

To Do or Not to Due Process: Dispute Resolution Options

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DISCLAIMER:

All materials are intended for general information and educational purposes. The information presented is NOT actual legal advice, is not to be acted on as such, may not be current, and is subject to change without notice. Consult with a qualified attorney for such advice.





Agenda

- + Introduction
- + Dispute Resolution Processes
- + Comparisons
- + Discussion
- + Resources

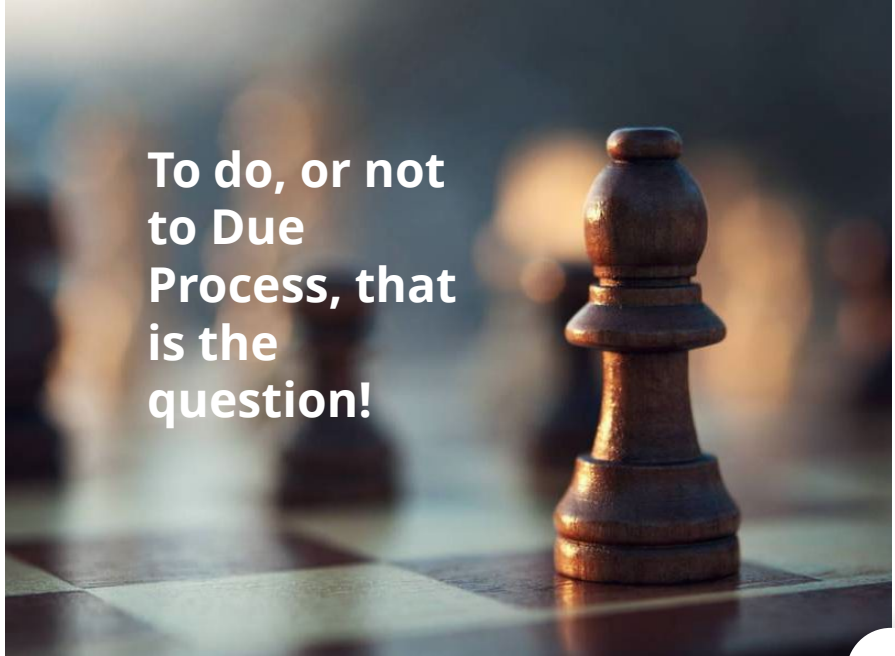
Introduction



To be, or not to be, that is the question:
Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles
And by opposing end them.

(William Shakespeare)

izquotes.com



To do, or not
to Due
Process, that
is the
question!



Special Education Processes + Procedural Safeguards

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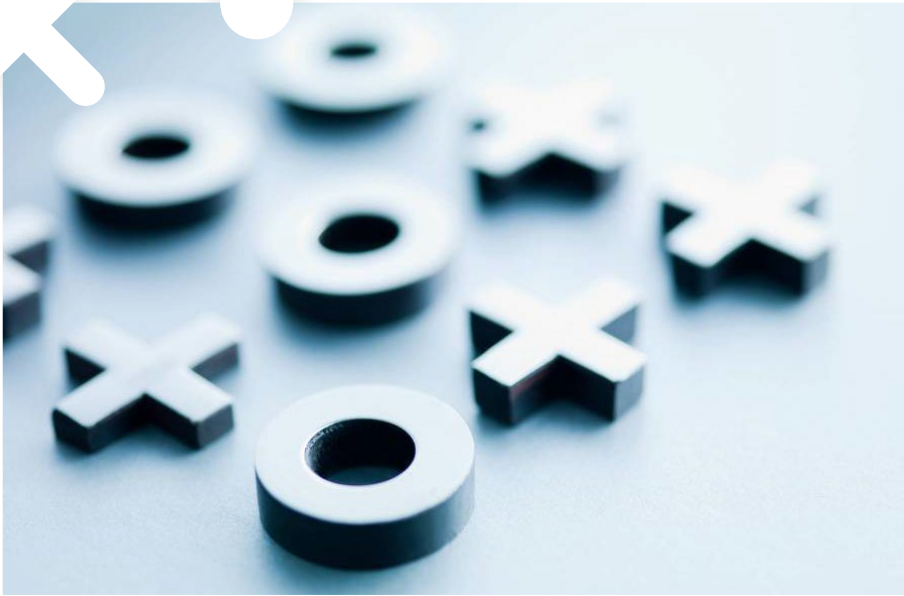
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Special Education Processes + Procedural Safeguards

This guide was developed by the **Louisiana** Department of Education to help parents navigate the complex system that oversees special education in **Louisiana's** ...

People also ask

State-facilitated IEP Meeting



- Non-adversarial dispute resolution method offered by LDOE
- IEP Facilitation may be appropriate when parents and school district staff are having difficulties communicating about the needs of the student
- IEP Facilitator will assist in creating an atmosphere of fair communication
- IEP Facilitator does not make decisions instead facilitates discussion and decision-making
- Process is voluntary so both parents and school district must agree to participate
- No cost service to parent or school district



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GRADUATION PATHWAYS
FOR STUDENTS WITH
DISABILITIES

INDIVIDUALIZED
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(IEP)

LOUISIANA SPECIAL
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STUDENTS WITH
SIGNIFICANT COGNITIVE
DISABILITIES

**DISPUTE RESOLUTION FOR STUDENTS WITH
EXCEPTIONALITIES**

The Louisiana Department of Education (LDOE) created and designed its special education dispute resolution system to protect the education rights of all children with exceptionalities within our state and help parents and public agencies resolve special education related disputes. The LDOE is committed to assisting parents and school districts in their efforts to resolve exceptionality related disagreements in the least adversarial manner possible. Therefore, the LDOE strongly encourages parents, their advocates and attorneys, or other concerned individuals to first contact their school district's or charter school's special education director or supervisor before utilizing any of the state-level exceptionality dispute resolution options.

The LDOE offers several exceptionality dispute resolution options to help resolve disagreements concerning issues related to providing a student with a disability a free appropriate public education (FAPE), including but not limited to issues involving evaluations, eligibility, placement, related services, and implementation. The LDOE offers these dispute resolution options at no cost to parents or school districts/charter schools. Our PDF-fillable request forms for LDOE IEP Facilitation, Mediation, Formal Complaint Investigation, and Due Process Hearings are available by using the links on the right hand side of this page and are also in the LDOE's on-line document library.

INFORMAL COMPLAINTS/EARLY RESOLUTION PROCESS

Parents of students with disabilities may file Informal Complaints. It is the simplest

HOT TOPICS

Strategies for Success Guidebook
Advocate-Parent Guide

FOR YOUR INFORMATION

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IEP Facilitation Request Form
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Form

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Guide to Section 504

<https://www.louisianabelieves.com/students-with-disabilities/dispute-resolution>

Send your IEP Facilitation Request Form to the LDOE by:

- **Email: DisputeResolution.DOE@la.gov;**
- **Mail: Louisiana Department of Education, Attention: Legal Division, P.O. Box 94064, Baton Rouge, Louisiana 70804-9064; or**
- **Fax to (225) 342-1197**

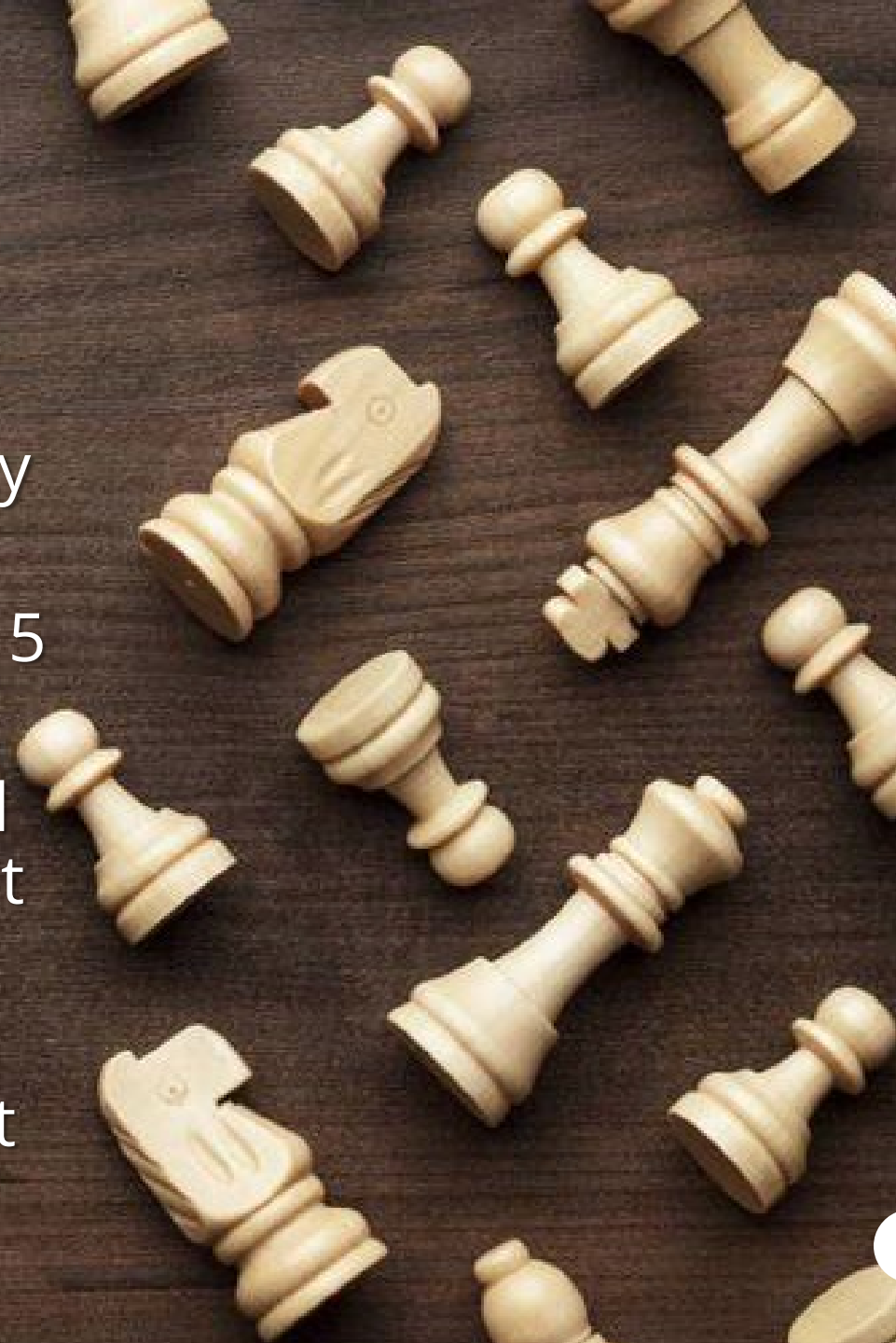
Informal Complaint



- One of least adversarial dispute resolution options
- May be appropriate when trying to resolve disputes prior to LDOE exercising its authority in addressing allegations of IDEA violations
- Must be addressed by school district within 15 days of receipt of the complaint
- After participating in this process, parent and school district may sign resolution agreement or an agreement to extend the resolution period



If no agreement reached, school district must provide parent with LDOE's explanation of dispute resolution options





Send your written Informal Complaint to your
School district ERP Representative

If you cannot determine who that person is, email
your Informal Complaint to the LDOE
at SpecialEducation@la.gov





Formal State Complaint

One of the more adversarial dispute resolution options

- LDOE has authority to investigate allegations that a school district is violating requirements of certain laws
- Any party may file a complaint must be in writing, signed, and sent to LDOE and the school district within 1-year of the alleged violation
- Complaint must include statement that school district has committed violations, the facts on which the statement is based, and description of nature of the problem including factual allegations related to the problem or dispute
- School district is required to provide a written response and any supporting information
- Complainant will have opportunity to provide additional information
- Generally, LDOE must issue written findings-decision within 60 days after complaint is received



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- SPECIAL EDUCATION FUNDING
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Parents should send their written Informal Complaints directly to their school district or charter school ERP Representative. If you cannot determine who that

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- Advocate-Parent Guide

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- Due Process Hearing Request Form

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- Education Rights of Gifted/Talented Children
- Parent and Educator Resource Guide to Section 504

Formal State Complaint

<https://www.louisianabelieves.com/students-with-disabilities/dispute-resolution>

Send your Formal Complaint Request Form to School District and the LDOE by:

- Email: DisputeResolution.DOE@la.gov;
- Mail: Louisiana Department of Education, Attention: Legal Division, P.O. Box 94064, Baton Rouge, Louisiana 70804-9064;
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Mediation

- + Less adversarial and uncomplicated dispute resolution methods
- + Voluntary process where trained mediator attempts to help parents and school districts resolve disagreements promptly and **CONFIDENTIALLY**
- + LDOE schedules mediation at mutually agreeable time and place for all parties
- + No cost to parents or school district





Mediation

- + Mediator does not represent any participants, provide legal advice or make decisions
- + Mediator facilitates discussions, participant decision-making, and helping participants reach compromise
- + Mediation discussions are **CONFIDENTIAL** and cannot be used as evidence in any subsequent Due Process or court proceeding





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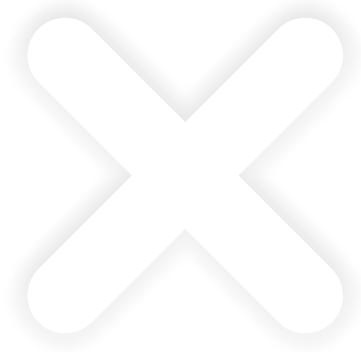
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Due Process





Due Process: a formal way to resolve disputes about your child's education



Most adversarial dispute resolution option



Formal, court-like proceeding where parties present evidence to an administrative law judge (ALJ)



There is a presumption of law that school districts are providing FAPE. The burden to prove that a school district is not providing FAPE is on the parent.



Must be filed within 1 year of when you learned or should have learned about the action you are complaining about, unless the school district withheld information or misrepresented that the problem was resolved

TO DO OR NOT TO DUE PROCESS:



- + General education issues
 - Religious rights
 - Personal injury



- + Special education issues related to:
 - Identification
 - Evaluation
 - Educational placement
 - Provision of FAPE



TO DO OR NOT TO DUE PROCESS:

- + District proposes or refuses to initiate or change student's disability or eligibility, and you disagree
- + District proposes to conduct an evaluation or reevaluation and you refuse to give consent for the assessment (District is most likely to file)
- + District proposes or refuses to initiate or change your child's educational placement, and you disagree
- + District proposes or refuses to initiate or change a provision of FAPE
- + You ask the District to change your child's eligibility category, and the District refuses
- + You and the District disagree about the availability of an appropriate program, and which who is financially responsible for providing it to the student



Consider filing when:

Clear noncompliance

Clear regression of skills





Failure to offer or define placement

Denial of rights under IDEA

Clear denial of FAPE

Denial of eligibility

Avoid filing when:

-  Procedural issues
(Except if the technical violation had educational impact (i.e. failure to give notice hurt student's right to FAPE))
-  Parents just tired of fighting with school district
-  Parents want to set precedence for all other parents having the same problem
-  As leverage to recover attorney fees



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COMPARISONS

	IEP Facilitation	Mediation	Informal Complaint	Formal State Complaint	Due Process Hearing
<i>Who can initiate the Process?</i>	Parent or Local School System or Public Agency, but participation is voluntary	Parent or Local School System or Public Agency, but participation is voluntary	Parent or Local School System or Public Agency, but participation is voluntary	Any organization, including those from out of state	Parent, Local School System or Public Agency
<i>Is there a time limit?</i>	No	No	Within 1 year of the violation, act, or omission	Within 1 year of the violation, act, or omission	Within 1 year of the violation or when the party knew or should have known about the problem
<i>What type of issues can be resolved?</i>	Content of the Individualized Education Plan (IEP)	Any matter relating to the identification, evaluation, educational placement, or provision of a Free Appropriate Public Education	Alleged violations of the IDEA, state law, or Department exceptionality regulations	Alleged violations of the IDEA, state law, or Department exceptionality regulations	Any matter relating to the identification, evaluation, educational placement, or provision of a Free Appropriate Public Education
<i>Who resolves the issues or decides if a violation occurred?</i>	The IEP facilitator is a neutral party who helps the IEP Team members to make decisions & reach a consensus	The mediator is a neutral party who is trained to help the participants make decisions & prepare a written agreement	The local ERP representative helps requestor and school make decisions & reach an agreement	The Department's designated complaint investigator	An administrative law judge (ALJ) assigned by the Division of Administrative Law (DAL)
<i>How long does the process take to complete?</i>	None Specified—but usually a three hour minimum	None Specified—but usually a three hour minimum	The Early Resolution Process (ERP) ends 14 days after the informal complaint is filed, unless it is extended by the participants	The investigation ends 45 days after the ERP, unless it is extended by the participants	The ALJ will hold the hearing & issue a written decision within 45 days after the resolution period ends, unless the participants continue the hearing





Resources

National Resource



COPAA – Council of Parent Attorneys & Advocates

www.copaa.org

***Scholarships are available**

***Free parent training**

Louisiana Resources

Local parent training center



Families Helping Families

www.fhfofgno.org/

www.fhfgbr.org/

www.fhfacadiana.org/

or



Pyramid Community Parent Resource Center

www.pyramidparentcenter.org



Advocacy Group/ Advocate



Attorney

www.theieplawyer.com

**Presented by:
Attorney Kimona Hogan
of
Hogan Law Firm, LLC**



**Using the gift of skilled advocacy to serve
our Families, with grace and by Grace**

Our home office is located in Denham Springs, La.

