

Due Process Hearing Request Information Sheet and Model Form

This model form may be used to request a special education or Early Intervention/Early Childhood Special Education (EI/ECSE) due process hearing. This form may be used to:

- Request a due process hearing in accordance with IDEA 2004 to resolve a disagreement about the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education to the child (or, for a child from birth through age two, the provision of appropriate early intervention services); or
- Request an expedited due process hearing when the parent of a child with a disability disagrees with any decision regarding the manifestation determination or placement resulting from a district or ECSE disciplinary action. (School districts and ECSE programs may also request an expedited hearing if the district or program believes that maintaining the child's current placement is substantially likely to result in injury to the child or to others.)

Whether or not a party uses this form, a due process hearing request must include the following information:

- The name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- A description of the nature of the problem of the child relating to the initiation or change of the child's identification, evaluation, educational placement or the provision of a free appropriate public education to the child (or, for a child from birth through age two, the provision of appropriate early intervention services); and
- A proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a due process hearing until the party, or the attorney representing the party, files a hearing request that meets these requirements. The party requesting the hearing, or the attorney representing that party, must file the hearing request with the other party and with the Oregon Department of Education (ODE). For the purposes of the timelines, "filing" means date of receipt by ODE, and the counting of days begins on the next calendar day. Any deadlines that fall on a weekend or legal holiday will be treated as falling on the next business day.

The hearing request must set forth alleged violations that occurred not more than **2 years** before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply to a parent if the parent was prevented from requesting the hearing due to: (a) specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request; or (b) the school district's withholding of information from the parent that was required by the IDEA to be provided to the parent.

A party's due process hearing request is deemed to be sufficient unless the party receiving the notice notifies the assigned administrative law judge (ALJ) in writing that the hearing request does not meet the requirements listed on the first page. This notice must be provided to the ALJ within **15 days** of receiving the hearing request. The ALJ must make a determination on the face of the hearing request whether the request includes the required content. The ALJ must make this determination within **5 days** of receiving an objection to the sufficiency of the hearing request, and must immediately notify the parties in writing of the determination.

A party may amend its due process hearing request only if: (a) The other party consents in writing to this amendment and is given the opportunity to resolve the complaint through a resolution session; or
(b) the administrative law judge grants permission and the request is not later than **5 days** before the due process hearing occurs.

The party requesting the hearing may not raise issues at the hearing that were not in the due process hearing request unless the other party agrees otherwise.

Under IDEA 2004, the parties to a due process hearing must meet for a resolution session within 15 days of the receipt of the hearing request unless the parties agree to waive the resolution session or to participate in mediation instead of a resolution session. The school district or EI/ECSE program is responsible for scheduling and conducting the resolution session. Information about resolution sessions is available on the ODE website at: <https://www.oregon.gov/ode/rules-and-policies/Documents/resolutionsessioninfoform.pdf>

Special education mediation services are available from ODE at no cost to parents or the district or program when the parties agree to mediate, whether or not a hearing has been requested. Information about mediation is available on the ODE website at: <https://www.oregon.gov/ode/rules-and-policies/Documents/medhandbook.pdf>

If the parties are unable to resolve the dispute within 30 days of receipt of the hearing request, the hearing timeline begins. In general, due process hearings must be held and an opinion issued within 45 days following the end of the 30-day preliminary period. An ALJ may agree to extend this timeline at the request of a party. For expedited hearings, the hearing must be held within 20 school days following the filing of the hearing request, and the final order must be issued within 10 school days after the hearing.

ODE refers requests for due process hearings to the Office of Administrative Hearings (OAH). OAH will schedule a pre-hearing conference to occur shortly after the end of the 30-day preliminary period following the hearing request.

Citations:

20USC§1415(b)(7)(PartB)

20 USC § 1439(a) (PartC)

20 USC § 1415(k)(4) (Part B - expedited)

20 USC § 1415(f)(3) (timelines, exceptions, limitations)

20 USC § 1415(c)(2) (sufficiency of hearing request, amendments) 34 CFR 300.507, 300.508, and 300.51 1(e)

OAR 581-015-2335 through 2385

Hearing Timelines under IDEA 2004¹

Preliminary Time Period	
Filing	<p>Party ("requesting party") files hearing request on other party and the Oregon Department of Education (ODE). The request must include¹:</p> <ul style="list-style-type: none"> ○ The name of the child, child's address (or contact information in the case of a homeless child) and name of school child attends; ○ A description of the nature of the problem of the child relating to a proposal or refusal to initiate or change the child's identification, evaluation, or educational placement, or the provision of a free appropriate public education to the child, including facts relating to such problem; and ○ A proposed resolution of the problem to the extent known and available to the party at the time.
Within 1-2 days	ODE acknowledges receipt in writing to requesting and receiving parties, provides Notice of Procedural Safeguards, and refers to the Office of Administrative Hearings (OAH).
Within a week	OAH appoints an administrative law judge (ALJ) & sends confirmation to both parties, including preliminary timelines and sets date/time for pre-hearing conference, and, beginning September 1, 2007, hearing and final order dates. (see Hearing Time Period, next page).
By day 10	<p>(a) If school district did not already send prior written notice to parent regarding the subject matter of the hearing request, the district must send parent a response that includes²:</p> <ul style="list-style-type: none"> ○ An explanation of why the district proposed or refused the action raised in the hearing request; ○ A description of other options the IEP team considered and why rejected; ○ A description of each evaluation procedure, etc., used as basis for proposed or refused action; ○ A description of factors relevant to the district's proposal or refusal. <p>(b) Except as provided in (a), the receiving party shall send the requesting party a response that specifically addresses the issues raised in the complaint.³ This response is not a pleading, should not be sent to the ALJ, and is not a part of the hearing record unless entered as an exhibit by a party.</p>
By day 15 (By day 7 if expedited hearing)	Parties participate in resolution session unless parties agree in writing to waive resolution session or to participate in mediation in lieu of a resolution session ⁴ .
By day 15	<p>Deadline for receiving party to notify ALJ and requesting party if receiving party believes the due process hearing request is not sufficient.⁵ See "Filing".</p> <p>NOTE: ALJ has 5 days from receipt of this notice to determine the sufficiency of the hearing request and to inform the parties in writing.⁶</p>

¹ 20 USC § 1415(b)(7)(A)(ii); 34 CFR 300.507; OAR 581-015-2345.

² 20 USC § 1415(c)(2)(B)(i)(1); 34 CFR 300.508(e); OAR 581-015-2345(2).

³ 20 USC § 1415(c)(2); 34 CFR 300.508(f); OAR 581-015-2345(2)(b).

⁴ 20 USC § 1415(f)(1)(B); 34 CFR 300.510; OAR 581-015-2355.

⁵ 20 USC § 1415(c)(2)(B)(i)(1); 34 CFR 300.507(d); OAR 581-015-2350.

⁶ 20 USC § 1415(c)(2)(D), 34 CFR 300.507(d); OAR 581-015-2350(2). If insufficient, the party may amend its hearing request only with the other party's consent (and new opportunity for resolution session or ALJ grants permission (but must be at least five days before hearing). If so, the preliminary time period starts over again. 20 USC § 1415(c)(2)(E), 34 CFR 300.507(d)(4), OAR 581-015-2350(4).

Day 30 (by day 15 if expedited hearing)	If the district has not resolved the complaint to the satisfaction of the parents, the due process hearing time period begins. ⁷
Hearing Time Period	
Within 5-7 days (next day if expedited hearing)	<p>(a) The ALJ holds pre-hearing conference to:</p> <ul style="list-style-type: none"> ○ Determine status of any resolution session, mediation, or settlement process; ○ If no resolution completed: <ul style="list-style-type: none"> ○ Identify issues to be resolved at hearing; ○ Determine whether expedited hearing timelines apply. ○ Resolve any discovery or other prehearing matters and, if appropriate, stipulations of fact; ○ Confirm the date(s) and expected length of hearing; ○ Determine a briefing schedule, if appropriate, and confirm final order date. ○ Determine whether the verbatim record of hearing will be written and/or electronic and, if written, make appropriate arrangements with the LEA to provide a court reporter; ○ Determine whether the hearing will be closed or open to the public; ○ Determine whether the final order will be written and/or an electronic recording; and ○ Review the parties' rights and procedures for the hearing, and evidentiary requirements. <p>(b) The ALJ issues Notice of Hearing and Hearing Rights.</p>
Day 6 – 45	<p>Completion of pre-hearing matters, briefing schedule according to pre-hearing order, conduct of hearing, and issuance of final order.⁸</p> <p>EXCEPTION: Expedited hearings must be conducted within 20 school days (from date of hearing request), and a final order issued within 10 school days after the hearing.⁹</p> <p>NOTE: At least 5 business days before a hearing, each party must disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing. An ALJ may bar any party that does not comply with this disclosure requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.¹⁰</p>

⁷ 20 USC § 1415(f)(1)(B)(ii); 34 CFR 300.510(b); OAR 581-015-2355(2). The 45 day timeline begins the day after one of the following events: both parties agree in writing to waive the resolution session (and do not agree to try mediation); after either mediation or resolution meeting starts (within the 30 day period), the parties agree in writing that no agreement is possible; both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later one or both parties withdraw from mediation.

⁸ 34 CFR 300.515(a); OAR 581-015-2375. An ALJ may grant specific extensions of time beyond this time period at the request of either party. 34 CFR 300.515(c), OAR 581-015-2375(2).

⁹ 20 USC § 1415(k)(4)(B); 34 CFR 300.532(c)(2); OAR 581-015-2445.

¹⁰ 20 USC § 1415(f)(2); 34 CFR 300.512; OAR 581-015-2360.

Directions for Completing Request for Due Process Hearing Form

- a. Due process hearing requests **must** be sent to the State Superintendent of Public Instruction **and** to the other party. Parents should enter the name of the school district superintendent and the address of the school district office. Parents of children in EI/ECSE programs should enter the name of the EI/ECSE agency providing services.
- b. Complete the following sections:
 1. Parent information:
 - Complete the contact information for person requesting the hearing: name, address, phone number(s), fax number, and e-mail address.
 - Identify your relationship to the child. For a minor child, the relationship would be parent, guardian, or surrogate parent. For a student who is 18 or older, the hearing must be requested by the student, unless the student has a court-appointed guardian, court-appointed surrogate parent, or surrogate appointed at the request of the student.
 2. Child information: Identify the child's legal name, date of birth, address (or, if homeless, contact information), and name of school or program child attends.
 3. Legal representation (if any): Identify the attorney's name, firm, address, telephone number(s), fax number, and e-mail address.
 4. Problem (statement of issues): Describe the problem with the child's special education or EI/ECSE program, and the specific actions that the school district or EI/ECSE program has taken or refused to take. Include facts about the problem. Attach more pages as needed.
 5. Proposed solution: Describe what you think needs to be done to solve the problem, if you know or have any specific ideas at this time. Attach more pages as needed.
 6. Mediation: Please indicate (by "yes" or "no") if you would like to try mediation to resolve this dispute, if you would like more written information about mediation, and if you would like to talk to another parent about mediation.
 7. Scheduling resolution session: Because the district or program must hold the resolution session within 15 days following receipt of the hearing request, please identify all dates and times you would be available for a resolution session in the next 15-17 days (17 allows 2 extra days for the hearing request to be received by the other party).
 8. Scheduling pre-hearing conference: Please indicate all dates and times you will be available during the ten-day window following the end of the 30-day preliminary period.

Sign and date the form, and print your name.

Request for Due Process Hearing

This model form may be used to request a Special Education or Early Intervention/Early Childhood Special Education (EI/ECSE) Due Process Hearing.

1. Complainant (Parent/Adult Student/Public Agency) Information

Name(s) _____

Address _____

City/State/Zip _____

Telephone number(s) _____ FAX number _____

Email address _____

Relationship to child _____

* Is an Agency provided interpreter required for this investigation? ☐ yes ☐ no. Language _____

2. Child Information

Name of Child _____ Date of Birth _____ Grade _____

Child's address (or contact information) _____

City/State/Zip _____

School or Program Child Attends: _____

Disability (*optional*) _____

3. Legal Representation (if any)

Attorney Name/Firm _____

Address _____

City/State/Zip _____

Telephone number(s) _____ FAX number _____

E-mail _____

4. Concerns Describe the IDEA violation and the specific facts that relate to that violation. The complaint must describe a concern(s) that happened within the last 2 years prior to the date that the complaint is received. Include dates, names and locations. (Attach additional pages if needed.)

Please check the box(es) and describe your concerns:

☐ Identification ☐ Evaluation ☐ Educational Placement ☐ the Provision of a Free Appropriate Public Education to your child

Request for Due Process Hearing

5. Proposed Solution: (Attach additional pages if needed)

6. Mediation (check applicable boxes)
(optional)

Mediation is available to parents at no cost and can be entered into with the agreement of the School District. Mediation may proceed concurrently with the complaint investigation process.

☐ I request mediation and authorize the school district and ODE to share educational information with the mediator about my child's identity, educational needs, and information pertinent to the mediation. I understand the mediator will keep this information confidential.

☐ I would like more information about mediation.

7. Scheduling resolution session: A resolution session must be scheduled within 15 days of receipt of your request. Indicate dates and times within those 15 days when you would be available to meet for a resolution session.

8. Scheduling pre-hearing conference: 30 to 40 days after your hearing request is received; the Administrative Law Judge (ALJ) will hold a Prehearing Conference. Please provide any information that would assist the ALJ in scheduling the Prehearing Conference.

The Due Process Hearing Request must be signed and mailed, faxed or emailed to both:

Assistant Superintendent – Student Services
Public Service Building
255 Capitol Street NE
Salem, Oregon 97310-0203
Fax: 503-378-5156
ode.disputeresolution@ode.oregon.gov

**Local School District,
ESD or EI/ECSE Program**

Name: _____

Superintendent: _____

Address: _____

City: _____

State/Zip: _____

Signature (required)

Date