

# A PEATC

Do You Know....



## Factsheet for Virginia's Parents—Special Education Due Process Hearings

### What do I do when I Disagree with the School Division?

It is best to try to resolve disagreements by working together. When that fails, there are options available. Either a parent or a school division (LEA) can request a **Due Process Hearing** when no agreement can be reached. This fact sheet focuses on information parents need to know about due process.

### Key Points about Due Process Hearings

- A due process hearing is a **formal procedure** used to **resolve disagreements** about the identification, evaluation, or education of a child with a disability, or the provision of a free appropriate public education (FAPE) to that child.
- An **impartial trained hearing officer** approved by the Supreme Court of Virginia hears the case. Hearing officers are lawyers trained by the Virginia Department of Education (VDOE); they are **not VDOE employees**.
- **Like a court hearing**, both sides call witnesses, give evidence, and make legal arguments that support their case. The hearing is usually in a conference room at a **mutually agreed time and location** and is **recorded**.
- An **attorney** is not required. While parents can represent themselves, the LEA will most likely have an attorney, and parents should highly consider hiring someone with specialized knowledge of special education. There are **low cost and free legal resources** available to parents and the LEA must tell parents about these.
- Due process is **complex, technical, time-consuming**. It is also **costly** and **stressful** and is an **adversarial** process. So, it should be a last resort when other attempts at resolution and negotiation have failed.
- The child will **stay in their current placement** (*stay put*) once the request is filed unless the parent and the LEA agree to change the placement or if there are **weapons or drugs involved** and the child is considered a danger.

### How does the Process Work?

- A due process request must be given in writing and can be on the [Due Process Request Form](#). It must be sent to the VDOE **Office of Dispute Resolution and Administrative Services (ODRAS)** and the school division at the same time. It is important to include all required information.

### Filing a Due Process Request and Resources that Can Help

**Due process hearings are complicated. This fact sheet only touches the surface of the timelines, details, requirements, and exceptions to requirements. The resources below will help you better understand this process.**

#### RESOURCES:

[IDEA Regulations](#)  
[VDOE-Navigating the MAZE of Due Process Requirements](#)  
[VDOE Parents Guide to Dispute Resolution](#)  
[VDOE - Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#)

#### FILING A REQUEST

**By mail:** Office of Dispute Resolution and Administrative Services (ODRAS), Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120

**By fax:** (804) 786-8520

**By email:** [odras@doe.virginia.gov](mailto:odras@doe.virginia.gov)

#### Contact Us:

800-869-6782 / 703-923-0010  
[www.peatc.org](http://www.peatc.org)  
Hablamos Español

# Factsheet for Virginia's Parents

- The request must be filed within **2 years of the date** that the parent knew or should have known about the action/issue being disputed. There are some exceptions to the 2-year timeframe.
- Within **10 calendar days** of receiving the due process request, the LEA must send the parent a **response that addresses the issues or alleged violations** unless they have already provided Prior Written Notice on those issues. They also must tell the parents about their **right to mediation** and give them a copy of the **procedural safeguards** if they have not already done so.
- The LEA can **challenge the hearing request** with 15 days of receipt by saying that it is **insufficient** (does not include required information). The Hearing Office may allow the parents to revise the request.
- Within **15 calendar days** of receiving the request, the LEA must meet with the parents for a **Resolution Session**. This session is required unless both parties waive it or agree to go to mediation. If an **agreement is reached** either party has **3 days** to change their mind and continue to a hearing.
- If the issue **hasn't been resolved within 30 days** of the request being received, a hearing will be held. The Hearing Officer **decision** is due within **45 days** of the request being received or 45 days following the resolution period. A Hearing Officer's decision can be **appealed to state or federal court**.
- If the due process issue relates to a **disciplinary action**, an **expedited** (quicker) hearing can be requested. Expedited hearing requests have **different timelines**.

## • Examples of Issues Appropriate for Due Process

- ✓ Janine **struggles with reading**. Her parents have obtained private evaluations that say she has dyslexia and needs specialized instruction and support, but the school found her **ineligible for special education**. The parents disagree.
- ✓ Drew has new **behavior problems**, and his team wants to move him to a self-contained classroom. The parents say that the school hasn't done any behavior assessments or interventions and they don't **agree to the placement**.
- ✓ Daria has autism and did not make progress in public school. Her parents enrolled her in **private school** where she has thrived. Parents are asking for reimbursement **of the tuition** they paid and for future tuition to be covered.

## TIPS FOR PREPARING

- **Be specific and factual** (not emotional) in your allegations.
- **Organize** all relevant records in date order. This includes letters, emails, test results, evaluations, etc.
- Make a **list of people**, including experts that you think could provide **testimony that supports your case**.
- Either party can ask the Hearing Officer to **subpoena** witnesses and documents.
- If a witness/document is **not provided in advance**, you may not be allowed to present that evidence.
- Decide if you want the hearing to be **private or open** to the public.
- You are **entitled to an interpreter** if you need one.
- If the decision is in your favor, you can ask for your **attorneys and/or expert fees** to be reimbursed. This is not automatic.

PEATC's mission focuses on building positive futures for Virginia's children by working collaboratively with families, schools, and communities to improve opportunities for excellence in education and success in school and community life. For more information about us, please contact:

800-869-6782 / 703-923-0010

[www.peatc.org](http://www.peatc.org)



The contents of this factsheet were developed under a grant from the US Department of Education, #H328M140013-18. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government Project Officer. PEATC is not a legal services agency and cannot provide legal advice or legal representation. Any information contained in this factsheet is not intended as legal advice and should not be used as a substitution for legal advice.

