


August 1, 2023

Dispute Resolution: Options, Procedures, and Trends

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Objectives

- To inform participants in this training of the individual rights of a student with a disability and his/her parents.
- To introduce primary sources of law.
- To distinguish between informal and formal dispute resolution processes.
- To view all special education disputes as opportunities for growth and building strong IEP team relationships.
- To weigh the positives against the negatives to determine which dispute resolution option is most appropriate for meeting the unique needs of the child.



Overview: Primary Sources of Law

- 1868 - 14th Amendment
- 1964 - Title VI of the Civil Rights Act of 1964
- 1972 – Title IX of the Education Amendments of 1972
- 1973 - Section 504 of the Rehabilitation Act of 1973
- 1974 - Family Educational Rights & Privacy Act (FERPA)
- 1975 - Individuals with Disabilities Education Act (IDEA) formally the Education for All Handicapped Children Act of 1975
- 1990 – Title II of the Americans with Disability Act (ADA)
- 2015 - Every Student Succeeds Act (ESSA) the reauthorization of 2002 No Child Left Behind which was the reauthorization of the 1965 Elementary and Secondary Education Act (ESEA) for which Title I originated.



History: Constitutional Foundation of the IDEA

Primary Sources of Law

- IDEA legislation was born from these two court cases:
 - *PARC v. Commonwealth of Pennsylvania* and *Mills v. Board of Education of District of Columbia*.
- The parents relied on their due process rights afforded them under the 14th Amendment and argued in relevant part:
 - The failure to provide adequate education to students with disabilities was discriminatory under the equal protection clause of the 14th amendment;
 - The definition of liberty included a parent's liberty to make decisions on how they raised their child, including schooling decisions; and
 - Liberty includes a child's right to attend school.
- Both cases relied on the *Brown vs. Board of Education* ruling that separate is not equal.
- Per *PARC v. Pennsylvania*, "Placement in a regular school is preferable to placement in a special school class and placement in a special public school class is preferable to placement in any other type of program of education and training."



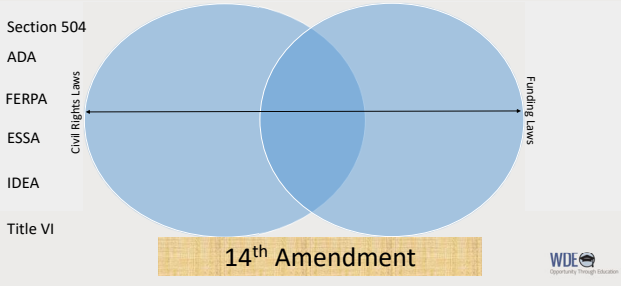
Outcome

Congress drafted legislation now known as the IDEA that ensured the following:

- An individualized education program (IEP);
- Free appropriate public education (FAPE);
- Educational placement in the general education setting;
- Public education to the age of 21; and
- Due Process Rights.



Activity: Place the Act in its appropriate space within the Venn Diagram.



Procedural Safeguards

- Procedural safeguards are rules of procedure that protect the rights of children with disabilities and their parents.
- This section of the law requires the WDE to make sure that a public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 34 C.F.R. §§ 300.500 – 300.536.
- This section is where the right to access educational records, confidentiality, parent participation in meetings, independent educational evaluation (IEE), prior written notice (PWN), mediation, due process hearing and resolution meeting, transfer of rights at the age of majority, and discipline statutes are found.
- Also, the WDE's Procedural Safeguards include rules of procedures that fall **outside** of 34 C.F.R. §§ 300.500 – 300.536, such as State Complaint Procedures and Unilateral Placement by Parents of Children in Private School at Public Expense.



Procedural Safeguards

- Pursuant to 300.504(b), the WDE makes available a copy of the Notice of Procedural Safeguards on its website.
- *"The Notice of Procedural Safeguards explains rights available to a parent or child under the IDEA. As a parent of a child with a disability you have certain rights under federal and state law. One of those rights is to be informed, in writing and in your native language or other mode of communication that you may use, of the procedural safeguards available to you."*




Procedural Safeguards

- Pursuant to 300.504, a copy of the procedural safeguards must be provided to a parent of a child with disability one time per year, except that a copy also must be given to the parents—
 - Upon initial referral or parent request for evaluation;
 - Upon receipt of the first State Complaint and upon receipt of the first due process complaint in a school year;
 - In accordance with the discipline procedures in 300.530(h); and
 - Upon request by a parent.

QUESTIONS?




Dispute Resolution




"Do you two have a history?"


What is Dispute Resolution?
Process for resolving disagreements between parents and districts concerning special education issues that range from informal to formal.
"...in any dispute, each side will bear at least a small portion of the blame."



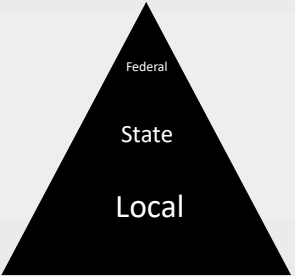
Dispute Resolution Continuum




Local-level Mediation State Complaint Investigation Due Process Civil lawsuit



Levels of Dispute Resolution



Federal
State
Local



Local-level Resolution

Local-level Mediation State Complaint Investigation Due Process Civil lawsuit

1. Is the LEAST formal option.
2. Begins with Prevention:
 - Continue building your special education knowledge by utilizing available resources such as the following National TA Centers - AIR, CADRE, IRIS, TAESE;
 - Attend in-person and virtual trainings/webinars;
 - Develop a written Special Education Desk Manual for staff;
 - Develop a Special Education Process Manual/Handbook for Parents; and
 - Build a strong, trusting, working relationship with the parents.
 - Accept that every IEP team member is an expert either because of personal experience or professional training.
 - Build a strong team relationship by identifying shared values, shared history, and shared goals.
 - Develop strong communication skills to prevent conflict that is the result of misunderstandings.
 - Include the student when appropriate.
3. Propose a resolution.

"Get started, then Get better"

Local-level Resolution

Positive outcomes for pursuing Informal Dispute Resolution Options:

- Parent(s) and School have more authority over the outcome.
- Resolved faster than formal dispute resolution options.
- Least costly, generally no cost.
- Build stronger Parent/School relationships.

TEAM Mindset

State-level Resolution

Local-level **Mediation** State Complaint Investigation Due Process Civil lawsuit

- Voluntary.
- The process of conducting a meeting led by a trained mediator at no cost to the parties involved. It is a means of resolving disputes concerning special education issues.
- Mediator- An individual who is specially trained in special education matters and whose role is to facilitate communication between the parties. The mediator is impartial, independent, and does not make decisions or enforce any action.
- Settlement Agreement- a written agreement signed by both parties that describes what the parties have agreed to and will do to resolve the dispute.

State-level Resolution

Examples of Conflict Best Suited for Mediation:

- Provision of services such as frequency, duration, location.
- Staffing issues such as wanting your child to work with a different teacher or paraeducator.
- Program preferences: desiring one dyslexia program over another.
- Alternative Assessments.
- Accommodations.

"Don't let the perfect be the enemy of the good"

State-level Resolution: Mediation

Positive Outcomes:

- No cost to the parent or district;
- Confidential;
- Available any time;
- Resolved faster than State Complaint Investigation and Due Process Hearing;
- Parent and LEA (the district) have more authority over the outcome; and
- Opportunity to learn and apply conflict resolution skills gained from working with a Mediator for future interactions.

QUESTIONS?

CADRE (2014). IDEA Special Education Written State Complaints, Eugene, Oregon, CADRE.

State-level Resolution

- A formal process for resolving allegations that an LEA/public agency has violated the IDEA or Wyoming Chapter 7 Special Education Rules.
- A complaint may be filed on behalf of an individual student or group of students (systemic complaint).
- A non-parent may request a complaint investigation.

State-level Resolution

Local-level Mediation **State Complaint Investigation** Due Process Civil lawsuit

State Complaint Request may be made by a Parent or Third Party.

- Fill out the State Complaint Investigation Form or provide a letter that meets the following requirements:
 - A statement that the public agency violated IDEA;
 - Facts on which the statement is based;
 - Signature and contact information for the Complainant; and
 - Name of child, his/her address, and the name of school the child attends.
- Identify the issue/concern.
 - Parent alleges school is not providing the services included in the IEP.
- Provide proposed solutions to the dispute.

State-level Resolution

Local-level Mediation **State Complaint Investigation** Due Process Civil lawsuit

- Examples of Issues:
 - Child find;
 - Not having a current IEP in place at the beginning of the school year;
 - Not implementing the IEP as written;
 - Not providing special education by a certified special educator;
 - Not conducting a comprehensive evaluation.
 - Not completing initial evaluation within 60 days of receiving consent;
 - Not providing prior written notice (PWN); and
 - Not scheduling an IEP meeting at a mutually agreeable time and place.
- The violation must have occurred within 1 year of filing for a state complaint investigation.
- State Education Agency determines the outcome within 60 days of receipt of request for complaint investigation.

State-level Resolution

Local-level Mediation **State Complaint Investigation** Due Process Civil lawsuit

- An opening investigation letter is sent to the parties within 10 days of receipt of the complaint investigation request. The letter will indicate a request has been received and the WDE will be investigating the issues listed in the letter.
- The letter will request documents concerning the complaint from the district.
- The district will have 10 days to provide the requested information to the WDE.
- The District is encouraged to continue working with the parent to resolve the dispute. Districts have several options to resolve the dispute at the local level prior to a decision being rendered.

State-level Resolution

5. The WDE will investigate by examining all student records and data.
6. After a thorough review of the data, the WDE will request either phone interviews with individual staff or provide them with a written questionnaire.
7. Both parties to the complaint may provide additional information at any time during the investigation either in writing or orally.
8. The Final Decision Letter will address each allegation identified in the opening investigation letter. The Decision Letter is broken down into the following sections: Findings of fact, Conclusions, Reasons for final decision; and Corrective action, if warranted.
9. All decisions are final. There is no appeal process.

State-level Resolution

- What is a Complaint Investigator?
- It is an impartial individual with expertise in special education issues and law whose primary purpose is to independently review the relevant facts, weigh the evidence, and recommend findings and corrections.

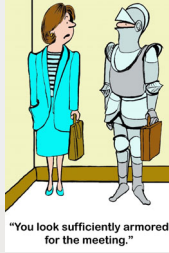
State-level: Complaint Investigation

Positive Outcomes:

- Option to resolve sooner than the 60-day timeline through informal local-level resolution or mediation;
- Less intimidating than Due Process Hearing;
- No cost;
- Remedy if a violation to Federal and State regulations occurred; and
- Opportunity to grow in one's knowledge of IDEA.

QUESTIONS?

Due Process Hearing



State-level Resolution



Who has the right to file for due process?

- A Parent or public agency may request a due process hearing on any matter relating to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.
 - Parents: To challenge the determination that their child was not found eligible for IDEA special education services.
 - Parents: To dispute that the Charter School placed the child in his/her least restrictive environment when the Charter School did not offer special education services in a self-contained classroom/resource room.
 - Parents: Allege a failure to "offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District Re-1*, 137 S. Ct. 989.
 - Public agency: To conduct an initial special education evaluation by overriding parent's refusal to consent.
 - Public agency: To remove a student to an interim alternative educational setting per the discipline statutes.
 - Public agency: To challenge the request of an IEE at public expense.
- Hearing officer is appointed within 5 days of receipt of request for a hearing.
- Hearing officer oversees the process.



Due Process Hearing

If the Parent requests Due Process Hearing, Parent is the Petitioner and does the following:

1. Hires attorney or is pro se;
2. Ensures motions or requests go to the hearing officer;
3. Provides evidence, exhibits, discovery;
4. Testimony; and
5. Bears the burden of Proof.

Due Process per Parent Request- Public Agency is the Respondent:

1. Attorney;
2. Provides a written response within 10 days of receipt of request if a PWN was not provided to the parent;
3. Public agency must organize and schedule the required resolution session;
4. Prepare all documents and exhibits; and
5. Continue to work with the parent on a resolution.



Due Process Hearing

Resolution Meeting

- Within 15 days of the request, the public agency must hold a resolution session with the parents and their counsel for up to 30 days.
- 45-day hearing timeline commences the day after the resolution session.
- The parties can agree to utilize mediation in lieu of the resolution session.
- The parties can agree to toll (stop the running of the time period) the due process hearing to engage in mediation.



Due Process Hearing

Due Process Hearing Request- Public Agency Petitioner:

1. No obligation to hold the resolution meeting unless parent would challenge sufficiency of the complaint. *Example: Public agency could amend complaint if parent agreed in writing and is given an opportunity to resolve via a resolution meeting.*
2. 45-day timeline to hold hearing begins upon receipt of complaint.
3. Bears the Burden of Proof.

Due Process Hearing Request- Parent Respondent:

1. Provide a written response within 10 days of receipt of complaint.
2. Prepare all documents and exhibits.



Due Process Hearing

Prehearing Conference is held to determine the following:

- Issues and wording of issues;
- Number of witnesses for each party;
- Number of days to conduct the hearing;
- Order of proceedings;
- Petitioner has the burden of proof and will go 1st;
- Whether the hearing will be held in-person or via electronic format;
- Whether the hearing will be open to the public;
- How to mark the exhibits;
- Determine if an interpreter, assistive technology, or other accommodations are needed; and
- Schedule the hearing dates.



Due Process Hearing

Hearing officer oversees the hearing process:

- Administering oaths;
- Issuing subpoenas;
- Taking of testimony;
- Ruling on offers of proof and admit evidence;
- Regulating course of hearing;
- Issuing orders necessary for the orderly administration of the due process hearing;
- Opening statements;
- Presentation of evidence;
- Cross-examination;
- Rebuttal evidence;
- Closing arguments; and
- Written verbatim record.



Due Process Hearing

Due Process Decision

- Includes: Findings of fact, conclusions of law, and order.
- Decision is binding, unless the decision is appealed in state or federal court within 90 days of the date of the decision. *34 CFR § 300.516*.



State-level Resolution



- Two (2) year statute of limitation to request a Due Process Hearing.
- The outcome is determined by the hearing officer so no local control.
- Most adversarial and least collaborative option.
- Damaging to parent and school working relationship.
- Costly if attorneys and advocates are involved.
- Timeline could exceed 75 days.



Due Process Hearing

Positive Outcomes:

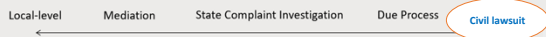
- Early resolution options available to resolve sooner than the 75-day timeline.
- Very formal legal process.
- Remedy if applicable.



QUESTIONS?



Federal Level of Intervention



- Appeal to a federal district court once IDEA administrative procedures have been exhausted.
- If the Petitioner prevails in the Due Process Hearing, s/he may sue for attorney's fees.
- May utilize a district court of competent jurisdiction to enforce a mediation agreement.

All IDEA eligible students are entitled to civil right protections under the following:

- Rehabilitation Act of 1973
- Americans with Disabilities Act 1990



Section 504 of the Rehabilitation Act of 1973

- Different federal law.
- Different definitional scope of disability (much broader).
- Section 504 does not require specially designed instruction (a.k.a. special education) to be eligible for a 504 plan.



Civil Rights

- Contact the Office for Civil Rights (OCR):
 - Retaliation for engaging in a protected right.
 - Bullying, Intimidation and Harassment.
 - Disability Discrimination.
 - Denied equal access to extracurricular athletics.
 - Denied equal access to public education.
- Parents are not required to exhaust IDEA administrative procedures to file a complaint with OCR.



Civil Rights

- Local-level: District Coordinator
- State-level: Wyoming Department of Education, Office for Civil Rights Coordinator-Beth Lougee, 2nd Floor, Hathaway Building, Cheyenne, WY 82002-0050 or **307-777-6198**.
- Federal-level: U.S. Department of Education, Cesar E. Chavez Memorial Building, 1244 Speer Boulevard, Suite 310, Denver, CO 80204-3582, Telephone: 303-844-5695, FAX: 303-844-4303; TDD: 877-521-2172; Email: OCR.Denver@ed.gov



Dispute Resolution Update (Summaries)

2022 Calendar Year

Complaint Investigation - 17 Requests
 vs. Carbon 2 (+systemic) Findings: Child find, IEP implementation, parent participation, IEP team member, and IEP implementation for 4 other students.
 3 complaints (1 Parent) vs. Niobrara WYVA Findings: Procedural violation - IEP scheduling.
 vs. Converse 1 Findings: Procedural - Unnecessary delay to access records and confidentiality.
 vs. Sweetwater 1 Resolved via Mediation Settlement Agreement.
 vs. Niobrara 1 No Findings. Issues: Transition and transition service participants invited.
 vs. Sweetwater 1 Decided via Due Process Hearing December 2021. SEA cannot overturn a hearing decision.
 vs. Laramie 1 Findings: FAPE violation for delegating development & implementation of BIP to outside agency.
 vs. Uinta 4 No Findings. Issues: FAPE and LRE.
 vs. Sheridan 1 No Findings. Issues: change of placement and PWN.
 vs. Laramie 1 (systemic) Findings: Students at Program did not receive FAPE due to violations of IEP development & implementation, LRE, & Comprehensive evaluations.
 vs. Weston 1 Withdrawn due to local level resolution.
 vs. Natrona 1 Findings: IEP development and implementation for blind/low vision student.
 vs. BHD (+systemic) Findings: IEP Development - goal pages not included and LRE. (Mediation requested Mar.23.2023 Re: CAP)
 vs. Uinta 1 Findings: FAPE - Not reasonably calculated; No Review/revision lack of progress; AR overdue; Progress reports.
 vs. Natrona 1 Findings: Implementation of services plan, goals not included in services plan, failed to provide progress reports to parent.



Dispute Resolution Update

2022 Calendar Year (January 1 - December 31, 2022)

Mediation - 3 Requests

Natrona: District requested due to dispute over placement in therapeutic residential treatment facility. **RESOLVED** via Mediation Settlement Agreement.

Platte 1: Parent requested due to dispute over comprehensive evaluation, IEP development and implementation, transition & meaningful participation. **RESOLVED** via Mediation Settlement Agreement.

Niobrara WYVA: Parent requested due to dispute over speech goal, training for staff, and consideration of special factors. **RESOLVED** via Mediation Settlement Agreement.

Due Process - 6 Requests

Sheridan: District requested a hearing to move forward with an evaluation but **withdrew** upon student moving out-of-district.

Campbell: Parent alleged evaluation did not assess for Dyslexia. **Resolved** via Mediation Settlement Agreement.

Converse: Parent alleged a denial of FAPE. **Resolved** via Mediation Settlement Agreement.

Park 1: Parent alleged denial of FAPE. **Resolved** via Resolution Session Agreement.

Hot Springs 1: District requested due to safety concerns. **Resolved** via local level resolution.

Uinta 1: Parent alleged a denial of FAPE. Parent **withdrew** and requested a state complaint investigation.



Dispute Resolution Update

2023 Calendar Year (January 1, 2023 – June 30, 2023)

Mediation - 5 Requests

Uinta 1: District requested a mediator for an IEP meeting since State does not offer IEP Facilitation. Parent declined due to no dispute with the district.

Parent requested a more restrictive placement. **Campbell #1** declined and resolve at the local level.

Complaint Investigation - 10 Requests

vs. **Laramie #1 Findings:** FAPE: IEP development & revision due to lack of progress & disciplinary removals.

vs. **Converse #1 Findings:** PWN and meaningful parent participation.

vs. **Sheridan #2 ISSUES:** LRE, Discipline removals, meaningful participation. **WITHDRAWN - Local Level Resolution.**

vs. **Laramie #1 ISSUES:** FAPE: IEP revised-lack of progress; IEP implementation; PWN; Copy of IEP; certified teacher. Resolved via Mediation Settlement Agreement.

vs. **Johnson #1 No Jurisdiction:** Alleged violations did not fall within the parameters of the IDEA. **CLOSED.**

vs. **Platte #1 Findings:** Parent participation and decisions regarding FAPE made prior to the IEP meeting.

vs. **Uinta #1 Findings:** Progress reporting per IEP and IEP Implementation.

vs. **BHD:** Withdrawn Local-level Resolution.

vs. **Carbon 1:** In Progress.

vs. **Platte 1:** In Progress.

Due Process - 1 Request

Fremont #1: Parent alleges a denial FAPE: failure to conduct FBA and develop BIP prior to proposing residential placement and not providing autism supports. Resolved via **Mediation Settlement Agreement.**



What **TRENDS** do you see?



Citations & Website LINKS

- Cartoon Resource. <https://cartoonresource.com/>.
- IRIS Center. <https://iris.peabody.vanderbilt.edu/resources/iris-resource-locator/>.
- National Center on Intensive Intervention. <https://intensiveintervention.org/training/online-learning-modules>.
- Parent Information Center <http://www.wpic.org/>.
- Progress Center at the American Institute for Research (AIR) <https://promotingprogress.org/training>.
- The Center for Appropriate Dispute Resolution in Special Education Resource (CADRE) <https://www.cadreworks.org/for-families>.
- WDE Dispute Resolution <https://edu.wyoming.gov/for-district-leadership/special-programs/dispute-resolution/>.



Dispute Resolution: Options, Procedures, and Trends
 Session Evaluation
 August 1, 2023 3:00 - 4:15 p.m.



Dispute Resolution: Options, Procedures, and Trends
 Session Evaluation
 August 2, 2023 2:15 - 3:30 p.m.



Questions/Comments

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Thank you!