

## Understanding Your Rights: Due Process

### RHODE ISLAND EDUCATION LAW

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### IMPORTANT TERMS TO KNOW

**Due Process Complaint:** A written complaint filed by a parent or school district involving any matter relating to identification, evaluation, educational placement, or Free and Appropriate Public Education (FAPE) as applied to a student with a disability. A complaint must be **filed within two years of the date the parent or school knew or should have known about the problem.**

**Due Process Hearing:** A formal procedure before an impartial hearing officer. Closely resembles a civil trial, where each side may be represented by a lawyer, present evidence, cross-examine witnesses, and compel witness attendance.

### COMPONENTS OF A DUE PROCESS COMPLAINT

A due process complaint **must** contain: (1) the name of the child, (2) the child's address of residence, (3) name of school the child attends, (4) a description of the nature of the problem, and (5) a proposed resolution. **Within fifteen days of filing the complaint**, the local education agency (LEA) must initiate a Resolution Session. **After thirty days**, if no agreement is reached at Resolution Session, the parties may proceed to a hearing.

### REQUESTING A DUE PROCESS HEARING

A due process hearing can be requested by completing a Due Process Hearing Request Form (available for download on the Rhode Island Department of Education (RIDE) website). This form should be mailed to the RIDE Office of Special Populations at 225 Westminster Street, Providence, RI. Once received, the Commissioner of Education, will appoint an impartial hearing officer.

### PREPARING FOR A DUE PROCESS HEARING

1. **Hire an Attorney:** If a hearing is needed to resolve a dispute, an attorney should be contacted for assistance. The school department will be represented by its attorney. A parent/guardian who is successful in challenging a school department decision may be entitled to reimbursement for attorney fees.

2. **Preparation of Evidence:** Before the hearing, parents/guardians should inspect their child's records and get a copy. These records can be presented at the hearing. Additionally, before the hearing, parents/guardians have the right to see any written evidence the school district will submit at the hearing.
3. **Testimony of Witnesses:** At the hearing, both parties, the parent/guardian and the school department, will have the opportunity to present and cross-examine witnesses.

## HEARING OFFICER'S DECISION

A decision by a hearing officer must be made **forty-five days after the initial thirty-day resolution period** unless the hearing officer has extended the timeline. If unsatisfied with the results, a parent/guardian can appeal the decision by filing a civil action in a federal or state court. In Rhode Island, individuals have **thirty days from the hearing officer decision to file the appeal**.

## CHILD'S STATUS DURING DUE PROCESS PROCEEDINGS

A child's placement is required to remain unchanged pending a due process hearing. Under "stay put" provisions, the child involved in the complaint must remain in his or her current educational placement unless the parents and the school district agree otherwise. If a hearing officer rules in favor of the parent/guardian, the decision can be implemented even if the school department appeals the decision.

For additional information, please contact:

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Further updates on Rhode Island Education Law can be found on our website at <http://www.adlercohen.com/education-law>

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