

ARIZONA DEPARTMENT OF EDUCATION
DISPUTE RESOLUTION

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IF YOU HAVE ANY QUESTIONS CALL: 602-542-3084



SOLVING PROBLEMS INFORMALLY

When you have questions or concerns regarding your child's special education program, attempt to address the issues with the teacher(s) first. If you have further concerns about your child's specific program, you may also request that the school reconvene your child's individualized education program (IEP) team. You should make your request in writing and give a copy to the special education teacher or team leader, and to the school principal. At that scheduled IEP meeting, keep in mind:

- The IEP team needs to work cooperatively to meet your child's needs.
- Each member has valuable information to share. Be an active listener, ask questions, and make your views known.
- No one member should come to the meeting with a solution or plan in mind that cannot be discussed or revised. Each member has a responsibility to share in the process.
- If the team does not agree and the school has not given you a "prior written notice" ask the school for this notification. This documentation is important if you feel you need to pursue other dispute resolution options.

Effective communication is very important in clarifying the concern(s) and assisting in the problem-solving process. It is important to document your concerns and the efforts you have made to resolve the problems.

- If your questions and concerns are not successfully addressed by your child's school, make an appointment to talk to the special education director.
- If you are still not satisfied with how your questions and concerns have been addressed, make an appointment with the superintendent or director of your child's school.

You may also contact the organizations listed below for information about what the federal and state requirements say regarding your issue or concern, next steps to take to resolve the problem, support groups in your area, training opportunities and events, and other resources available to assist with the special education process.

PARENT RESOURCES

ARIZONA DEPARTMENT OF EDUCATION/DISPUTE RESOLUTION

The Early Resolution Specialists with the Dispute Resolution Unit provide technical assistance to constituents seeking early resolution of complaints, in addition to providing guidance on the formal dispute resolution options available under the IDEA. For further information, please contact one of the Early Resolution Specialists using the toll-free number 1-855-383-9801.

RAISING SPECIAL KIDS

Raising Special Kids serves as Arizona's Family-to-Family Health Information Center, and as Arizona's Parent Training and Information Center. To learn more about your child's disability and parent training opportunities, call Raising Special Kids at 602-242-4366 or 800-237-3007, or visit their website at www.raisingpecialkids.org. Address your questions by e-mail to info@raisingpecialkids.org.

ARIZONA DEPARTMENT OF EDUCATION/EXCEPTIONAL STUDENT SERVICES

Many times you can handle a concern regarding special education matters informally by contacting the Arizona Department of Education/Exceptional Student Services (ADE/ESS) Education Program Specialist assigned to the district or charter school your child attends. To contact the ADE/ESS Specialist for your area, call 602-542-4013. You can also download information on special education from the following website www.azed.gov/special-education/.

LEGAL ADVOCACY

For advocacy or legal assistance regarding special education, call the Arizona Center for Disability Law in Phoenix at 602-274-6287 (voice/TTY) or 800-927-2260 (voice/TTY); In Tucson at 520-327-9547 or 800-922-1447 (voice only) or 877-327-7754 (TTY); or visit their website at www.acdl.com. Address your e-mail to center@azdisabilty.org.

FORMAL OPTIONS TO CONSIDER

If you are still unable to resolve your issue(s), you may contact the Arizona Department of Education for the following formal dispute resolution options:

- MEDIATION
- STATE COMPLAINT
- DUE PROCESS

MEDIATION SYSTEM FOR SPECIAL EDUCATION

The Individuals with Disabilities Education Act (IDEA) mandates that states establish procedures to allow parties to disputes involving any matter under the IDEA to resolve those disputes through mediation. To that end, mediation is available through the Arizona Department of Education/Dispute Resolution Unit (ADE/DR) at no cost to parent or school. ADE mediators are independent contractors trained in both mediation techniques and special education requirements. Mediation is an informal, voluntary process during which an impartial mediator facilitates open communication between the participants, assists them in expressing their concerns, and offers solutions with a focus on resolving the disagreement in a way that satisfies all parties. Mediation cannot be used to deny or delay a parent's right to a due process hearing.

THE SYSTEM

Mediation

- Is voluntary.
- Is an informal and effective way to resolve differences in a positive manner.
- Is a problem-solving process that requires the parties to communicate directly with each other and work toward a mutually agreeable solution. (Due to the non-adversarial nature of mediation, legal representation is not recommended during this interaction. If either party intends to have legal representation, prior notice should be provided to the other party.)
- Is generally completed in one-half to one full day.

The ADE/DR:

- Maintains a list of qualified mediators.
- Provides mediation at no cost to either party.
- Assigns the mediators after both parties have agreed to participate in mediation.
- Evaluates and monitors the effectiveness of the mediation system.

THE PROCESS

- Parents or the public education agency (PEA) representatives may contact the ADE/DR to request mediation, or may submit a mediation request form, which can be found on the ADE website at www.azed.gov/special-education/dispute-resolution-mediation/.
- ADE/DR staff will explain the mediation process and obtain assurances that both parties are willing to mediate.
- ADE/DR staff will contact a mediator, who is selected on a rotational basis, to facilitate the mediation. Upon selection and assignment of a mediator, all parties will be notified by ADE/DR. The mediator will contact the parties to schedule mediation.
- When the mediation is scheduled, the mediator will inform the ADE/DR of the date, time, and location.
- Materials relating to the mediation process will be sent by ADE/DR staff to both the mediator and the parties involved, as appropriate.
- If the parties are able to resolve the dispute through the mediation process, they must develop a legally binding agreement that sets forth the resolution. The mediation agreement must be signed by both parties and must state that all discussions that occurred during the mediation will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a federal district court.

- Upon completion of the mediation, the mediator will submit the original, signed mediation agreement to ADE/DR.
- A questionnaire will be distributed to the parties to complete and return to the ADE/DR.
- All mediation documents sent to the ADE/DR will be maintained in confidential files.

THE MEDIATOR

- Is trained in effective mediation techniques and is knowledgeable about the laws and regulations related to special education.
- Contacts both parties prior to the mediation to clarify the issues, gather necessary information, and explain the mediation process.
- Schedules the mediation with both parties.
- Determines who may be present during the mediation, limiting the number of participants generally to a maximum of three for each party.
- Acts as an impartial facilitator, not as a special education expert, advocate, or decision maker.
- Establishes an understanding of the nature of the disagreement and determines points of agreement.
- Encourages open communication.
- Limits discussions to the current or future aspects of the situation.
- May caucus (meet privately), if necessary, with both parties during the mediation and must maintain confidentiality of those discussions, unless the parties otherwise agree.
- Assists the parties in writing the terms of the agreement.
- Provides ADE/DR with the original signed agreement, with copies to the parties.
- May terminate the mediation if an agreement cannot be reached, or if the parties do not follow the mediation guidelines.
- Will not participate in subsequent due process hearings or future legal proceedings.
- Only one mediator is assigned to mediation; however, on occasion, a mentor/trainee will attend as an observer.

THE PARTIES

- Agree to approach the mediation in good faith, with the interest of reaching an agreement.
- Take the steps necessary to ensure a sufficient amount of time is available to complete the mediation process (generally four to eight hours).
- Present their viewpoint, including all relevant information.
- Meet separately with the mediator when necessary or appropriate. This may occur when sensitive information is to be shared, or when it is necessary to address private concerns of the parties.
- Ask for clarification whenever material or a point of discussion is not understood.
- Actively participate in mediation and in the drafting of the mediation agreement.
- Schedule an IEP meeting to include any agreed-upon changes to the student's IEP.

STATE COMPLAINT SYSTEM FOR SPECIAL EDUCATION

THE PROCESS

Individuals or organizations may file signed written complaints with the Arizona Department of Education/Dispute Resolution Unit (ADE/DR) if they believe a public education agency (PEA) responsible for the provision of special education services is not in compliance with state and federal laws or regulations.

A complaint must include:

- A statement that the PEA has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA), its implementing regulations, or a special education law found in the Arizona Revised Statutes or the Arizona Administrative Code, but it need not identify the specific law or regulation involved.
- The facts on which the allegation is based.
- A signature and contact information for the complainant (anonymous complaints will not be processed).
- If alleging violations with respect to a specific child or children, the child's name and address (in the case of a homeless child, available contact information), and the name of the school the child attends.
- A proposed resolution of the problem to the extent known and available at the time the complaint is filed.

A complaint:

- Must allege a violation that occurred not more than **one (1) year** prior to the date that the complaint is received by the ADE/DR.
- Should be filed with the Director of Dispute Resolution at the Arizona Department of Education/Dispute Resolution, 1535 West Jefferson, Bin 62, Phoenix, Arizona 85007, and a copy of the complaint must be forwarded to the PEA serving the child.

After a complaint is received by the ADE/DR, the parties involved will receive a Letter of Acknowledgement from ADE/DR. This letter will provide the following information:

- The reference number that has been assigned.
- The timeline required for completion of the investigation (60 calendar days from the date of acknowledgement of the complaint).
- The probability of a site visit.
- How to amend the complaint and who to contact if questions arise.
- In addition, when the "Letter of Acknowledgement" is sent, the PEA will receive a copy of the complaint and any supporting documentation.

Within **five (5) business days** of receipt of the complaint by the ADE/DR, the assigned investigator will contact each party in an attempt to facilitate resolution of the dispute by clarifying the issues and focusing on how the parties can work together to meet the child's educational needs. The parties will be offered the opportunity to voluntarily participate in mediation.

As part of the investigation, the assigned investigator will collect relevant documents, conduct interviews, and, if appropriate, visit the school. The complainant will be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

The **60 calendar day** timeline may be extended by the Director of Dispute Resolution, or a designee, if exceptional circumstances exist with respect to that particular complaint. If an extension is required, the ADE/DR will send all parties a letter that includes a description of the exceptional circumstance(s) and the date by which the "Letter of Findings" will be issued.

Once the investigation has been completed, the investigator will prepare a "Letter of Findings". The "Letter of Findings" will include factual information, conclusions specific to the complaint allegations, and reasons for the final decision(s) as determined by ADE/DR. A copy of the "Letter of Findings" will be sent to both parties involved within **60 calendar days** of the receipt of the complaint.

When noncompliance is discovered, ADE/DR will order specific corrective action(s) that must be completed within the timelines outlined in the "Letter of Findings." The Corrective Action Compliance Monitor will track all corrective action documentation and insure that all corrective action is complete and received within the stated timelines. A PEA's failure to comply with corrective action timelines will result in serious consequences—up to and including the interruption or redirection of federal special education funding; the withholding of up to 10 percent of state special education funding; or for charter schools, the revocation of the school's charter.

ADDITIONAL COMPLAINT INFORMATION

A written complaint should also contain the following information to help facilitate the process:

- Printed or typed name of the person filing the complaint.
- The address of the person filing the complaint.
- Daytime phone number(s) where the complainant can be reached between 8:00 a.m. and 5:00 p.m. Monday through Friday.
- The date the complaint was written.
- A chronological listing of dates and events relevant to the complaint investigation.
- Copies of any relevant documents that should be reviewed and/or a list of any additional documents that should be reviewed as part of the complaint.
- The name and contact information of individuals believed to have relevant information concerning the complaint allegations.
- Written statements concerning any relevant information that is not documented in some other way.
- The complainant may use the ADE/DR model complaint form located at www.azed.gov/special-education/dispute/complaints/. The complainant is not required to use the model form and may, instead, send a complaint in the form of a letter; however, to avoid confusion regarding the purpose of the letter, the ADE/DR suggests that the letter indicate that it is a "formal state administrative complaint."

THE ADE/DR COMPLAINT INVESTIGATOR

- Is a professional staff member trained to investigate special education complaints.
- Has the authority to review confidential student educational records related to the complaint allegations.
- Bases his/her findings and conclusions on the documentation provided or otherwise discovered during the investigation; information obtained through interviews; relevant statutes, rules, and regulations; and pertinent case law.

INVESTIGATION LIMITATIONS

Allegations related to Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990 are not within the authority of the ADE/DR to investigate; however, the complainant will be referred to the appropriate investigative agency as appropriate.

Allegations related to unprofessional conduct by PEA personnel are not typically investigated by the ADE/DR. For these types of allegations, the complainant will be referred to the PEA's administration for resolution or to the Investigative Unit of the Arizona State Board of Education.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of that hearing, ADE/DR must set aside any part of the complaint that is being addressed in the due process hearing until it is concluded. Additionally, allegations that have been resolved in a due process hearing, or have already been investigated in a previously filed complaint, will not be reinvestigated.

DUE PROCESS SYSTEM FOR SPECIAL EDUCATION

THE PROCESS

In accordance with the Individuals with Disabilities Education Act (IDEA), the ADE/DR is required to provide a due process hearing system to assist parents of children with disabilities and PEAs in resolving special education related disputes. A due process hearing may be used to resolve any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to the child. Parents, students who have reached the age of majority, or a PEA may request a due process hearing.

DUE PROCESS COMPLAINT FILING PROCEDURES

The party seeking due process must provide a due process complaint notice to the other party and to ADE/DR. This may be done by regular United States mail, fax, or e-mail.

Upon receipt of the request for a due process hearing, the ADE/DR will assign a case number to the matter and forward the due process complaint notice and supporting documentation to the Arizona Office of Administrative Hearings (OAH). OAH will provide ADE with hearing dates and the name of the appointed Administrative Law Judge (ALJ). The parties are then notified by ADE/DR by way of a "Notice of Hearing" that outlines how the process works, the name of the ALJ, the hearing dates, and other pertinent information. From that point on, all questions and correspondence go between the parties and the assigned ALJ.

Upon the filing of a due process complaint, the PEA must inform the parent of any free or low-cost legal services and other relevant services available in the geographic area and must provide the parents a copy of the procedural safeguards available to the parents of a child with a disability.

DUE PROCESS COMPLAINT NOTICE

The alleged violation for which the party is filing for due process must have occurred not more than two (2) years from the date the complainant knew or should have known about the alleged action. There are two exceptions – when a parent's delay in filing a request was due to specific misrepresentations of the school or where the school withheld information that was required to be provided to the parent.

The party filing a due process complaint notice may either use the model form found on the ADE website at www.azed.gov/special-education/dispute/due-process/ or submit the due process complaint in a letter. In either format, a due process complaint must contain specific criteria in order to meet the sufficiency requirements set forth in the federal law.

At a minimum, a due process complaint must include:

- The name of the child and the address of the child's residence.
- The name of the child's school/school district.
- In the case of a homeless child or youth, the child's contact information and the name of the school the child is attending.
- A description of the nature of the problem of the child relating to the proposed or refused action, including facts relevant to the problem.
- A proposed resolution of the problem to the extent known and available to the complaining party at the time.

In order for a due process complaint to go forward, it must be considered sufficient (i.e., it must meet the content requirements above). The due process complaint will be presumed sufficient unless the non-complaining party files a written objection within **15 calendar days** of receiving the complaint to both the ALJ officer and the other party. The ALJ has **five (5) calendar days** to determine if the due process complaint notice meets the criteria set forth in the law and must immediately notify both parties in writing of the determination regarding sufficiency.

Once filed, the due process complaint notice can only be amended if the other party consents in writing to the amendment and is provided an opportunity for a resolution session OR if ordered by the ALJ. The ALJ may grant permission to amend at any time, but not later than **five (5) days** before the hearing begins. Hearing timelines recommence when the amended complaint is filed.

Within **10 calendar days** of receiving the complaint, the party against whom due process has been filed must send a response that specifically addresses each issue raised in the complaint. If the PEA is the respondent and it has not already sent a prior written notice to the parent concerning the subject matter of the dispute, the response must include:

- An explanation of the proposed or refused action.
- A description of other options considered by the child's individualized education program (IEP) team and the reasons why those options were rejected.
- A description of each evaluation procedure, assessment, record, or report used as the basis for the proposed or refused action.
- A description of other factors relevant to the decision.

Filing a response does not preclude a party from also challenging the sufficiency of the due process complaint notice. Likewise, a challenge to the sufficiency does not extend the timeline for filing a response.

RESOLUTION

Within **15 calendar days** of receiving notice of the parent's due process complaint and prior to the initiation of a hearing, the PEA must convene a meeting with the parent and the relevant member or members 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 it is waived in writing by both parties, or unless both parties agree to participate in mediation. The resolution period is **30 calendar days** from the date the complaint is filed.

The resolution session must include a representative of the PEA who has decision-making authority, but may not include the PEA's attorney unless the parents are accompanied by an attorney. The parent and the PEA determine the relevant members of the IEP team to attend the meeting.

The resolution session or a mediation session must occur before a due process hearing can be held, unless it is waived in writing by both parties. If the PEA has not resolved the due process complaint to the parent's satisfaction within **30 calendar days** of receipt of the due process complaint, the due process hearing may occur. The **45 calendar days** timeline for issuing a final decision begins at the end of the 30 day resolution period, or on the day after one of the following occurs: (1) the parties agree, in writing, to waive the resolution session requirement; or (2) after the resolution session or mediation, the parties agree, in writing, that they are unable to resolve the dispute.

If the parties are able to reach a resolution during the resolution period, they must execute a legally binding agreement that is signed by both parties and is enforceable in a state court of competent jurisdiction or in a federal district court. Either party may void the agreement within **three (3) business days** of its execution.

DUE PROCESS HEARING

If, at the conclusion of the **30 day resolution period**, the issues raised in the complaint have not been resolved to the parent's satisfaction, or the parties have agreed either to waive the resolution session requirement, or that no resolution is possible, the hearing process will commence. Initially, the ALJ will conduct a prehearing conference either telephonically, or at a location that is reasonably convenient to the parent and the child involved, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the time and dates for the hearing.

Parties have the right to:

- Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities.
- Present evidence and confront, cross-examine, and require the attendance of witnesses.
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least **five (5) business days** before the hearing.
- Obtain a written or, at the party's option, electronic, word-for-word record of the hearing.
- Obtain written or, at the party's option, electronic findings of fact and decisions.

The parties to a due process hearing must disclose all evaluations and recommendations to date that they intend to use at the hearing within **five (5) business days** prior to the hearing, or face the possibility of not being allowed to introduce that evidence in the hearing. The parent must be given the right to:

- Have the child present.
- Open the hearing to the public.
- Have the record of the hearing, the findings of fact, and the decisions provided at no cost.

According to the United States Supreme Court decision in *Schaffer v. Weast*, the burden of proof in an administrative hearing is on the party filing for the hearing.

Once a due process complaint is sent to the other party, during the resolution period and while waiting for the decision of any impartial due process hearing or court proceeding, unless the complainant and the PEA agree otherwise, the child must remain in his or her current educational placement. If the due process complaint involves an application for initial admission to public school, the child, with parental consent, must be placed in the regular public school program until the completion of such proceedings.

A final hearing decision must be issued no later than **45 calendar days** after the expiration of the **30 calendar day** period for resolution meetings, or within **45 calendar days** of the day after the parties agree, in writing, to waive the resolution session requirement; or after the resolution session or mediation, the parties agree, in writing, that they are unable to resolve the dispute. A copy of the decision must be sent to each of the parties. A hearing officer may grant specific extensions of time beyond the **45 calendar day** time period at the request of either party.

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 PEA 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 PEA agree in writing to waive the meeting, or agree to use mediation, a resolution session must occur within **seven (7) calendar days** of receiving notice of the 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 ALJ has **10 school days** after the hearing to issue a decision.

The student remains in the interim alternative educational setting (IAES) pending the ALJ's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.

APPEAL

Any party that does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In Arizona, the party bringing the action shall have **35 calendar days** from the date of the hearing decision to file a civil action.

HEARING OFFICER IMPARTIALITY

In Arizona, "impartial hearing officer" is defined as a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected. The IDEA sets forth the minimum qualifications for hearing officers, stating that they must: (1) not be an employee of the state education agency or the school responsible for the child; (2) not have a personal or professional interest that would present a conflict of interest; (3) have knowledge and understanding of special education law; (4) be able to conduct hearings in accordance with appropriate, standard legal practice; and (5) render and write decisions in accordance with appropriate, standard legal practice. Arizona laws mirror these federal requirements.

ATTORNEY FEES

Parents may recover attorney's fees from the PEA at the discretion of the judge, if they are the prevailing party.

Fees may be recovered from the parent's attorney for filing a complaint or continuing litigation that is frivolous, unreasonable, or without foundation.

Fees may be recovered from the parent or the parent's attorney for filing a complaint or otherwise continuing litigation for an improper purpose such as harassment, causing unnecessary delay, or needlessly increasing the cost of litigation.

Fees cannot be recovered for time spent in an IEP meeting unless the meeting was convened because of an administrative or judicial proceeding. States have individual discretion to determine whether to allow attorney's fees to either side for time spent in mediation.

ARIZONA DEPARTMENT OF EDUCATION – DISPUTE RESOLUTION

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