



STATE OF VERMONT
DEPARTMENT OF EDUCATION
120 State Street
Montpelier, VT 05620-2501

To: Superintendents, Principals and Special Education Directors
From: Karin Edwards, Director of Student Support Services
Date: September 1, 2006
Re: Vermont's New Special Education Due Process System

The Vermont Department of Education (DOE) is pleased to announce the roll-out of the new special education due process system that went into effect with the adoption of the revised Vermont Special Education rules effective August 24, 2006. Although consistent with the direction of the reauthorized IDEA, these changes were in response to Vermonters - both school representatives and parent representatives - wanting to improve the current due process system in Vermont.

The changes focus primarily on due process, but also include some changes to special education mediation. The intent of the changes is two part: (1) to encourage the use of mediation or the new federal "resolution session" which is a meeting between the school district and the parent to identify disputed issues and provide opportunity for the parties to resolve the matter without having to proceed to a hearing and (2) if either mediation or resolution session is unsuccessful, to contain costs for parties and shorten the timeframe for concluding due process hearings. As adopted, the new due process rules emphasize *pre-hearing exchange of information*, use of affidavits, and focusing of issues so that two-day hearings become the standard and decisions are issued within the 45-day timeframe.

This memo provides information on the following:

1. What Should the School Expect Prior to and Upon Receipt of Complaint
2. How to Prepare for the Initial Telephone Conference Call
3. What Happens if the School Did Not Provide Prior Written Notice Regarding an Issue Raised in the Complaint
4. Considering a Challenge to the Sufficiency of the Complaint
5. Preparing for the Pre-hearing Conference; Pre-Hearing Order
6. Last Steps for Disclosing Information Prior to the Hearing

Vermont's New Special Education Due Process System

Vermont Department of Education

7. What Happens if the Parties Reach Agreement Prior to the Hearing
8. What to Expect At and Following the Hearing

This memo highlights some of the key elements of the new due process rules *but is not a complete outline of either party's obligations in due process*. Please be sure to carefully review Vermont State Board of Education (SBE) Manual of Rules and Practices, Special Education Rules on due process and related provisions on mediation for a full explanation of your obligations.

1. What Should the School Expect Prior to and Upon Receipt of Complaint

- The statute of limitations remains the same but worthy of noting. The date of the alleged action of dispute must have occurred within two years of the filing. However, if the parent is requesting funding for the tuition for a unilateral placement, the complaint must be made no more than 90 days after the placement. There are also exceptions to the time limits if the parent was not clearly informed of his/her rights or if there were certain misrepresentations made by the school district.
- On the day of receipt, the DOE legal administrator will confirm receipt of the complaint with the special education administrator or superintendent through fax or e-mail and a copy by first class mail.
- The DOE legal administrator will also contact the special education administrator to schedule the initial conference call. If the district may be represented by an attorney, it will need to determine his/her availability for the initial call. Or, at a minimum, be ready with its attorney's dates of availability for the pre-hearing conference and the hearing.
- As there is now a much higher standard for a hearing officer to grant an extension to the 45-day due process timeline, it is critical that the initial telephone conference call occur within the four days so as to not unnecessarily use up the parties' days to complete necessary steps to prepare for the hearing.

2. How to Prepare for the Initial Telephone Conference Call

- Within two business days of receiving the complaint, the DOE legal administrator will send a letter to both parties confirming the time and date for the initial telephone conference between the hearing officer and the parties. The telephone conference will be held no later than four business days after the receipt of the complaint.
- During the conference call, the hearing officer will explain two options, resolution session and mediation, and ask the school and the parents whether both want to hold a resolution session or a mediation.
- If both parties want to hold a resolution session, the hearing officer ask the parties to pick a date, time, participants and location while on the call.
- If the parties instead decide to go to mediation, the hearing officer will identify a date by which the mediation must occur. (After the conference call, the hearing officer will notify the DOE legal administrator to initiate the mediation scheduling process.)

Vermont's New Special Education Due Process System

Vermont Department of Education

- Regardless if the parties elect to go to a resolution session or mediation, the hearing officer will count out the days beyond the resolution period¹ and inform the parties of the dates for the pre-hearing conference, deadlines for exchange of information and the hearing.
 - If the parties waive the resolution session and do not want to go to mediation, the hearing officer will have the parties confirm in writing their decision to waive and inform the parties of the date that the 45-day due process timeline will commence. The hearing officer will schedule the dates for the pre-hearing conference, deadlines for exchange of information and the hearing. (Note: If the school files for due process, there is no resolution period, thus the 45-day timeline begins on the date the complaint was received by the commissioner.)
 - The hearing officer will inform the parties of the deadlines for the following: the school's response, a challenge to the sufficiency of the complaint, the detailed written statement and the opposing party's defenses.
 - The hearing officer will explain options for parties considering the use of expert witnesses, as well as the use of affidavits.
 - The hearing officer will follow up the initial telephone conference call with a scheduling order sent to the parties.
- 3. What Happens if the School Did Not Provide Prior Written Notice Regarding an Issue Raised in the Complaint**
- The school is required to have already shared with the parent the explanation of why it proposed or refused to take the action raised in the parent's complaint, and will have provided supporting information. The DOE "Form 7" usually accomplishes this notice to the parent.
 - If the school did not adequately provide this notice to the parents, the school must do so within 10 days of the receipt of the complaint.
- 4. Considering a Challenge to the Sufficiency of the Complaint**
- Within 15 days of receipt of the complaint, the school may challenge the sufficiency of the complaint in writing to the hearing officer.
 - No later than five days following receipt of a sufficiency challenge, the hearing officer will let the parties know if the complaint is sufficient to move forward. (Although this may not always be possible, the hearing officer may be able to send a faster response so that the parties may know the status of the complaint prior to the mediation.)
 - If the hearing officer finds the complaint insufficient, the complaint may not move forward unless both parties agree to an amendment or if the hearing officer agrees to allow an amendment.

¹ The recently released federal IDEA regulations go into effect on October 13, 2006. Any discrepancies between the new state rules and new federal regulations will be addressed through the state rule making process to commence later this fall. Although mediation outside the resolution period must not delay the right to a hearing, mediation may be used in lieu of a resolution session. When mediation is used in lieu of a resolution session, this allows for the use of a 30-day resolution period before the 45-day due process timeline commences. Note that the federal regulations also provide possible adjustments to the resolution period. The hearing officer will guide the parties through the timelines based on their decision to either go to a resolution session, a mediation, or waive the resolution session in a parent initiated complaint.

Vermont Department of Education

- If amended, the timelines for *the resolution session* and the resolution period start from the beginning.²

5. Preparing for the Pre-hearing Conference; Pre-hearing Order

- The pre-hearing conference is a face-to-face meeting of the hearing officer and the parties. Plan to be available for four hours. As in most instances each party will have one day to put on its case at the actual hearing, the pre-hearing conference is a critical step. It is a key point for the hearing officer and parties to focus the issues of the complaint and is critical to ensure a full and fair hearing.
- Certain steps need to occur prior to the pre-hearing conference:
 - If the parent filed the complaint, he/she must provide the school and the hearing officer a detailed written statement at least three days prior to the pre-hearing conference. Through this document, the parent will give the school and the hearing officer a more in-depth explanation of the issues raised in the original complaint.
 - At least one day before the pre-hearing conference, the school will provide the parent and the hearing officer with a written statement of any defenses. Through this document, the school will elaborate on its response to the parent's issues and supporting information. (If the school filed the complaint, these steps are reversed: In that instance, the school must provide a detailed written statement and the parent files the statement of any defenses.)
- At the pre-hearing conference, documents need to be exchanged as follows:
 - Each party must provide a preliminary witness list, including a summary of testimony expected from each witness.
 - Each party must provide a statement of facts that are not disputed.
 - The school must provide a binder of proposed core exhibits.
- Following the pre-hearing conference, the hearing officer will issue a pre-hearing order which will include a clear and specific identification of the issues to be heard, rulings on any motions heard, any decisions made about evidence or order of presentation, scheduling or other related matters.

6. Last Steps for Disclosing Information Prior to the Hearing

- Affidavits may be used to reduce time at the hearing for testimony. Keep in mind that the affidavit must be submitted in advance and the school's witness will have to be available for cross examination unless both parties agree that his/her presence is not necessary. Testimony may be in person or by phone.
- No later than five business days prior to the hearing, all evidence and any supplements to the school's witness list and core exhibits must be sent to the opposing party.

² A discrepancy between the new federal regulation 34 C.F.R. 300.503(d)(4) and the new language in VSBE Rule 2365.1.6.5(d) exists and the state rule will need to be amended to be consistent with the federal language. In the interim, the hearing officers will apply the federal language. In so far as the state rule could be construed as extending the statute of limitations pursuant to VSBE Rule 2365.1.6.1, it cannot be interpreted that way.

Vermont Department of Education

- At least five business days prior to the hearing, each party will disclose to the opposing party all evidence including:
 - Final witness list with a brief description of testimony.
 - All documents requested for admission into evidence.
- If neither party objects, exhibits will be shared with the hearing officer two business days prior to the hearing. Sharing exhibits in advance with the hearing officer can help him/her to be better prepared for the hearing and manage the hearing more efficiently.

7. What Happens if the Parties Reach Agreement Prior to the Hearing

- If the school and the parent reach an agreement prior to the hearing, the school must inform the hearing officer in writing that an agreement has been reached and include a written statement signed by both parties requesting the cancellation of the hearing and the dismissal of the case with prejudice.
- A legally binding written settlement agreement between the parties, whether reached through a resolution session, mediation or other means of negotiation between the parties, shall be enforceable as between the parties in the appropriate state court or federal court.

8. What to Expect At and Following the Hearing

- Each party is limited to one day to present its case, including questioning of any witnesses, unless the hearing officer determines that more time is necessary.
- The hearing officer will render a decision not later than 45 days after the resolution session, mediation or the parties written decision to waive the resolution session.
- Exceptions to the 45-day timeframe are not to be expected. Exceptions will be granted under limited circumstances when the delay does not negatively impact the student, create a financial burden for either party that outweighs the need for the delay *and* if the delay is determined necessary to provide either party adequate time to prepare its case.

As noted above, this memo only highlights some key elements to the new due process system. It is not a full description of all the rights and obligations of parties within due process.

We hope this memo will help as an introduction to the new special education due process rules and relevant sections of the mediation rules. Please carefully review the rules to guide you through due process.

In addition to this memo, please note that there are two upcoming trainings to learn more about the revised special education rules, including the sections discussed above.

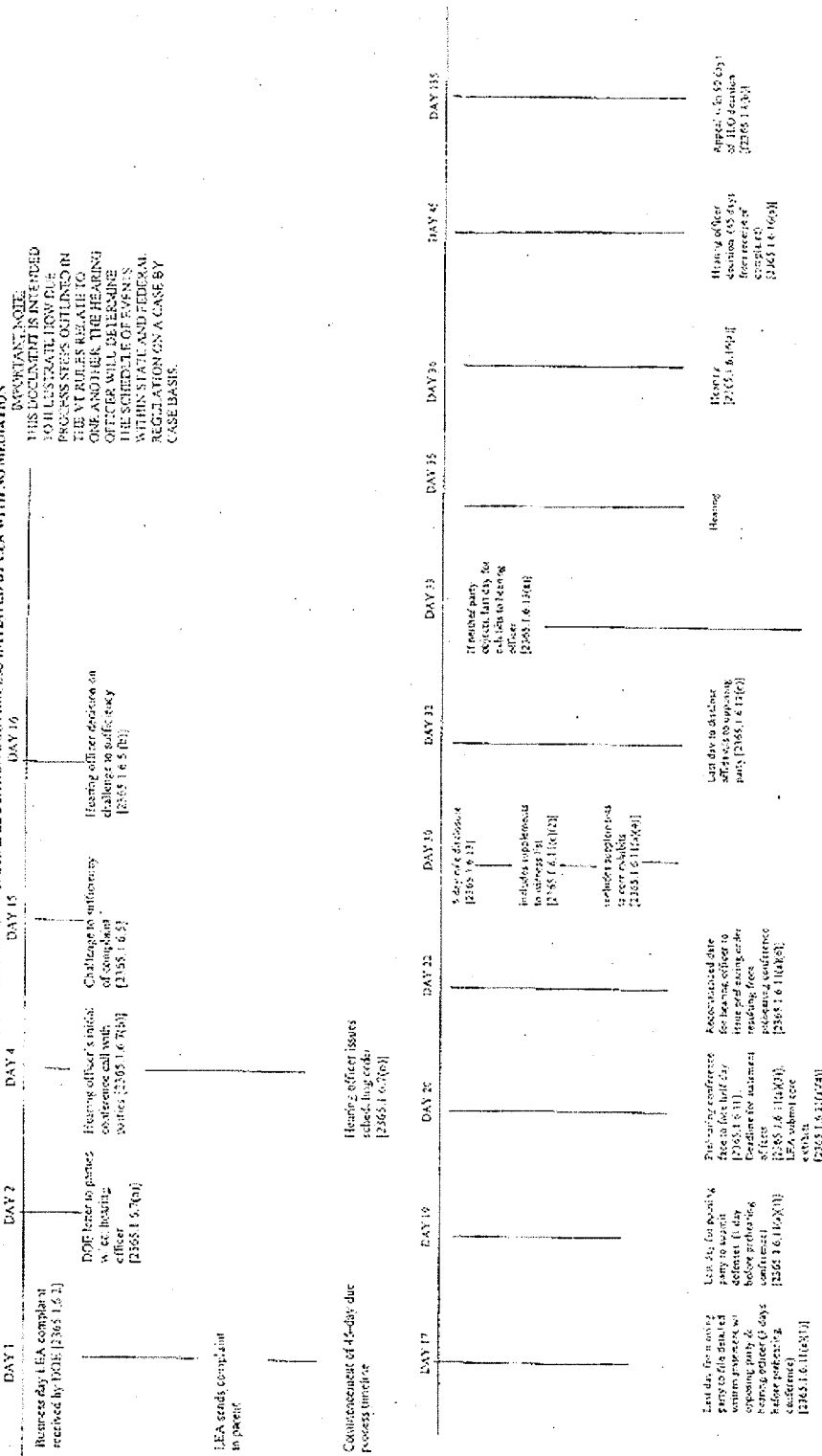
Vermont's New Special Education Due Process System

APPENDIX C
Sample Timelines

45 SAMPLE TIMELINE: VT SPECIAL EDUCATION DUE PROCESS INITIATED BY PARENT WITH WAIVER OF RESOLUTION SESSION AND NO MEDIATION	
DAY 1	Business day complaint received by DOE [2365.16.2]
DAY 2	DOE letter to parent w/c hearing officer [2365.16.7a]
DAY 3	DOE forwards to LEA w/c hearing officer [2365.16.2]
DAY 4	Hearing officer's initial conference call with parties [2365.16.7b]
DAY 5	Hearing officer asks each party to submit in writing objections to waive
DAY 6	Hearing officer issues standard order [2365.16.7c]
DAY 7	DOE forwards to LEA w/c hearing officer [2365.16.2]
DAY 8	DOE forwards to LEA w/c hearing officer [2365.16.2]
DAY 9	If no prior notice, LEA response to complete [2365.16.8b]
DAY 10	Other party response (when applicable) [2365.16.8b]
DAY 11	Counter-motion of LEA [2365.16.8b(1)]
DAY 12	Challenge to sufficiency of complaint [2365.16.3]
DAY 13	Challenge to sufficiency of complaint [2365.16.3]
DAY 14	Hearing officer decision on challenge to sufficiency [2365.16.3(b)]
DAY 15	5 day notice of hearing [2365.16.4]
DAY 16	Notice of appearance [2365.16.4]
DAY 17	Notice of appearance [2365.16.4]
DAY 18	Notice of appearance [2365.16.4]
DAY 19	Notice of appearance [2365.16.4]
DAY 20	Hearing
DAY 21	Hearing [2365.16.10a]
DAY 22	Hearing [2365.16.10a]
DAY 23	Hearing [2365.16.10a]
DAY 24	Hearing [2365.16.10a]
DAY 25	Hearing [2365.16.10a]
DAY 26	Hearing [2365.16.10a]
DAY 27	Hearing [2365.16.10a]
DAY 28	Hearing [2365.16.10a]
DAY 29	Hearing [2365.16.10a]
DAY 30	Hearing [2365.16.10a]
DAY 31	Hearing [2365.16.10a]
DAY 32	Hearing [2365.16.10a]
DAY 33	Hearing [2365.16.10a]
DAY 34	Hearing [2365.16.10a]
DAY 35	Hearing [2365.16.10a]
DAY 36	Hearing [2365.16.10a]
DAY 37	Hearing [2365.16.10a]
DAY 38	Hearing [2365.16.10a]
DAY 39	Hearing [2365.16.10a]
DAY 40	Hearing [2365.16.10a]
DAY 41	Hearing [2365.16.10a]
DAY 42	Hearing [2365.16.10a]
DAY 43	Hearing [2365.16.10a]
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DAY 52	Hearing [2365.16.10a]
DAY 53	Hearing [2365.16.10a]
DAY 54	Hearing [2365.16.10a]
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DAY 70	Hearing [2365.16.10a]
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DAY 73	Hearing [2365.16.10a]
DAY 74	Hearing [2365.16.10a]
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DAY 89	Hearing [2365.16.10a]
DAY 90	Hearing [2365.16.10a]
DAY 91	Hearing [2365.16.10a]
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DAY 93	Hearing [2365.16.10a]
DAY 94	Hearing [2365.16.10a]
DAY 95	Hearing [2365.16.10a]
DAY 96	Hearing [2365.16.10a]
DAY 97	Hearing [2365.16.10a]
DAY 98	Hearing [2365.16.10a]
DAY 99	Hearing [2365.16.10a]
DAY 100	Hearing [2365.16.10a]

IMPORTANT NOTE:
THIS DOCUMENT IS REFERRED TO ILLUSTRATE HOW THE PROCESS STARTS OUTLINED IN THE VT RULES RELATE TO ONE ANOTHER. THE HEARING OFFICER WILL DETERMINE THE SCHEDULE OF EVENTS WITHIN STATE AND FEDERAL REGULATIONS ON A CASE BY CASE BASIS

84 SAMPLE TIMELINE - VT SPECIAL EDUCATION DUE PROCESS INITIATED BY LEA WITH NO MEDIATION

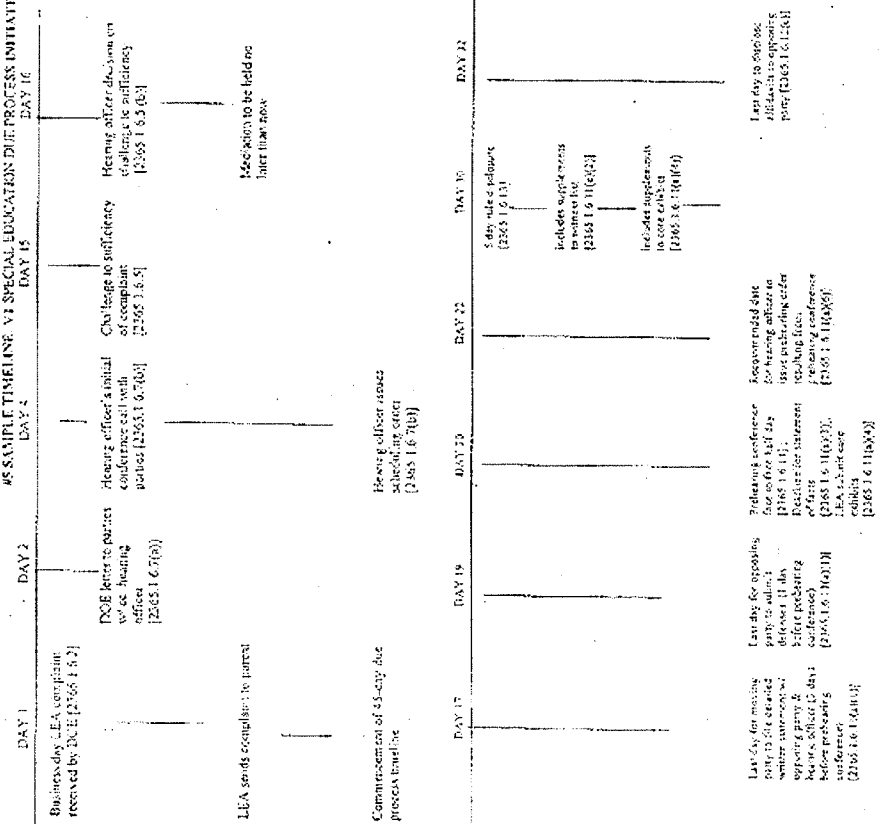


IMPORTANT NOTE:
THIS DOCUMENT IS INTENDED FOR USE IN STATE HEARINGS ONLY. IT DOES NOT RELATE TO OTHER HEARINGS. THE SCHEDULE OF EVENTS WITHIN THIS STATE AND FEDERAL REGULATION ON A CASE BY CASE BASIS.

45 SAMPLE TIMELINE: VI SPECIAL EDUCATION DUE PROCESS INITIATED BY LEA WITH PARTIES OPTION FOR MEDIATION

SEE LEGISLATION

THIS DOCUMENT IS INTENDED TO ILLUSTRATE HOW DUE PROCESS STEPS OUTLINED IN THE VT RULES RELATE TO ONE ANOTHER. THE HEARING OFFICER WILL DETERMINE THE SCHEDULE OF EVENTS WITHIN STATE AND FEDERAL REGULATION ON A CASE BY CASE BASIS.



Vermont Department of Education

Appendix B: Parent Due Process Complaint Form

This form may be used to submit a due process complaint to resolve a disagreement about the identification, evaluation, eligibility or placement of a student or regarding the provision of a free appropriate public education for a student under the Individuals with Disabilities Education Improvement Act.

Instructions:

1. All asterisked (*) information on this form must be included when you submit a request for a due process hearing. If you, or your attorney, do not include the asterisked (*) items on this form, it may result in the denial or delay of a due process hearing and the reduction of any attorney's fees awarded by the court.
2. At the same time that you send this form to the Commissioner, you must send or deliver a copy of this form to the school district's special education coordinator or superintendent.
3. As soon as your complaint is received by the Commissioner, the Department will attempt to contact you to identify a mutually convenient time for an initial telephone conference call that needs to occur no later than four days from the receipt of the complaint. If the Department is unsuccessful at reaching you, a time and date will be selected and you will be notified by first class mail.
4. Under federal and state law, a parent can raise the following problems in a due process complaint:
 - Identification** (Issues related to the timely and accurate identification by a school district of a child with a disability. This may also include issues arising from termination of services or eligibility.)
 - Evaluation** (Issues involving the timeliness, appropriateness, and conclusions of evaluation procedures, and/or of the determination of eligibility or continuing eligibility or ineligibility, or of a parent's refusal to consent to an evaluation.)
 - Educational Placement** (Issues involving the appropriateness of the instructional and related services, program and/or setting in which the child with a disability is provided services, including issues arising from proposed or requested changes in placement.)
 - Provision of a free appropriate public education** (Issues involving the appropriateness and adequacy of the IEP offered to the child with a disability, and/or issues about the district's compliance with special education procedures. This may also include issues arising from termination of services or eligibility, and/or issues arising out of suspension or expulsion of the child with a disability.)
5. If you have a complaint about one of the items above, please describe it completely and accurately on the attached pages. Remember: It is important that you describe any issue that you wish to have addressed at the due process hearing, and the facts that you feel support your position. If you do not describe the issue you will not be able to raise it at the hearing. Focus on the issues that genuinely have had an adverse effect on the student's ability to receive meaningful educational benefit.

If you are not sure about how to complete this form, you may want to contact one of the following for more information or assistance:

Vermont Parent Information Center (VPIC)
600 Blair Park Rd, Suite 301
Williston, VT 05401
Tel: (802) 876-5315 or 1 800-639-7170

VT Disability Law Project
264 North Winooski Avenue
Burlington, VT 05402
Tel: (802) 863-2881 or 1 800-747-5022
Fax: (802) 863-7152

Susan Boyd
Vermont Dept of Education
120 State Street
Montpelier, VT 05620-2501
Tel: (802) 828-3136

APPENDIX B: Parent Due Process Complaint Form

Vermont Department of Education

Mail to: Commissioner, Department of Education, 120 State Street, Montpelier, VT 05620-2501

Date: _____

*Parent's Name: _____ Parent's Name: _____

*Address: _____ Address: _____

*Tel: W () _____ H () _____ (cell) _____ Fax: _____ email: _____

Attorney/Advocate: _____

Address: _____

*Tel: W () _____ H () _____ (cell) _____ Fax: _____ email: _____

*Student's name: _____ Date of Birth: _____

*Student's Residence, if different from parent. If the child is homeless, please provide contact information:

*School the student attends: _____ Grade: _____ Disability: _____

A copy of this request must be provided to the Special Education Coordinator or Superintendent at the School District. Please confirm that you have done this by checking off one of the following:

A copy of this request was:

_____ mailed on _____ (date)

_____ hand-delivered on _____ (date)

The copy was provided to:

Name: _____ Title: _____

Address: _____

APPENDIX B: Parent Due Process Complaint Form

Vermont Department of Education

***Descriptions of the Issues**

Under federal and state law, a parent can raise issues in the following four identified areas: identification, evaluation, educational placement and provision of a free appropriate public education (FAPE). If you have a complaint about one of these issues, please describe it completely and accurately on the following pages. Attach additional pages if necessary. Remember, it is important that you describe any issue that you wish to have addressed at the due process hearing, and the facts that you feel support your position. If you do not describe the issue you will not be able to raise it at the hearing. Focus on the issues that genuinely have had an adverse effect on the student's ability to receive meaningful educational benefit. In order to file a complaint, you need to complete at least one of the issues below (A – D); for any of the listed issues below that are not part of your complaint, just leave those parts of the form blank.

A. **Identification** (Issues related to the timely and accurate identification by a school district of a child with a disability. This may also include issues arising from termination of services or eligibility.)

1. Describe the nature of the problem with the school and any facts relating to the problem.

2. Describe how this problem could be resolved.

3. Describe what actions the school has taken to address the problem.

Were these problem(s) identified above, the subject of a previous due process complaint, administrative complaint, and/or mediation? yes no

signature of Parent(s) submitting request: _____

APPENDIX B: Parent Due Process Complaint Form

Vermont Department of Education

C. Educational Placement (issues involving the appropriateness of the instructional and related services, program and/or setting in which the child with a disability is provided services, including issues arising from proposed or requested changes in placement.)

1. Describe the nature of the problem with the school and any facts relating to the problem.

Lined area for describing the nature of the problem with the school and any facts relating to the problem.

2. Describe how this problem could be resolved.

Lined area for describing how this problem could be resolved.

3. Describe what actions the school has taken to address the problem.

Lined area for describing what actions the school has taken to address the problem.

Were these problem(s) identified above, the subject of a previous due process complaint, administrative complaint, and/or mediation? yes no

Signature of Parent(s) submitting request: _____

APPENDIX B: Parent Due Process Complaint Form

Vermont Department of Education

D. **Provision of a free appropriate public education** (Issues involved with the appropriateness and adequacy of the IEP offered to the child with a disability, and/or issues about the district's compliance with special education procedures. This may also include issues arising from termination of services or eligibility, and/or issues arising out of suspension or expulsion of the child with a disability.)

1. Describe the nature of the problem with the school and any facts relating to the problem.

Lined area for describing the nature of the problem.

2. Describe how this problem could be resolved.

Lined area for describing how the problem could be resolved.

3. Describe what actions the school has taken to address the problem.

Lined area for describing actions taken to address the problem.

Were these problem(s) identified above, the subject of a previous due process complaint, administrative complaint, and/or mediation? yes no

*Signature of Parent(s) submitting request: _____

parent's due process complaint form

APPENDIX B: Parent Due Process Complaint Form

 Back to Procedure Menu