

Surviving Formal State Complaints



Vision _____

To create a world-class educational system that gives students the knowledge and skills to be successful in college and the workforce, and to flourish as parents and citizens

Mission _____

To provide leadership through the development of policy and accountability systems so that all students are prepared to compete in the global community

State Board of Education Goals 5-Year Strategic Plan for 2016-2021

- ✓ All Students Proficient and Showing Growth in All Assessed Areas
- ✓ Every Student Graduates High School and is Ready for College and Career
- ✓ Every Child Has Access to a High-Quality Early Childhood Program
- ✓ Every School Has Effective Teachers and Leaders
- ✓ Every Community Effectively Using a World-Class Data System to Improve Student Outcomes
- ✓ Every School and District is Rated “C” or Higher

Dispute Resolution

- Office of Special Education (OSE) has an affirmative duty to enforce IDEA.
- Policies and procedures (P/Ps) contribute to this effort by being very specific regarding dispute resolution options.

What to do 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 Resolutions

Conflict
Resolution

IEP
Facilitation

Mediation

Formal State
Complaint



Due Process
Hearing

What is Mediation?

- Mediation is a voluntary process that brings people together to resolve their disagreements.
- A mediator helps participants communicate with each other, so that everyone has an opportunity to express concerns and offer solutions.

Mediation

- Parents and LEA must both agree to participate in order for mediation to happen.
- Participants may leave mediation at any time.
- Mediation discussions are confidential. What is said in mediation cannot be used as evidence in a due process hearing or civil lawsuit.

Mediation

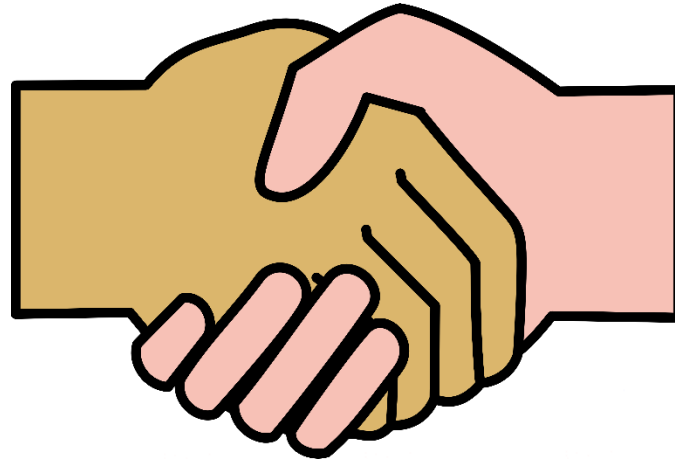
- The mediator does not make decisions. The parent and LEA must both agree to any decisions made.
- The focus is on resolving disagreements and working toward a solution that satisfies all participants.
- Parents and educators can use mediation at any time to resolve disagreements.
- The goal is finding a solution that meets the educational needs of the child.

Benefits of Mediation

- Mediation can help everyone better understand differing points of view.
- Participants work on solutions together and are in control of the outcome, rather than someone who doesn't know the child making a decision.
- People tend to be more satisfied and follow through with the terms of mediated agreements because they are developed together.

Benefits of Mediation

- Disagreements may be resolved more quickly than with other dispute resolution options.
- Mediation focuses on creating a plan for the future.



Considerations About Mediation

- Mediation can sometimes be an emotional, tiring, and frustrating process.
- Parents and LEA may feel at a disadvantage if they don't take time to prepare before the mediation session.
- Some complex situations may require more than one mediation session to create a detailed agreement.
- There are no guarantees that mediation will lead to a written agreement.

Frequently Asked Questions About Mediation

- *Who can request mediation?*

Parents or school district staff may request mediation when communications are difficult or there is a dispute that can't be resolved.

- *When can I request mediation?*

Mediation can be requested anytime, even if you have already asked for a due process hearing or filed a written state complaint.

Frequently Asked Questions

- *Who will choose the mediator?*

OSE will select a mediator a mediator on a random, rotational, or other neutral basis.

- *Does the mediator make decisions?*

No. The mediator facilitates communication and does not favor the parent or the school district. Mediation is a problem-solving process guided by the mediator.

- *When and where does the mediation take place?*

The mediation should take place at a time and in a location that is convenient to both the parent and school district.

Frequently Asked Questions

- *Who attends the mediation?*

The parent, staff from the school district, and the mediator must be present for a mediation to take place. The mediator often helps with this before the mediation session.

- *Do mediation agreements have to be in writing?*

Yes. If a dispute is resolved through the mediation process, the agreement must be in writing. It must be signed by the parent and an authorized representative of the school district and it must state that all of the discussions that took place during the mediation process will remain confidential.

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.

What is IEP facilitation?

- IEP facilitation is a voluntary process that can be used when all parties to an IEP meeting agree that the presence of a neutral third party would help facilitate communication and the successful drafting of the student's IEP. This process is not necessary for most IEP meetings. Rather, it is most often utilized when there is a sense from any of the participants that the issues at the IEP meeting are creating an impasse or acrimonious.
- Both parties (parent and district) must be in agreement to this request.
- OSE pays for the cost of the IEP facilitator.

What are the benefits of IEP facilitation?

- Builds and improves relationships among IEP team members and between parents and schools.
- Keeps the meeting focused on the student.
- Supports the full participation of all IEP team members.
- No cost to the parties and typically less stressful than formal dispute resolution options.
- Models effective communication and listening.

What is the role of the facilitator?

- Assists in generating the agenda for the meeting based on pre-meeting conversations with the IEP team members.
- Helps keep members of the IEP committee focused on the student and on developing a satisfactory IEP that addresses all requirements of IDEA.
- Maintains impartiality and does not represent the parent, student, district .
- Helps to maintain open communication among all members.
- The members of the IEP Team are the decision makers.

Formal State Complaint

- A formal state complaint is used to communicate that a public agency has not followed the requirements of the Individuals with Disabilities Education Act (IDEA), and to request an investigation of the problem.
- Complaints may concern one child or student, or a group of students.
- Any person or organization, including one from another state, may file a written state complaint.

Formal State Complaint Process

- Office of Special Education receives written, signed complaint.
- Based on verification of receipt of the Formal State Complaint, a notification letter is sent to District Superintendent and Director of Special Education.
- District is provided the opportunity to respond within 14 days verifying receipt of FSC.

Complaint Process

- Complaint *must* be filed within one year of violation.
- Time limit may be extended beyond 60 days in exceptional circumstances.
- The State Education Agency (SEA) has 60 days from the date the complaint is filed (and verified) to issue letter of Findings and Decision.

Case 1

In a very small and understaffed district, a six-year-old student, who has an IEP for emotional disturbance, is experiencing increased behavioral problems in her general education class. Over the last 6 months, she has hit numerous students, torn books, ripped down posters, thrown chairs, and just bit an aide. Occasionally, she bolts from the building and hides. Mom has been called into school to pick her up early on 17 different occasions this year.

After the biting incident, Mom is met at the school door by the Principal and told that a new plan will be enacted tomorrow. Her daughter will be in a self-contained classroom separated from other students for the rest of the year (3 months). Mom agrees and supports plan.

The next day, Mom is called in because her daughter had a “meltdown” and will not comply with school personnel. The Principal says, “Evidently the new plan isn’t working, especially since the aide won’t work with your daughter anymore. We need you to keep her home for the rest of the year and we’ll send her homework. Her brother can transport it back and forth.” Mom objects, but the plan is enacted anyway. Mom files a complaint.

Case 2

A 16-year-old, male student on an IEP for cognitive impairment rides the bus to and from school. Occasionally, he reacts threateningly toward others when corrected, especially by adults. His IEP indicates that authority figures should avoid close-ended questions with him because he will always say “No,” but will de-escalate when given more than one choice.

On the bus home one day, the student begins drumming on the back of the seat and is occasionally hitting a boy in front of him. A yelling match ensues between the kids, and the bus driver stops the bus. The bus driver walks back and stands over the student ordering him to stop his behavior. The student, who is 200 lbs. and 5’10, stands up, pushes bus driver away, and yells, “No!” The bus driver contacts the school, the police arrive, and have to forcibly remove the student from the bus. The parents are informed that their son is banned from the bus and are given a mileage reimbursement form to pay for transporting their son. The Parents want an aide to ride the bus like they used when he was younger. The Principal says that is not an option. The Parents file a complaint.

Case 3

A 15 year old student, who is failing, has an IEP for SLD (Specific Learning Disability), and his file includes that he's been diagnosed with ADHD and OD. He cuts classes, usually in the afternoon, and subsequently is failing 4 of 7 classes. Additionally he has missed more classes than school policy allows.

The school policy also states that classes can only be repeated one time, and the student is failing three required classes for a second time. The student is no longer on track to graduate. The Director recommends to the School Board that this student should be expelled.

The Board meets and the student is expelled. The Parents are given the option to homeschool. The Parents file a complaint.

What is Due Process

- A due process complaint is a written document used to request a due process hearing related to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free, appropriate public education (FAPE) to the child.
- The complaint may be filed by a parent or public agency. This starts a process that may lead to a formal hearing where a hearing officer decides the outcome.

Due Process

- Parent or district 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 school district are to contact hearing officer if they have questions.

What is 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.

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.

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 LEA 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.

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.

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 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.

Considerations about Due Process Request

- Due process is considered the most adversarial, least collaborative dispute resolution option, and may damage the working relationship between educators and families.
- Certain issues that might be of concern to a parent, such as who a school district hires, are not appropriate for a due process hearing.
- In a due process hearing, a hearing officer who doesn't know your child makes the decision.

Considerations about Due Process Request

- In mediation or resolution meetings, a solution is reached by you, school staff, and others who know your child best.
- Most due process complaints are resolved without the need for a hearing, often through the use of mediation or at resolution meetings.
- To protect the hearing officer's fairness, the hearing officer is not permitted to talk to either party individually about the due process complaint or hearing.
- The hearing officer's decision is legally binding.

Expedited Due Process

- An expedited hearing may only be requested in certain situations. This special type of due process complaint is used when parents disagree with a school district's discipline-related decision affecting their child's placement.
- Parents can also file an expedited hearing request when they disagree with a school district's decision about whether a child's behavior is related to their disability. This decision is called a manifestation determination.
- A school district may file an expedited hearing request when it believes that a child's behavior could be dangerous to the child or others.

What Happens after I File an Expedited Due Process

- A resolution meeting must occur within 7 calendar days, unless you and the school district both agree in writing not to have a resolution meeting, or to use mediation instead.
- If the dispute is not resolved within 15 calendar days, the hearing timeline proceeds.
- The hearing must be held within 20 school days of the expedited hearing request being filed.
- The hearing officer must issue a decision within 10 school days of the date of the hearing.

Expedited Due Process

! A Note About Expedited Hearing Timelines *!*

- It is important to keep in mind expedited timeline differences, especially during or close to times when school is not in session, such as summer vacation and extended breaks.
- School day has the same meaning for all children in school, including children with disabilities – meaning days when children are scheduled to attend school.
- Calendar day means all of the days on the calendar, including weekends and holidays.



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How to Avoid Pitfalls?



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Communication

- Begins as parents enter the door of school or make first phone call
- Key to building relationships and working as a team



Communication

- Could reduce or often resolve complaint if effective
- Must be two-way
- Can be a barrier that should be addressed
 - Native Language
 - Education
 - Level of understanding



- “Frequent filers”
 - Sometimes unavoidable
 - Be proactive
 - Make sure communication is **effective** – Is Mama picking up what you are putting down?



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Frequent Complaints/ How to Avoid Pitfalls

- FAPE
 - Covers many issues
 - Students with disabilities are protected under IDEA

What Parent says:	What you should do:
<p>“My child is not receiving a FAPE.”</p>	<ul style="list-style-type: none"> - Call an IEP meeting. - Request a facilitator or mediator if needed. - Ask for specific concerns and address them in an IEP meeting. - Listen and address parent’s concerns. - Document discussion and any changes in the IEP.

Frequent Complaints/ How to Avoid Pitfalls

- LRE
 - IEP committee may disagree about placement

What Parent says:	What you should do:
<p>“My child is not in the right class.” or “They’re trying to move my child to another class.”</p>	<ul style="list-style-type: none"> - Call an IEP meeting. - Request a facilitator or mediator if needed. - Talk about the continuum of placements. - Provide documentation to show why placement is appropriate. <u>(Data drives decisions.)</u> - Document on IEP.

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Frequent Complaints/ How to Avoid Pitfalls

- Implementation of IEP
 - Appropriate services
 - Related services
 - Accommodations
 - Assistive Technology

What Parent says:	What you should do:
<p>“They’re not helping my child in class.” or “My child isn’t getting his speech services.”</p>	<ul style="list-style-type: none"> - Call an IEP meeting. - Request a facilitator or mediator if needed. - Make sure related service providers keep a log of sessions. - Services should begin as stated on the IEP.

Frequent Complaints/ How to Avoid Pitfalls

- IEP Meeting

- Law is specific about who is required to attend IEP meetings: parent, general education teacher, special education teacher, representative of public agency, individual who can interpret evaluation results, others with special knowledge of the child, student (as appropriate.)

What Parent says:	What you should do:
<p>“I don’t want so-and-so at my child’s IEP meeting.”</p>	<ul style="list-style-type: none"> - Make sure you follow the law. (34 C.F.R. § 300.321, <i>Miss. Admin. Code</i> 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.321) - Keep in mind what is best for the relationship in the long run.

Frequent Complaints/ How to Avoid Pitfalls

- Child Find
 - District refuses to evaluate
 - Student struggling in tier process
 - Parents have gotten outside evaluation

What Parent says:	What you should do:
<p>“My child is having problems at school and they won’t test him.” or “I’ve asked for an evaluation and they said there’s a waiting list.”</p>	<ul style="list-style-type: none"> - Have MTSS information available for parents. - Don’t delay or deny because of the MTSS process. - Make sure your district policy follows the law. (34 C.F.R. § 300.301, Miss. Admin. Code 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.301)

Frequent Complaints/ How to Avoid Pitfalls

- Parent Participation
 - District not sending proper notices
 - Parent feels they have no voice

What Parent says:	What you should do:
<p>“They had an IEP meeting without me.” or “I don’t say anything at the IEP meeting. The district doesn’t listen to what I say.”</p>	<ul style="list-style-type: none"> - Make sure district policy follows the law. (34 C.F.R. § 300.322, Miss. Admin. Code 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.322) - Make sure district staff know when to use what - Notice of Invitation to Committee Meeting vs. Prior Written Notice. - Be attentive to parents and validate their input. They are the experts on their children.

Frequent Complaints/ How to Avoid Pitfalls

- Bullying
 - Not an IDEA issue, *unless* it affects educational progress

What Parent says:	What you should do:
<p>“My child is being harassed by a teacher at school.” or “My child is afraid to go to school because he is being bullied.”</p>	<ul style="list-style-type: none"> - Call a parent conference OR IEP meeting (depending on the circumstances). - If the student is missing school due to bullying, this may be an IDEA issue. Address early and document actions taken.



Frequent Complaints/ How to Avoid Pitfalls

- Teacher Qualifications
 - Not necessarily an IDEA issue
 - Licenses are accessible to be viewed by anyone

What Parent says:	What you should do:
<p>“I don’t think my child’s teacher is qualified to teach my child.”</p>	<ul style="list-style-type: none"> - Having a license does not ensure a specific skillset. Talk to the parent about specific concerns and address them. - Get training if appropriate. <ul style="list-style-type: none"> - Document under Support for Personnel.

Frequent Complaints/ How to Avoid Pitfalls

- Homeschool
 - District policy determines services

What Parent says:	What you should do:
<p>“I’m homeschooling my child and the local district will not provide special education services for him. I’m a taxpayer.”</p>	<ul style="list-style-type: none"> - Make sure your district has a policy on services to homeschoolers and follow your policy. - Fulfill your responsibility of Child Find.

Maintaining the Relationship

- Begin with the end in mind
 - Student is the responsibility of the school district throughout the dispute resolution process and afterward.
 - Make promises you can keep.
 - Follow through on agreements.



Questions?



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