); date of birth: _____ ;

Social Security Number: _____

The records required to be produced are as follows:

(attach additional pages as necessary)

NOTICE TO PROVIDERS

A copy of this subpoena has been provided to your patient or your patient’s counsel. You or your patient has the right to file a motion to quash (to object) to this subpoena. If you elect to file a motion to quash, you must file the motion within 15 days of the date of this subpoena.

You must not respond to this subpoena until you have received written certification from the party on whose behalf the subpoena was issued that the time for filing a motion to quash has elapsed and that:

- No motion to quash was filed; or
- Any motion to quash has been resolved by the court or administrative agency and the disclosures sought are consistent with such resolution.

If you receive notice that your patient has filed a motion to quash this subpoena, or if you file a motion to quash this subpoena, you must send the records only to the hearing officer who issued this subpoena using the following procedure: place the records in a sealed envelope and attach to the sealed envelope a cover letter to the hearing officer which states that confidential health care records are enclosed and are to be held under seal pending a ruling on the motion to quash the subpoena. The sealed envelope and the cover letter shall be placed in an outer envelope or package for transmittal to the hearing officer.

You are directed to make arrangements with _____ (name of party or attorney requesting subpoena), as to the method by which you both wish to proceed in order to comply with this subpoena. _____ (name of party or attorney requesting subpoena), address and telephone number are:

If for some compelling good cause it is impossible for you to comply with this subpoena on the date given, you are directed to immediately advise _____, (name of party or attorney requesting subpoena), at the address and phone number listed above.

FAILURE TO COMPLY WITH THIS SUBPOENA IS A VIOLATION OF THE LAW. THIS SUBPOENA IS ENFORCEABLE IN THE APPROPRIATE CIRCUIT COURT.

Hearing Officer

Dated

c: Parent/Parents’ Attorney/Advocate
School Division/School Division Attorney



SPECIAL EDUCATION DUE PROCESS HEARING

IN RE: _____ (Student) / _____ (School Division)

WITNESS SUBPOENA and
SUBPOENA FOR PRODUCTION OF DOCUMENTS (subpoena duces tecum)

TO: _____ (Person to be subpoenaed/Witness)

Address: _____

Phone: _____

By virtue of the authority vested in me, the undersigned Hearing Officer, in accordance with the provisions of Title 22.1-214.1 of the *Code of Virginia*, 1950, as amended, you are hereby commanded to **appear and give testimony** in a special education due process hearing involving the above-named student at the following time and place:

_____ (date)

Hearing begins at _____ (You will be called to indicate the approximate time for your testimony to minimize unnecessary waiting.)

Location of hearing: _____

If for some compelling good cause it is impossible for you to comply with this subpoena on the date given, you are directed to immediately advise _____, (name of party or attorney requesting subpoena), at the following address and phone number:

By virtue of the authority vested in me, the undersigned Hearing Officer, in accordance with the provisions of Title 22.1-214.1 of the *Code of Virginia*, 1950, as amended, you are also hereby commanded to **produce, and bring with you when you come to testify at the hearing at the time and place indicated above, the following records** pertaining to _____ (name of student); date of birth: _____:

APPENDIX

(attach additional pages as necessary)

You are directed to make arrangements with _____ (name of party or attorney requesting subpoena), as to the method by which you both wish to proceed in order to comply with this subpoena. _____ (name of party or attorney requesting subpoena), address and telephone number are: _____

**FAILURE TO COMPLY WITH THIS SUBPOENA IS A VIOLATION OF THE LAW.
THIS SUBPOENA IS ENFORCEABLE IN THE APPROPRIATE CIRCUIT COURT.**

Hearing Officer

Dated

- c: Parent/Parents' Attorney/Advocate
- School Division/School Division Attorney



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