

XIII. Dispute Resolution

The Individuals with Disabilities Education Act (IDEA) and its implementing regulations mandate that states make available formal processes for families of children with disabilities age 3 through 21 and public schools to resolve special education-related disputes. State Educational Agencies (SEA) are required to offer mediation, a due process hearing system, and a State administrative complaint system.

Mediation

Mediation is a part of parents' procedural safeguards under the IDEA. It is an informal process during which an impartial mediator helps parents and schools experiencing conflict reach agreement about a student's special education program. Mediation is a problem-solving process rather than an adversarial process. It allows the parties to communicate directly with each other as they work toward a mutually agreeable solution. The goal of mediation is for parties to reach a compromise regarding disputes over special education matters and to memorialize that compromised solution into a written agreement signed by both parties.

Either a parent of a child with a disability or a public education agency may request mediation as a way to resolve disputes involving any matter that arises under the IDEA or its implementing regulations. Mediation may be used to resolve issues in a due process complaint or it may be requested, by the parent or the school, as a stand-alone process to address concerns or disputes that arise. Mediation is offered at no cost, must be voluntary on the part of both parties, and may not be used to deny or delay a parent's right to a due process hearing. The Arizona Department of Education maintains a list of qualified mediators who are trained annually in the area of special education law and are knowledgeable about current trends in mediation and mediation techniques.

Due Process Hearing System

Like mediation, the due process hearing system is part of parents' procedural safeguards under the IDEA. The most formal of the dispute resolution options, a due process hearing may be used to resolve any matter relating to the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education to the child. Only parents or adult students and schools can be parties to a due process hearing. One of the parties must file a due process complaint to begin the process, and there is a two-year statute of limitations on requests for a due process hearing. The filing party bears the burden of proof in the hearing.

In 2004, Congress added a mandatory 30 calendar day resolution period, which commences the day the complaint is received by the non-filing party. Within 15 calendar days of receiving the due process complaint notice and before a hearing may occur, the school must convene a meeting with the parent and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the complaint. The purpose of this meeting—called a resolution session—is for the parties to discuss the complaint and attempt to resolve the issues without the need for a hearing.

This meeting must occur unless waived in writing by both parties, or unless both parties agree to mediation. The resolution session must include a representative of the school who has decision-making authority on behalf of the school, but may not include the school's attorney unless the parents are accompanied by an attorney. The parent and the school determine the relevant members of the IEP team to attend the meeting. The resolution session *must* occur before a due process hearing can be held, unless it is waived in writing by both parties, or the parties agree to participate in mediation.

If the school has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur. The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 day resolution period; upon the parties agreeing in writing to waive the resolution meeting; or after the resolution meeting or mediation if the parties agree in writing that they are unable to resolve the dispute.

In a due process hearing, an administrative law judge will consider the parties' arguments and evidence and will issue a decision. Once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless the complainant and the school agree otherwise, the child must *stay put* in his or her current (that is, last agreed upon) educational placement.

**** EXPEDITED DUE PROCESS HEARING**

The parent of a child with a disability may file a request for an expedited due process hearing if he or she disagrees with: (1) any decision regarding placement made under the special education discipline provisions; or (2) the manifestation determination. A school may request an expedited due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Unless the parents and the school agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the expedited due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint. An expedited due process hearing must be conducted within 20 school days of the date the hearing request is received, and the administrative law judge has 10 school days after the hearing to issue a decision.

The student stays put in the Interim Alternative Educational Setting (IAES) pending the judge's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.

State Administrative Complaint System

Unlike mediation and due process, the State administrative complaint system is not part of the system of procedural safeguards outlined in the IDEA, but rather falls under the SEA's general supervision responsibilities and is outlined in the regulations that implement the IDEA. The SEA is responsible for ensuring that public schools comply with Part B of the IDEA and a complaint is a way for members of the community to notify the SEA that there is or may be noncompliance with the IDEA in a public school. A formal complaint is considered a request for the SEA to investigate an alleged failure by a public school to comply with a legal requirement of the IDEA or an alleged violation of a right of a parent and/or child with disabilities who is eligible, or believed to be eligible, for services based on federal and state laws and regulations governing special education.

Because the State complaint system is not a procedural safeguard, any individual or organization may file a State administrative complaint. The SEA can only investigate allegations of violations of Part B of the IDEA that occurred within the past year. The SEA has 60 calendar days from the date it identifies the complaint to conduct an investigation into the allegations presented in the complaint and to issue written findings. Every investigation includes a thorough review of information presented within documentation and via interviews with relevant parties in the particular case. The investigation concludes with the issuance of a formal written report, which is the SEA's independent determination as to whether the public school has violated a requirement of Part B of the IDEA. In accordance with 34 C.F.R. § 300.152(a), the report must address each allegation in the complaint and includes the findings of fact, conclusions of law, and the reasons for the SEA's final decision.

If the SEA identifies noncompliance with State and/or federal special education requirements it will dictate corrective action that the school must undertake to correct any noncompliance and mitigate the likelihood of the reoccurrence of the noncompliance. Corrective action must be completed in accordance with the schedule prescribed by the SEA, but in no case may take more than one year to complete.

