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Education Rights: Dispute Resolution Options

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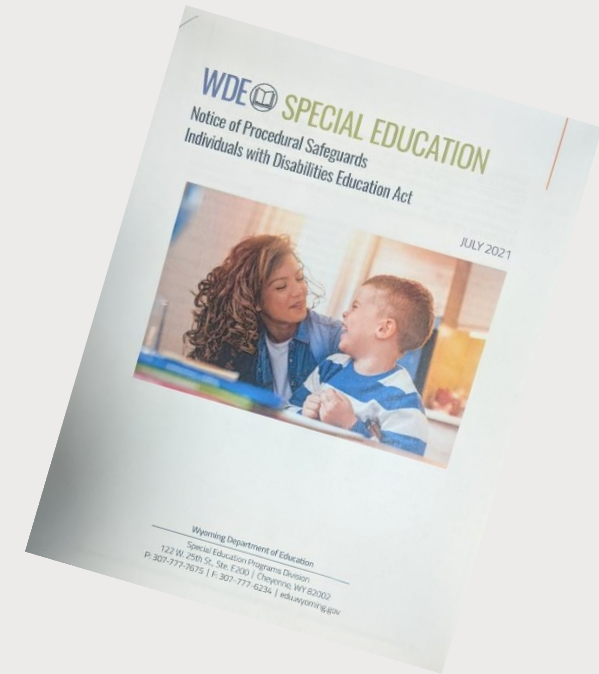
WDE Dispute Resolution Coordinator

Objectives

- 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.

Procedural Safeguards

- Procedural safeguards are rules of procedure that protect the rights of children with disabilities and their parents.
- This section of the law is where the right to access educational records, confidentiality, parent participation in meetings, independent educational evaluation (IEE), prior written notice (PWN), mediation, due process hearings and resolution meeting, transfer of rights at the age of majority, and discipline statutes are found.
- See Page ii for low to no cost legal providers.



Dispute Resolution



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.” (Nestlebaum, 2017, p. 245)

Levels of Intervention

- Local
- State
- Federal



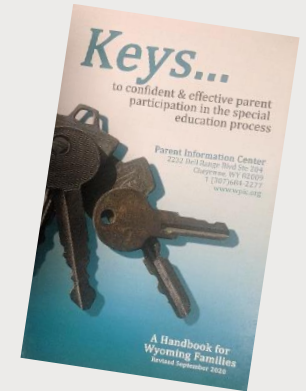
**“We are communicating better ...
but we are still not out of the woods.”**

Local-level Resolution

1. Is the LEAST formal option.
2. Begins with Prevention:
 - 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.

“Get started, then Get better”

Local-level Resolution



3. Conflict Engagement: Conflict is inevitable.

- **Begin at the lowest level by holding a parent/teacher conference to discuss concerns such as low grades or lack of progress.**
- **Hold an IEP Team Meeting to discuss concerns/issues that may result in a change to the IEP.**
- **Contact the Parent Information Center (PIC). PIC provides a variety of services to parents and districts such as IEP Facilitation.**
- **Call or email me for Dispute Resolution Technical Assistance.**



Local-level Resolution

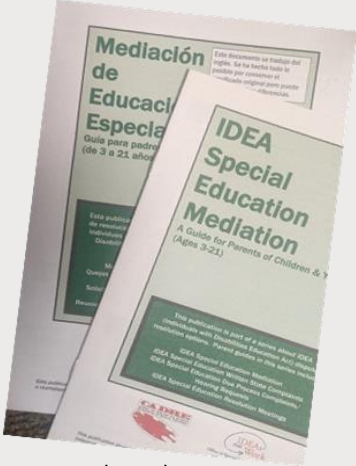
Positive outcomes for pursuing Informal Dispute Resolution Options:

- **Parent(s) and School have more authority over the outcome.**
- **Resolved faster than formal dispute resolution options.**
- **Build stronger Parent/School relationships.**

TEAM Mindset

State-level Resolution: Mediation

- 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.



CADRE (2014). CADRE (2014). IDEA Special Education Mediation, Eugene, Oregon, CADRE.

State-level Resolution: Mediation

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.
- Accommodations.

“Don't let the perfect be the enemy of the good”

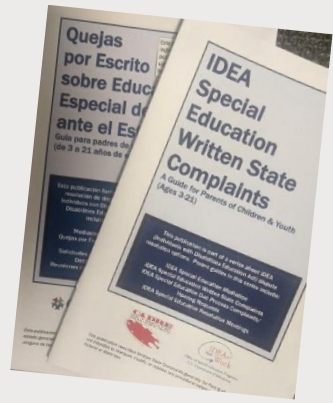
State-level Resolution: Mediation

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.**



State-level: Complaint Investigation



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

- 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: Complaint Investigation

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

1. Fill out 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.
2. Identify the issue/concern.
 - Parent alleges school is not providing the services included in the IEP.
3. Provide proposed solutions to the dispute.

State-level: Complaint Investigation

1. 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.
2. The letter will request documents concerning the complaint from the district.
3. The district will have 10 days to get the requested information to the WDE.
4. 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: Complaint Investigation

1. The WDE will investigate by examining all student records and data.
2. After a thorough review of the data, the WDE will request either phone interviews with individual staff or provide them with a written questionnaire.
3. Both parties to the complaint may provide additional information at any time during the investigation either in writing or orally.
4. 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.
5. All decisions are final. There is no appeal process.

State-level: Complaint Investigation

- 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

- The violation must have occurred within 1 year of filing for a state complaint investigation.
- Examples of Issues:
 - 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.
- State Education Agency determines the outcome within 60 days of receipt of request for complaint investigation.

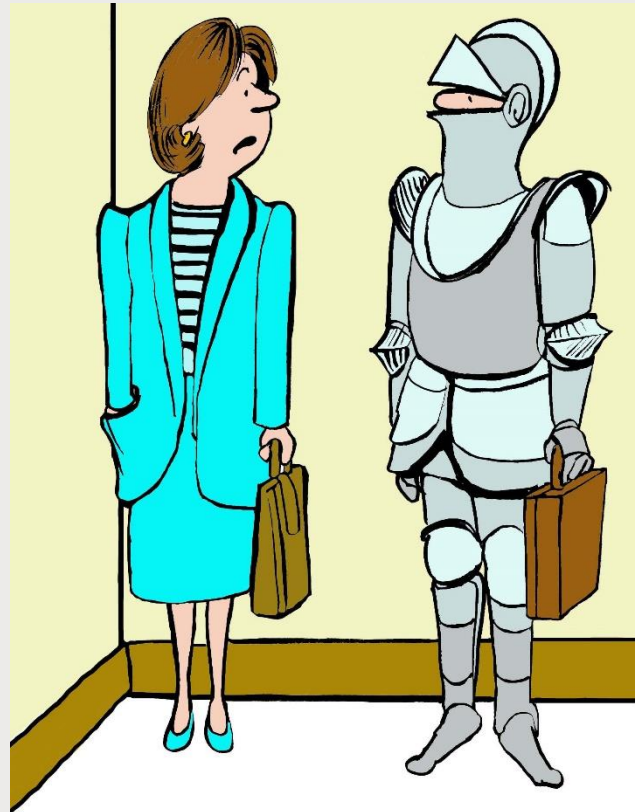
State-level: Complaint Investigation

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.



Due Process Hearing

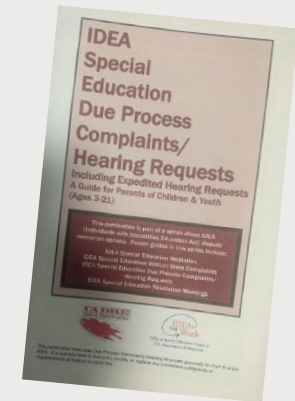


**“You look sufficiently armored
for the meeting.”**

State-level: Due Process Hearing

Who has the right to file for due process?

- A Parent or School District 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.
- Hearing officer is appointed within 5 days of receipt.
- Hearing officer oversees the process.



CADRE (2014). IDEA Special Education Due Process Complaints/Hearing Requests Including Expedited Hearing Requests, Eugene, Oregon, CADRE.

Due Process Hearing

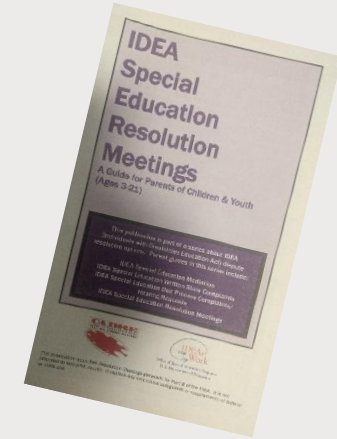
If the Parent requests Due Process Hearing, Parent is the Petitioner and does the following:

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 Parent Request- District is the Respondent:

1. School District Attorney;
2. Provides a written response within 10 days of receipt of request if a PWN was not provided to the parent;
3. District 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, district 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.

CADRE (2014). IDEA Special Education Resolution Meetings, Eugene, Oregon, CADRE.

Due Process Hearing

Due Process Hearing Request- District Petitioner:

1. No obligation to hold the resolution meeting unless parent would challenge sufficiency of the complaint. *Example: District 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.*

Due Process Hearing

- 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.



Federal Level of Intervention

- Appeal to a federal district court once IDEA administrative procedures have been exhausted.
- 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

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.
- 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, 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

Citations & Website LINKS

- CADRE (2014). IDEA Special Education Due Process Complaints/Hearing Requests Including Expedited Hearing Requests, Eugene, Oregon, CADRE. [CADRE-parent-guides/due-process-complaints](#).
- CADRE (2014). IDEA Special Education Resolution Meetings, Eugene, Oregon, CADRE. [CADRE-parent-guides/due-process-complaints/resolution-meetings](#).
- CADRE (2014). CADRE (2014). IDEA Special Education Mediation, Eugene, Oregon, CADRE. [CADRE-parent-guides/mediation](#).
- CADRE (2014). IDEA Special Education Written State Complaints, Eugene, Oregon, CADRE. [CADRE-parent-guides/writtenstatecomplaints](#).
- CADRE <https://www.cadeworks.org/for-families>.
- Cartoon Resource. <https://cartoonresource.com/>.
- Nestlebaum, C. (2017). *Master Your Words, Master Your Life: Real-Life Answers, Advice, and Strategies for Proper Speech*. Artscroll.
- Parent Information Center <http://www.wpic.org/>.
- WDE Dispute Resolution <https://edu.wyoming.gov/for-district-leadership/special-programs/dispute-resolution/>.

Questions/Comments

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Thank you!