

Dispute Resolution

October 9, 2014



Agenda

- Introduction
 - Introduction of presenter
 - Overview of topics
 - Policies and Procedures
 - Mediation and Resolution Sessions
 - Complaint Investigation

Foundation

- Individuals with Disabilities Education Act (IDEA) 2004 statute is the foundation of everything in special education.
- Regulations, rules, and local district policies and procedures are efforts to ensure implementation of law with emphasis on policy purposes.

Where do regulations come from?

- IDEA (United States Code [USC])
 - Federal regulations (CFR)
- State statute (Mississippi Code)
- State administrative rules
 - District policies and procedures

Responsibility and Obligation

- Office of Special Education (OSE) has an affirmative duty to enforce IDEA. Policies and procedures (P/Ps) contribute to this effort
 - by simplifying language
 - by focusing on *districts'* IDEA obligations—not everything in IDEA appears in P/Ps.

when disagreements happen

- Good faith adherence to Policies and Procedures is no guarantee of peace and harmony; disagreements will arise!
- IDEA includes a variety of mechanisms for dispute resolution.

Dispute Resolution

- IDEA dispute resolution is **not** a continuum of increasingly formal or adversarial processes.
- Different dispute resolution mechanisms serve different regulatory and practical functions.

Elements involved in Dispute Resolution

- Mediation
- Complaint
- Resolution
- Due Process

Mediation

- No special conditions needed to mediate.
- Can be used at any point there is disagreement about any aspect of special education.
- 34 C.F.R. Section 300.506

Mediation is ...

- A voluntary process to resolve disagreements in an informal and confidential manner;
- A form of conflict resolution;
- Can be used to resolve issues related to identification, evaluation or educational placement and provisions of free appropriate public education.

Mediation - Benefits

- Proactive strategy to attempt resolution before a complaint or due process request is filed.
- Can deal with issues related to special education but outside of compliance issues

Mediation - Benefits

- Opportunity for a “safe” way to hear each others concerns and come up with a plan to improve the current situation.
- Office of Special Education pays!

Mediation Process

- OSE is responsible for assignment of mediator.
- Parent or district requests mediation through OSE.
- Request can be verbal or written.
- Both parties must agree to participate in mediation to resolve disputed issue.

Mediation Process

- If successful, written agreement will be signed by parents and district at close of session.
- If unsuccessful, parents or district may choose to pursue resolution of disputed issues through other OSE processes.

Mediation Process

- If disputed issue becomes a due process hearing request, no information obtained from the mediation session may be utilized within the due process hearing.

Qualifications of Mediator

- Is specially trained and has knowledge of special education and the needs of students.
- Is assigned by the Office of Special Education, Divisions of Parent Outreach.
- Works with the parent and the school to schedule a convenient date, time and location for the mediation.

Example

- The Local Educational Agency (LEA) believes further evaluation is necessary to clarify student's learning needs.

Example

- The Local Educational Agency (LEA) is experiencing concerns about the parent's unannounced visits to schools and interactions between parent, staff and student. Concern that these negative interactions are leading to further decline in student behavior and progress.

Example

- District and parents having difficulties in communicating with each other about student progress. Parent expects certain information to be going home in student's notebook. District thinks parent is requesting more information than they think is needed for the situation.

Formal State Complaint

- IDEA 2004 retained the need for established methods to resolve disputes between parents/guardians and school districts.
- Due Process is guaranteed through Procedural Safeguards for parents and interested parties of children and youth with disabilities.

Formal State Complaint Process

- Office of Special Education receives written, signed complaint.
- Within 10 days, notification letter is sent to District Superintendent and Supervisor of Special Education.
- District must respond within 7 days of OSE letter.
- The State Education Agency (SEA) has 60 days from the date the complaint is filed to issue letter of Findings and Decision.

Formal State Complaint

- An individual or organization may file a complaint with the OSE.
- Complaint must contain specific elements required by IDEA 2004.

Complaint Process

- Complaint *must* be filed within one year of violation OR within two years of violation if requesting compensatory services.
- District is given opportunity to respond to allegation through written contact with the OSE.

State Complaint Process

- Complainant has an opportunity to respond to district response through OSE contact.
- The Office of Special Education will issue a letter of findings to district and original complainant to officially close the complaint.
- Time limit may be extended beyond 60 days in exceptional circumstances.

State Complaint

- A complaint investigation only looks at allegations, which must be supported by specific facts, that a district is violating or has violated the IDEA.

Example of Formal State Complaint

- Parent alleges District is not implementing student's IEP, thus denying the student a Free Appropriate Public Education (FAPE).

Example

- Parent alleges student is not receiving related services as outlined in the IEP; student's grades are suffering; parent is requesting compensatory services.

Example

- The parent alleges transportation is being denied to the student based on disability.

Resolution

- The purpose of the Resolution Session is to resolve the issues in a pending due process hearing.
- It is the first step to resolving the due process dispute.
- District/Parent convenes meeting to review the matters outlined in the hearing request.

Resolution Benefits

- Offers parties an opportunity to ‘dodge the bullet’ of the most adversarial and expensive dispute resolution process—Due Process hearing.
- Final opportunity for face to face/knee to knee meeting to resolve issues *without* attorneys present.

Resolution Process

- Local district must conduct resolution meeting within 15 days of receipt of notice of due process and prior to initiation of due process.
- IEP committee must include parents and relevant IEP members who have specific knowledge of facts identified in due process complaint notice.

Resolution Process

- The attorney for district may not attend resolution meeting unless attorney for parent also attends.
- Purpose of meeting is for parents to discuss the due process complaint.
- The resolution meeting is not needed if both parent and district agree to mediation process.

Resolution Process

- The 45 day timeline for issuing final due process decision begins at close of 30 day resolution.
- Timeline for issuing final due process decision will not be delayed if parents and district both agree to waive the resolution process or use mediation.

Resolution Process

- If the resolution meeting results in resolution of the disputed issue, then an agreement is written.
- Written agreement is legally binding and must be signed by both parent and district representative (Representative must have authority to bind district to compliance).

Resolution Process

- Written agreement is enforceable in any state court of competent jurisdiction or in district court of the United States.
- Either parent or district may void the agreement within 3 business days of the agreement's resolution.
- A copy of the final agreement must be sent to the SEA/mediation/due process consultant.

Resolution Benefits

- As in mediation, the parties in resolution sessions retain control. At any point, they can find common ground, and the dispute ends.
- OSE has no direct role.

Due Process

- Parent or district must complete the Due Process Request Form – “Request for due process under Part B of the Individuals with Disabilities Education Improvement Act 2004 Amendments” or other document.
- Request is mailed to superintendent of district and OSE.

Due Process

- Once due process request is received by OSE, an impartial hearing officer will be assigned.
 - Once hearing officer is assigned, OSE may no longer discuss disputed issue with parent or district.
 - Parent and district are to contact hearing officer if they have questions.

Due Process

- If parent or district needs to discuss issues unrelated to due process, then OSE can discuss these for resolution.

Due Process

- Resolution meeting must be held before due process hearing unless parents and district agree to waive this meeting or request mediation.
- If mediation is requested at the same time as due process, a mediator will be assigned at the same time as the hearing officer.

Due Process

- After hearing officer is assigned, OSE due process/mediation coordinator will notify district superintendent, district special education director and parent.

Hearing Officer Requirements

- Must have the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice
- Must have the knowledge and ability to write a decision in accordance with appropriate legal practice
- Must be knowledgeable of the requirements of the IDEA 2004, its regulations and similar state statutes and regulations

Sufficiency

- The Due Process complaint must be deemed sufficient unless the party receiving the complaint notifies the Hearing Officer and the other party in writing within 15 days of receipt of the due process complaint that the receiving party believes the due process complaint does not meet the requirements.

Due Process

- Within 5 days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements and must immediately notify the parties in writing of that determination.

Due Process

- A party may amend its due process complaint only **if** -
 - The other party consents in writing to the amendment and is given the opportunity to resolve the due process.
 - The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time no later than five days before the due process begins.

Due Process

- If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve begin again with the filing of the amended due process complaint.

Due Process

- OSE will send forms for all parties to complete for the hearing officer prior to the actual due process hearing.

Due Process Hearing

- Issues are limited to those raised in the complaint, unless the other party otherwise agrees.
- Any party has a right to
 - Be accompanied by legal counsel and individuals with special knowledge or training
 - Present evidence and confront, cross-examine and compel the attendance of witnesses
 - Prohibit the introduction of evidence that has not been disclosed at least 5 business day before the hearing
 - Obtain a written, or at the parent's option, electronic verbatim record of the hearing
 - Obtain written, or at parent's option, electronic findings of fact and decision.

• Decision of Hearing Officer

- Decision of Hearing Officer must be based on substantive grounds.
- If procedural violations asserted, a hearing officer may find a student did not receive FAPE only if the procedural inadequacies
 - Impeded the student's right to a FAPE,
 - Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or
 - Cause a deprivation of educational benefits.

Due Process

Due Process complaint may be filed on only the following:

Identification

Evaluation

Educational Placement

Provision of Free Appropriate Public Education (FAPE) to the child

• Contact Information

- 601-359-3498
- 866-544-0408 (Parent Hotline)
- 601-359-1829 (FAX)

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