



## SPECIAL EDUCATION RIGHTS: ILLINOIS EDITION



# Due Process Hearings

This fact sheet answers:

- What Is a Due Process Hearing?
- When Should I File for Due Process?
- What If I Don't Want My Hearing Officer?
- What Do I Need to Do to Win My Case?
- And More

## What Is a Due Process Hearing?

A due process hearing is like a trial. You are saying the school made a mistake in how it taught your child. Both you and the school show records and have people tell the “judge” why your side is right. The “judge” decides who is right and how the problem will be fixed.

## Who Is the “Judge?”

A hearing officer acts like a judge in a due process hearing. The Illinois State Board of Education (ISBE) gives you the hearing officer.

## How Long Can Due Process Take?

A due process hearing can happen in just 45 days, but it often takes a few months.

## Where Is the Hearing?

The hearing will happen at your child’s school or at the school district’s office.

## Who Can File for Due Process?

- You can as the parent.
- Your child, if she is 18 or older and has not signed over her rights to make school decisions to someone else.
- The school can also file for due process against you.

## Does the School Have to Go to a Hearing?

Yes. Unlike mediation, due process is not voluntary. The school must go.

## What Problems Are a Good Fit for Due Process?

You can file for due process when you do not agree with your child’s IEP or how the school is helping your child. Some examples include when:

- The school won’t test your child for an IEP.
- The school tests your child but says she does not need an IEP.
- Your child is not being taught the way her IEP says she needs to be.
- The school will not let your child in a classroom with typically developing classmates.
- The school will not give your child a special kind of therapy.
- Your child is not making progress and the school will not change how it teaches her.

## When Should I File for Due Process?

Due process can take a lot time and money. **Think of it as a last resort. First try writing the school, having an IEP meeting, and going to mediation.**

You have to file for due process within 2 years from the time the school broke the law or you learned that the school broke the law. There are a few exceptions to this rule. You can talk to an attorney or call Equip for Equality’s Helpline to see if your problem is one of these exceptions.



### How Do I File for Due Process?

You file for due process by sending the school district a form called a due process complaint notice.

The law says very specific things must be in your complaint. If you do not include everything, the school can say your letter is not “good enough” and you will have to send another complaint. To make sure you have everything, use ISBE’s form: [www.isbe.net/Documents/dp\\_parental\\_19-86a.pdf](http://www.isbe.net/Documents/dp_parental_19-86a.pdf)

Be sure to include:

- The date.
- Your child’s name, address, and birthday.
- The name of your child’s school.
- Background on your child’s disability/IEP.
- The problem. Be very specific. The hearing officer knows nothing about you, your child, or anything that has happened.
- Any paperwork that proves what you are saying.
- What you want to happen. Be specific so the hearing officer knows what you want.

If you forget something, you will not be allowed to talk about it at the hearing. You can add to or change your complaint up to 5 days before the hearing if the school agrees or the hearing officer approves it.

Sign your letter and email, mail, or fax it to your child’s school superintendent. Send a copy to ISBE.

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### What If I Don’t Want My Hearing Officer?

You have 5 calendar days to research your hearing officer to see if you want to remove or “strike” him so ISBE gives you a different hearing officer. Each side gets one strike.

Some hearing officers are known to be more parent-friendly and others are known to be more school-friendly. Do your research.

ISBE has information about each hearing officer and decisions they have made on its website here: <https://www.isbe.net/Pages/Special-Education-Due-Process.aspx>

### What Happens After I Get a Hearing Officer?

You, the school, and the hearing officer will have a call to talk about your due process complaint and schedule the hearing.

You and the school are supposed to meet to try to fix the problems. This can be a mediation (where the school can bring an attorney even if you don’t) or a “resolution session” (where the school can only bring an attorney if you do). The resolution session or mediation meeting should happen within 30 days.

If you and the school fix the problem, you can withdraw the due process request. If you do not reach an agreement, the hearing should be held within 45 days. This date is often pushed back and takes much longer.

If you and the school agree that you do not want a resolution session or mediation, you can waive it. We recommend that you **do not waive it** so you can avoid the stress and work of a full due process hearing.

### What Do I Need to Do to Win My Case?

Winning is never a sure thing, but here are a few ways to help improve your odds.

- Be prepared for the meetings that happen before the hearing such as the “status calls” (to discuss updates) and the pre-hearing conference (a phone call where you talk about the witnesses you want at the hearing). You will have to submit paperwork for the prehearing conference and the hearing.
- Have records that prove the things you are saying.
- Write a detailed and easy to follow due process complaint (see above).
- Get a special education attorney. Parents who do not have a lawyer are much more likely to lose.
- Have experts come to the hearing to back up what you are saying.
- Practice the things that you will say. It can be very hard but try to stay calm and be very clear so the hearing officer can understand what happened.

### What Happens If I Win the Hearing?

This depends on what you said the school did wrong and how the hearing officer should fix it. The hearing officer can order the school to:

- Pay for your child to go to a new school.
- Give your child a new teacher with special training.
- Pay for your child to get tutoring or therapy inside and outside of school.
- Give your child a new support like an aide, Assistive Technology, a Behavior Intervention Plan, or summer school.

A hearing officer **cannot** order the school district to pay you money as a punishment to the school for breaking special education laws.

### What Happens If I Lose?

You can appeal the decision in state or federal court. You must start the appeal within 120 days of the date of the hearing officer’s decision. You will probably need an attorney to help you win your appeal because court is even more formal than a due process hearing. ■



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## Have More Questions?

Call our Special Education Rights Parent Helpline.

**1-866-KIDS-046** (1-866-543-7046)  
[SpecialEd@equipforequality.org](mailto:SpecialEd@equipforequality.org)  
[www.equipforequality.org/helpline](http://www.equipforequality.org/helpline)