Disability Rights WISCONSIN

Guide: Special Education Due Process Hearings

This resource is a general guide for people with disabilities and their families, not legal advice. For legal advice specific to your situation, please talk with an attorney.

Introduction

Navigating the Due Process Hearing system for special education is difficult. Disability Rights Wisconsin (DRW) created this guide to help students with disabilities and their families understand Due Process Hearings as an option to resolve problems with the school.

What is a Due Process Complaint and Hearing?

A **Due Process Complaint** asking for a hearing is one of the most complex, complicated, and formal processes families can use to resolve disputes about the education of a student with a disability. Almost always, an attorney will represent the school district during this process.

An Administrative Law Judge (ALJ) from Wisconsin's Division of Hearings and Appeals (DHA) hears the case as the Hearing Officer. Hearing officers work for Wisconsin's government, not the school district. The hearing will be in a conference room (or sometimes virtual) at an agreed-upon time and location. It will be recorded.

The Due Process Hearing procedure applies to students with Individualized Education Programs (IEPs). Students with 504 plans can't use Due Process this way. Both school districts and parents can ask for Due Process, although districts rarely do.

Learn more about the Division of Hearings and Appeals: doa.wi.gov/Pages/LicensesHearings/DHAGeneralGovernmentUnit.aspx

Learn more about Due Process Complaints: dpi.wi.gov/sped/dispute-resolution/due-process

Advocacy Tip

The Due Process Hearing system is complex. It will be stressful and may be expensive. You may want to try other dispute resolution options before asking for a Due Process Hearing.

Learn more about other dispute resolution options: dpi.wi.gov/sped/dispute-resolution

Due Process may be a good option if you aren't making progress with the IEP team and can't see a way forward besides a formal legal proceeding. Talk to a lawyer about your case before filing for Due Process, if you can.

Step 1: Asking for Due Process

Generally, you must ask for a Due Process Hearing within one year of what you're complaining about.[1] You can ask for a hearing by sending a letter or completed Due Process Hearing Request form to the Department of Public Instruction (DPI).

Find the Due Process Hearing Request form here: dpi.wi.gov/media/48690/

In your request, you must include:

- your child's name and address.
- name of the school your child goes to.
- a description of the problem you're filing about.
- a proposed solution to the problem you're filing about.[2]

[1] Wis. Stat. §115.80(1)(a)(1).

[2] Wis. Stat. §115.80(1)(a)(2).

You must send a copy of your request to both the Department of Public Instruction and the school district.[3] When they get your request, DPI will send you a copy of your procedural protections under the law,[4] and will find a hearing officer for your Due Process Hearing.[5]

Advocacy Tip

Make sure your Due Process Hearing request is complete and meets the above requirements! A hearing can't move forward unless you do the notice correctly, including sending a copy to the district and the Department of Public Instruction. It will also be hard to change the hearing request later in the process.

Step 2: School District Responds

After you ask for a Due Process Hearing, the district has 10 days to send you a written explanation of their side of the issue, if they haven't already given you one.[6] Even if they gave you one before you asked for the hearing, the district has 10 days from getting your Due Process Request to respond to your complaint.[7]

Within 15 days of getting your request, the district can tell the Hearing Officer if they think your notice wasn't done correctly. If the district does this, the Officer has 5 days to decide whether the notice was ok and tell each party.[8]

Step 3: Meeting with the School District

Within 15 days of getting your hearing request, the district will meet with you and relevant IEP team members to talk about the issue(s) from your complaint. You may be able to fix things with the district at this meeting.[9] The district must bring someone who can make decisions on the district's behalf. The district can't bring a

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3 Wis. Stat. §115.80(1)(d).

4 Id.

5 Wis. Stat. §115.80(2).

6 Wis. Stat. §115.80(1)(e)(1).

7 Wis. Stat. §115.80(1)(f).

8 Wis. Stat. §115.80(1)(e)(2).

9 Wis. Stat. §115.80(2m)(a).

lawyer to this meeting unless you bring one too.[10] You and the district can agree to waive this meeting or use mediation instead, if you prefer.[11]

Advocacy Tip

Try to be open to fixing the issue(s) with the district at this meeting. It may feel hard to listen to them — but if you can resolve things at this stage, you won't have to go through a whole hearing, which will be complicated and stressful.

Agreeing to mediation during this pre-hearing meeting achieves the same goals — no hearing and possible satisfactory resolution of the issue.

If you and the district agree to a solution at this meeting, you will write and sign an agreement that can be enforced in court.[12] If you and the district can't resolve the issue within 30 days of the hearing request, a Due Process Hearing will happen.[13]

Step 4: Due Process Hearing

At least 5 business days before the hearing, the district must send you all evaluations they did for your child through the present day, and any recommendations based on these evaluations, that they plan to use at the hearing. You must send these to the district too, if you have any. If you have evaluations but you don't send them ahead of time, you won't be able to use them at the hearing unless the district agrees.[14]

You can bring a lawyer or advocate to the hearing with you, although this isn't required. At the hearing, you and the district can show evidence to support your arguments. You and the district can also bring witnesses to support your side of the story. If you bring a witness, the district gets to question them after you. You can question the district's witnesses too.[15]

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[10] Wis. Stat. §115.80(2m)(b).

[11] Wis. Stat. §115.80(2m)(c).

[12] Note that parents or the school district can cancel an agreement within three business days of signing. Wis. Stat. §115.80(2m)(d).

[13] Wis. Stat. §115.80(2m)(e).

[14] Wis. Stat. §115.80(4).

[15] Wis. Stat. §115.80(3).

Advocacy Tip

During the hearing, if you think something the district or one of their witnesses is saying has nothing to do with the reason for the hearing, you can say that to the Hearing Officer. The Officer will decide whether to let them keep talking.

The district may also object if they believe something you or your witness says isn't relevant. Be ready to explain how each piece of information you're offering is important to the issue.

Step 5: Hearing Decision

After the hearing, the Hearing Officer has 45 days to send you and the district their decision.[16] The decision will be written and have fact findings and legal conclusions. The decision must be based on a "preponderance of the evidence" — meaning **most of the evidence** — from the hearing.[17]

Step 6: Appeal Rights

If you or the district disagree with the Hearing Officer's decision, you can appeal it in county or federal court. You have 45 days after getting the Officer's decision to appeal. If you or the district appeal, the new court will get the records from the Due Process Hearing and can hear more evidence.[18]

"Stay Put"

A unique part of the Due Process Hearing procedure is that it triggers something called "**Stay Put**." This means that, except in rare circumstances, the district can't change your child's educational placement while a Due Process Hearing is pending — unless you agree. See Wis. Stat. §115.80(8).

[16] Wis. Stat. §115.80(6).

[17] Wis. Stat. §115.80(5)(b).

[18] Wis. Stat. §115.80(7).