

Module 18

Options for Dispute Resolution



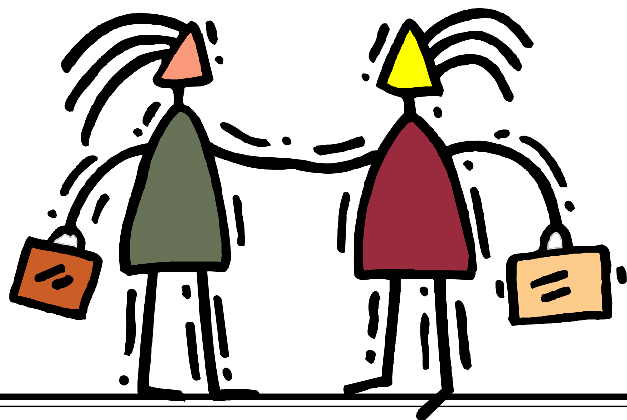
Written by:

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Office of Special Education Programs
U.S. Department of Education

with special thanks to...

Marshall Peter, Dick Zeller, and Philip Moses
CADRE, the Consortium for Appropriate
Dispute Resolution In Special Education



A Product of...

NICHCY, the National Dissemination Center for Children with Disabilities

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NICHCY is here for you.

This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

Background and Discussion

This module is part of a training package on the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), developed by NICHCY for the Office of Special Education Programs (OSEP) at the U.S. Department of Education (hereinafter called the Department). The training curriculum is entitled *Building the Legacy*; this module is entitled *Options for Dispute Resolution*.

The 2004 Amendments to the IDEA and the final Part B regulations¹ include—as did their predecessors—an entire section entitled “Procedural Safeguards.” These safeguards are designed to protect the rights of children with disabilities and their parents, while giving parents and schools mechanisms for resolving disputes. In this module, we will look in some detail at several approaches to addressing how families and school staff can resolve disagreements that arise in determining what is an appropriate educational program for an individual child with a disability.

Finding of Congress

In drafting the provisions of IDEA, Congress clearly contemplated that, at times, there would be disagreements between parents of children with disabilities and the school districts providing special education and related services to their children. While it is expected that parents and school personnel will work in partnership to ensure children with disabilities are provided appropriate services, there are times when an

How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what’s on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



You’ll note the “*New in IDEA*” icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations resulting from the 2004 Amendments to IDEA.

individualized education program (IEP) Team, which includes the child’s parents and school officials, cannot reach consensus on what constitutes a free appropriate public education (FAPE) for an individual child. When such disagreements occur, parents and school districts can turn to IDEA’s procedural safeguards and dispute resolution options, which protect the rights of parents and children with disabilities and include, among other things, procedures for resolving disputes that arise over the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.



Trainer’s Note

Throughout this training module, all references in the discussion section for a slide are provided at the *end* of that slide’s discussion.

How Many, How Often, To What End?

Statistics and studies can help establish a context for talking about IDEA’s dispute resolution options. For example, think about this:

In the 1999-2000 school year, school districts spent approximately \$146.5 million on special education mediation, due process, and litigation activities.²

That sounds like a significant amount of money, but, according to the Special Education Expenditure Project (SEEP) conducted at the request of the OSEP at the Department:

This represents less than one-half of one percent (i.e., 0.3 percent, to be exact) of total special education expenditures.³

By the way, that quote appears in italics because that's the way the SEEP Project stated those words. In italics. Talk about establishing a context!

In 2003, the General Accounting Office [now the Government Accountability Office] (GAO) conducted an investigation of IDEA's dispute resolution options and issued a report to the ranking minority member of the U.S. Senate Committee on Health, Education, Labor and Pensions. The report was entitled *Special Education: Numbers of Formal Disputes are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts*.⁴ While data were limited and inexact, according to GAO:

[F]our national studies indicate that the use of the three formal dispute resolution mechanisms has been generally low relative to the number of children with disabilities. Due process hearings, the most resource-intensive dispute mechanism, were the least used nationwide.⁵

Using data from the National Association of State Directors of Special Education (NASDSE), GAO calculated that, in 2002:

- Approximately 5 due process hearings were held per 10,000 students with disabilities.
- Nearly 80% of all these hearings were held in five States (California, Maryland, New Jersey, New York, and Pennsylvania) and the District of Columbia.⁴



GAO made the following calculations based on findings from other studies:

- In school year 1999-2000, more formal disputes between parents and schools were resolved through mediation than due process hearings.
- Median number of mediations: 4 for every 10,000 students with disabilities in school year 1999-2000.
- The cost of a mediator is about one-tenth that of a hearing officer.
- Number of State complaints filed: 10 for every 10,000 students with disabilities in the 1998-1999 school year.⁴

The GAO report included many other observations and findings of interest, including:

- State officials told GAO they found that mediation was successful in resolving disputes, strengthening relationships between families and educators, saving financial resources, and reaching resolution more quickly than State complaints or due process hearings.

- The Texas State educational agency (SEA) estimated that over the past decade it had saved about \$50 million in attorney fees and related due process hearing expenses by using mediation rather than due process hearings.
- In January 2003, the average cost for mediation in California was \$1,800, while the average cost of a due process hearing was \$18,600.

In the end, GAO reached this conclusion:

Overall, the numbers of formal disputes between parents and school districts were generally low compared to the 6.5 million students between 3 and 21 years old served during the 2001-02 school year, but the thousands of disputes that occur threaten relationships and can result in great expense.⁶

It is within that context that we will now take a detailed look at the dispute resolution options currently in IDEA, those carried over from the predecessor statutes, and those added by the 2004 Amendments to the IDEA.



Dispute Resolution Options in IDEA

The IDEA statute states, as a finding of Congress, that:

[P]arents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.⁷

That finding has resulted in new approaches and rules for the dispute resolution methods available under IDEA. In this module we will review:

- **Mediation:** A process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and a public agency regarding any matter arising under Part B of IDEA, including matters arising prior to the filing of a due process complaint.
- **Due process complaint:** A complaint filed by a parent or a public agency to initiate an impartial due process hearing on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child.
- **Resolution process:** An opportunity for the parents and the local educational agency (LEA) to attempt to resolve the issues in a parent's due process complaint prior to the initiation of a due process hearing.

The LEA is obligated to convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and within 7 days of receiving notice of

the parent's due process complaint regarding a discipline matter. The resolution meeting need not be held if the parties agree in writing to waive the resolution meeting or agree to use the mediation process under Part B of IDEA.

- **Resolution period:** Thirty (30) days from the date the LEA receives a parent's due process complaint notice. (This timeline changes to 15 days from the date the LEA receives a due process complaint involving a discipline matter.)
- **Resolution meeting:** A meeting convened by the LEA within 15 days of receiving notice of a parent's due process complaint (7 days in the disciplinary context) and prior to the initiation of a due process hearing. Includes the parent(s) and the relevant member(s) of the IEP Team, who have specific knowledge of the facts in the parent's due process complaint.

The purpose of the meeting is for the parent to discuss the due process complaint and the facts that form the basis of the due process complaint so that

the LEA has the opportunity to resolve the dispute that forms the basis for the due process complaint.

- **State complaints:** A written and signed complaint alleging that a public agency has violated a requirement of Part B of IDEA or the Part B regulations in 34 CFR Part 300; submitted to an SEA (or, at the SEA's discretion, to the public agency, with review by the SEA).

Key Term: Day

A key term that will be used when discussing the requirements related to the dispute resolution processes is "day." While we use this word in our every day language, it's important to know that, when the word "day" is used by itself in the regulations, it means a *calendar* day. If a meaning other than calendar day is intended, the term "business day" or "school day" is used. IDEA's provisions giving the meaning of each of these terms are presented in the box below.



§300.11 Day; business day; school day.

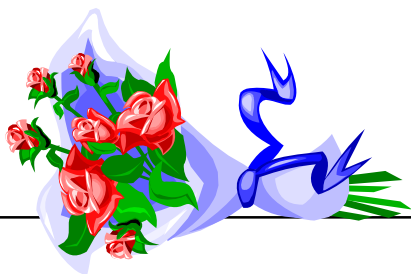
(a) *Day* means calendar day unless otherwise indicated as business day or school day.

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(d)(1)(ii)).

(c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) *School day* has the same meaning for all children in school, including children with and without disabilities.

These key terms will be reviewed again as we discuss each dispute resolution process. Also, we will review the specific requirements related to which method or methods can be used to resolve specific issues and who is eligible to use a particular dispute resolution process. There are important rules governing the time limit for initiating the dispute resolution processes and how long it may take for the dispute to be resolved; these will be discussed as well.



Files You'll Need for This Module

Module 18 includes the following components provided in separate files. If you need or want the entire module, be sure to download each of the components in either Word® or PDF format.

- **Trainer's Guide Discussion.** The discussion text (what you're reading right now) describes how the slides operate and explains the content of each slide, including relevant requirements of the statute signed into law by President George W. Bush in

December 2004 and the final regulations for Part B published in August 2006, which became effective on October 13, 2006.

The discussion is provided via two PDF files, with the equivalent content also available in one accessible Word® file. Here are the files' full names and where to find them on NICHCY's Web site:

PDF of discussion for Slides 1-10
www.nichcy.org/training/18-discussionSlides1-10.pdf

PDF of discussion for Slides 11-end
www.nichcy.org/training/18-discussionSlides11-end.pdf

The entire discussion in an accessible Word® file
www.nichcy.org/training/18-discussion.doc

- **Handouts in English.** The handouts for this module are provided within an integrated package of handouts for the entire umbrella topic of **Theme E, Procedural Safeguards**, which includes three different modules (described above). These handouts are available in both PDF and Word® files as follows:

PDF version of the Handouts.
www.nichcy.org/training/E-handouts.pdf

Word® version of the Handouts, for participants who need an accessible version of the handouts or if you'd like to create large-print or Braille versions:

www.nichcy.org/training/E-handouts.doc

Thanks to the Author of This Module

NICHCY would like to express its appreciation for the hard work and expertise of:

Lisa Pagano, Office of Special Education Programs, U.S. Department of Education, who is the primary author of this module.

And then to CADRE...

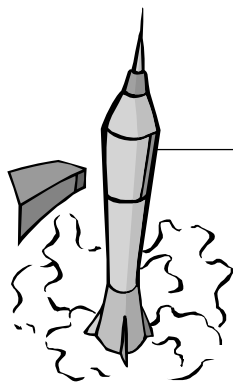
NICHCY would also like to send many thanks to **Marshall Peter**, **Dick Zeller**, and **Philip Moses** of CADRE, the Consortium for Appropriate Dispute Resolution in Special Education, who rallied to the cause in the height of their own work extremity, sharing both their expertise and their materials on dispute resolution. Thanks, friends, for the unforgettable reminder that people really *can* make the world a better place for each other.

And Finally to the Office of General Counsel

NICHCY would also like to thank **Rhonda Weiss**, Office of General Counsel, U.S. Department of Education, for her painstaking and thorough review of this module for its legal sufficiency with the statute and final Part B regulations of IDEA.

- **PowerPoint slide show.** NICHCY is pleased to provide a slide show (produced in PowerPoint®) around which trainers can frame their presentations on options for dispute resolution under IDEA. Find this presentation at:

www.nichcy.org/training/18slideshow.zip



To launch the PowerPoint presentation, double-click the **PLAY.bat** file

Important note: You do NOT need the PowerPoint® software to use these slide shows. It's set to display, regardless, because the PowerPoint Viewer® is included. You may be asked to agree to Viewer's licensing terms when you first open the slideshow.

References



¹ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (at 34 CFR pt. 300). Available online at:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- <http://idea.ed.gov>

² Chambers, J.G., Harr, J.J., & Dhanani, A. (2003). *What are we spending on procedural safeguards in special education, 1999–2000?* Washington, DC: Center for Special Education Finance, Special Education Expenditure Project (SEEP). (Available online at: http://www.csef-air.org/about_csef.php)

³ *Id.*, p. 5.

⁴ General Accounting Office (GAO). (2003, September). *Special education: Numbers of formal disputes are generally low and states are using mediation and other strategies to resolve conflicts* (GAO-03-897). Washington, DC: Author. (Available online at: www.gao.gov/cgi-bin/getrpt?GAO-03-897)

⁵ *Id.*, p. 3.

⁶ *Id.*, p. 2.

⁷ 20 U.S.C. 1400(c)(8) (2005).

Looking for IDEA 2004?

The Statute:

- www.nichcy.org/reauth/PL108-446.pdf
- <http://idea.ed.gov>

Final Part B Regulations:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
 - <http://idea.ed.gov>
-

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final Part B regulations, you will find references to specific sections, such as §300.507. (The symbol § means “Section.”) These references can be used to locate the precise sections in the Part B regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of IDEA’s regulations so that you don’t have to go looking for them.

However, the final Part B regulations have been codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. Proper legal citations include this—such as 34 CFR §300.507. We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. 46738.

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

www.nichcy.org/reauth/IDEA2004regulations.pdf

IDEA's



**Options
for Dispute
Resolution**

How to Operate the Slide:

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CLICK to advance to next slide.

This title slide introduces the focus of the module and allows you to begin the training session and draw everyone's attention.

The topics that *will* be covered in this module are listed on Slide 4, the agenda slide.

Theme E Considered

You can also use this slide to give the audience the Big Picture of the modules comprising **Theme E** of *Building the Legacy*. This includes making participants aware that:

- there are other themes around which important IDEA-related issues can be (and are!) meaningfully grouped (see the list of themes in this training curriculum in the box above); and
- there's more to know about procedural safeguards than what's covered in this specific module.

**Themes in
*Building the Legacy***

Theme A
Welcome to IDEA


Theme B
IDEA
and General Education

Theme C
Evaluating Children
for Disability

Theme D
Individualized Education
Programs (IEPs)

Theme E
Procedural Safeguards

Available online at:
www.nichcy.org/training/contents.asp



Familiar Approaches to Resolving Conflicts



A.

B.



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next slide.

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Slide 2 looks at some possibly familiar, definitely whimsical ways of resolving disputes.

A—the thumb war

B—a shoot-off at marbles

Ask questions to prompt both the audience's contemplation of the absurd and their sharing with you and each other what they know already about IDEA's dispute resolution processes. Suggestions:

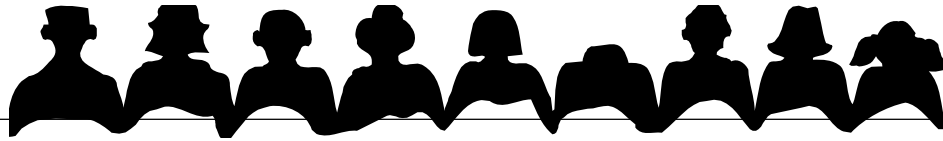
- When was the last time any of you used such a method for resolving a conflict?
- Have you ever used either method?
- How would either method work in special education to settle disagreements?
- Would the outcome be fair? Why or why not?

- Would anyone in the room prefer these methods over what you know about IDEA's dispute resolution processes?
- What does mediation (due process, state complaint) have to offer that other familiar approaches to resolving conflict don't offer??

The Purpose of Activity I

Dispute resolution is a complicated subject; it may well raise personal recollections in the audience for some participants that might disrupt the flow of the training curriculum. Therefore, this module begins with an activity designed to have participants consider how human nature plays into any conflict situation. Humanity has a long history of disagreeing over most everything, a wide spectrum of

ways in which we express disagreement, and many constructive and destructive ways of resolving our conflicts. The activity sheet—**Handout E-8**—is designed to introduce an element of laughter into a difficult subject. In combination with the opening slides, which are purposefully wry, we hope that a positive mood can be established to take on the discussion of conflict. Considering the nonconstructive options for dispute resolution that people have pursued over the years, the positive mechanisms available under IDEA stand in contrast.



Opening Activity

Purposes

1. To have participants reflect on ways of expressing disagreement and resolving conflicts.
2. To create a positive atmosphere within which to discuss the resolution of conflict.

Total Time Activity Takes

10 minutes.

Group Size

Pairs, to complete activity sheet. Large group, to discuss.

Materials

Handout E-8
Flip chart (optional)

Instructions

1. Frame the activity by talking for a minute or two about mankind's long history of getting into—and out of—disagreements. Refer participants to **Handout E-8**, the activity sheet opening this training session.
2. Tell participants their task is to work with a partner to brainstorm answers to the activity sheet. Give them 5 minutes.

3. Call the room back to large group and have people tell you some of their brainstorming for #1, "Expressing Disagreement." What are some of the funny ways we have of letting others know we don't agree? Not so funny ways? Ask for audience input on what they feel are constructive ways of expressing disagreement and what ways are no-no's in their experience.

4. Now ask for their brainstormed lists for #2, "Finding Resolution." Has anyone in the room ever flipped a coin to resolve a disagreement? What other methods work—or don't work? How do they pick an approach when they have a conflict? What factors might be involved in choosing one approach over another? (Whether money is involved, anger, who the other person is)

5. Working from the list you generated whole-group, take a room vote, show of hands. What's the silliest way to resolve a conflict? The least productive? The one most people seem to go for? The most likely to succeed?

How About These?



A.



B.

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Slide 3 continues the quest for the ultimate dispute resolution approach: the most fair to both parties, minimizing cost and acrimony or ill will, and most timely and responsive to the circumstances. On this slide, our choices are...

A — a race between stakeholders

B — a chess game, winner takes all!

And what do participants think of these two alternatives? Were either mentioned in their brainstorming with the opening activity? Briefly explore how these alternatives would work to resolve a conflict between parents and the public agency.

Suggestions:

- Would you select your fastest runner and send that runner to win or lose a disagreement over whether your child is making adequate progress under his or her current IEP?
- How good are you at chess? How well would that work out for you, do you think? If you had to play chess, winner take all—would you win, or lose? Would either result have anything to do with whether or not your child was making adequate progress under the current IEP and what should be done about that?
- What alternatives does IDEA now offer?

Take a minute or two to contrast the fairness and cost involved in using an IDEA process to resolve a dispute between parents and the public agency versus using a contest like a track race.

None of this whimsy is intended to diminish the critical nature of dispute resolution. Quite the contrary. Hopefully, no one in the audience would argue with the premise that it is unacceptable to resolve conflicts on any basis other than the merits of each party's position and evidence.

And that's what we're going to look at today: IDEA's options for resolving disputes that allow the parties to continue their work together afterwards—namely, ensuring that a child with a disability has available to him or her a free appropriate public education in the least restrictive environment.

As a segue into seriousness, the box below offers a small reflection on ancient dispute resolution approaches.



Have you heard of the “Spartan way” of arbitrating disputes?

The Greek biographer and philosopher Plutarch once told the story of two men who wanted to avoid the rigors of a trial, but who made the mistake of submitting their dispute to the Spartan king, Archidamus II (469-427 BC), for arbitration. The king took the disputants to the temple of Athene of the Brazen House and asked them to swear to abide by his award. They agreed.

Then the arbitrator said: “You both stay here till you have made up your quarrel.”

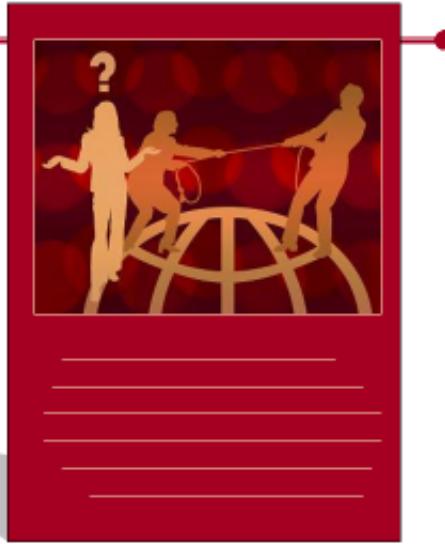


Fazzi, C. (2000, August-October). Tales of arbitration from ancient literature. *Dispute Resolution Journal*. Retrieved June 6, 2007 at http://findarticles.com/p/articles/mi_qa3923/is_200008/ai_n8905522

This module looks at...

IDEA's options for dispute resolution

- Informal approaches
- State complaints
- Mediation
- Due process complaints
- Resolution process
- Due process hearings
- Expedited due process hearings in disciplinary situations
- Other hearings



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Slide 4 is an advance organizer for the audience as to what content they're going to hear and discuss in this module. The slide loads the header "This module will look at..." and a list of IDEA's dispute resolution options.

Using the Slide to Activate Knowledge

Each of the bulleted items allows you to solicit remarks from your audience, as time permits. The interaction you have with the audience—or more precisely, *their* participation in the interaction—activates their knowledge base and attention,

and allows other participants to absorb that knowledge and interest.

Some suggestions:

Bullet 1: Informal approaches. Ask for a show of hands—how many in the audience are administrators of schools? Administrators of school systems? Parents? Teachers? Something else entirely? When they read the first bullet, informal approaches to dispute resolution, what comes to mind? (Friendly phone call, an IEP meeting)

Bullet 2: State complaints. Has anyone in the audience filed a State complaint? Does anyone

know how to file one? What type of information needs to be included in one? How many in the audience are administrators or public agency staff who have been involved in a State complaint investigation?

Bullet 3: Mediation. Ask similar questions—have they ever participated in a mediation? What have they heard about mediation?

Remaining bullets. Same drill. What does the audience know about due process complaints and due process hearings? How about the resolution sessions—

added to IDEA by the 2004 Amendments? How about expedited due process hearings in disciplinary situations? And what might that last item ("other hearings") be referring to? (Insider scoop: It's referring to hearings when a child with a

disability is unilaterally placed at a private school when tuition reimbursement is at issue. But we'll get to that, we promise.)

These are the elements that will be examined in some detail in this module. When done, no one in the audience will have to

play tic-tac-toe or engage in a footrace to resolve a dispute in special education. They will have other, much fairer tools to use.

Slide 5

Procedural Safeguards Notice

Procedural Safeguards Notice

- Is a comprehensive written explanation of procedural safeguards available to parents of a child with a disability.
- Must be provided to parents once per school year.
- Must also be given to parents under specific conditions.



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To help parents better understand their rights under IDEA, including their options for resolving disagreements, public agencies must provide parents with a copy of the procedural safeguards notice. As the slide indicates, this is a comprehensive written explanation of the procedural safeguards available to the parents of a child with a disability.

The procedural safeguards notice, by the way, was examined in some detail in Module 17, *Introduction to Procedural Safeguards*, some of which is being reiterated here.

As the slide also indicates, the public agency must provide parents with this notice only one time a school year, except under certain specific circumstances, namely:



- when the child is initially referred for evaluation or the child’s parent requests that the child be evaluated;
- 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) [i.e., disciplinary removal that constitutes a change of placement for the child]; and
- when the parent requests a copy of the procedural safeguards notice.

The box below provides the provision from the final Part B regulations at §300.504(a). Refer participants to **Handout E-4**.

The final Part B regulations require that the procedural safeguards notice contain a full explanation of the procedural safeguards relating to, among other matters, the availability of mediation and an opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including:

- (1) the time period in which to file a complaint;
- (2) the opportunity for the agency to resolve the complaint; and
- (3) the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures. [§300.504(c)(5)]

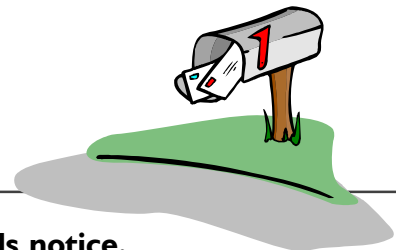
While the requirement to ensure that parents are provided notice of their procedural safeguards is not new, the 2004 Amendments to IDEA and the final Part B regulations expand the required content of the procedural safeguards notice regarding the State complaint and due process complaint procedures. This represents a key change from previous regulations. It may be helpful to take a look at your public agency’s procedural safeguards notice and the Model Procedural Safeguards Notice developed by the Department in accordance with section 617(e) of the IDEA. The Department’s Model Notice may be found at the Department’s Web site at:



<http://idea.ed.gov/static/modelForms>

Also, in keeping with §300.507(b), public agencies must provide parents information about free or low-cost legal and other relevant services in the area if the parent requests the information, or if the parent or the public agency files a due process complaint. Examples of such resources include the State’s Protection and Advocacy (P&A) agency and Legal Aid Bureau. If you have questions about the dispute resolution options, you may want to contact your local Parent Training and Information (PTI) Center. To locate your State’s P&A and PTI, visit NICHCY and find your *State Resource Sheet*. Both of these groups are listed on the sheet. All *State Resource Sheets* are available at:

www.nichcy.org/states.htm



§300.504 Procedural safeguards notice.

(a) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

- (1) Upon initial referral or parent request for evaluation;
- (2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
- (3) In accordance with the discipline procedures in §300.530(h); and
- (4) Upon request by a parent.

Examples of Informal Approaches

- IEP Review



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Let's start by examining less formal ways in which parents and school staff might attempt to work out disagreements regarding a child's special education program. The first of these is to *review the child's IEP*.

Under IDEA, the public agency is responsible for determining when it is necessary to conduct an IEP meeting, and the child's IEP Team is responsible for reviewing the child's IEP periodically, but not less than annually, and revising the child's IEP, if appropriate [§300.324(b)(1)]. In addition, the parents of a child with a disability have the right to request an IEP meeting at any time.

There is a new provision in the 2004 Amendments to IDEA that allows changes to be made to the child's IEP, following the annual IEP Team review, without convening the full IEP Team. You'll find this provision at §300.324(a)(4).



Simply stated, the parent and the public agency may agree *not* to convene an IEP Team meeting for the purpose of making changes to the child's IEP. More detailed information about this new provision is addressed in Module 14, *Meetings of the IEP Team*.

We bring this up because, in some cases, the parties may be able to resolve a disagreement about the child's program by conducting a review of the child's IEP, and amending it as

appropriate, without convening the entire IEP Team.

What kinds of disputes might be resolved through an IEP review meeting?

After the annual IEP review has taken place, if a parent has concerns about his or her child's rate of progress, the appropriateness of the services provided to the child, or the child's educational placement, it would be appropriate for the parents to request that the IEP Team reconvene. At that meeting, the parent and public agency can discuss the parent's concerns and, hopefully, as collaborative members of the IEP Team, work toward a solution that is agreeable to all. The solution doesn't have to be permanent. It's not uncommon for IEP Teams to

agree on a temporary compromise—for example, to try out a particular plan of instruction or classroom placement for a certain period of time that the child’s IEP is in effect. During (or at the end of) that period, the school can check the child’s progress. Team members can then meet again and discuss how the child is doing, how well the temporary compromise addressed the original concern, and what to do next. The trial period may help parents and the school come to a comfortable agreement on how to help the child.

Because parents and the public agency are partners in ensuring the child is provided an appropriate education, and sometimes will be working together for many years—in some cases, the child’s entire school career—it is in everyone’s best interest, especially the child’s, that the IEP Team members communicate with one another, respectfully and honestly.

Space for Notes

Examples of Informal Approaches

- IEP Facilitation



Slide loads fully.
No clicks are
needed except to
advance to the
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CLICK to advance to next slide.

This slide addresses another informal approach to dispute resolution that is not specifically required or addressed in IDEA: IEP facilitation.¹

We are mentioning IEP facilitation because it is being used to help IEP Teams reach agreements in the special education decision-making process. There may also be other dispute resolution mechanisms not required or addressed in IDEA that have been successful.

Some SEAs provide parents and school districts with the option of facilitated IEP meetings. When relationships between parents and schools are strained, facilitated meetings may be beneficial. It's important to remember, though, that this approach is not required or addressed under IDEA and may

not be available in your school district.

What is a facilitated IEP Team meeting?

A facilitated IEP Team meeting is one that includes an impartial facilitator. The facilitator is not a member of the IEP Team but, rather, is there to keep the IEP Team focused on developing the child's program while addressing conflicts as they arise. The facilitator can help promote communication among IEP Team members and work toward resolving differences of opinion that may occur concerning the provision of FAPE to a child. The facilitator helps keep the IEP Team on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

What are the benefits of having a facilitator for an IEP Team meeting?

The IEP facilitator can help support the full participation of all parties. The facilitator does not impose a decision on the group; the facilitator clarifies points of agreement and disagreement and can model effective communication and listening for the IEP Team members. When disagreements arise, the facilitator can help encourage the members to identify new options. Most importantly, the impartial facilitator ensures that the meeting remains *focused on the child*.

Do all school districts have to offer facilitated IEP Team meetings?

No. IDEA does not address IEP facilitation. This means that there is no requirement in IDEA for public agencies to provide an impartial facilitator for IEP Team meetings. While the use of IEP facilitation has become more prevalent, facilitators may not be available in all school districts and are not required.

For More Information: CADRE

For more information about IEP facilitation, take a trip on the Web to CADRE, the Consortium for Appropriate Dispute Resolution in Special Education.

www.directionservice.org/cadre



p.s.

This won't be the only time we mention CADRE, so remember that address...



¹ Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and the Technical Assistance ALLIANCE for Parent Centers. (2004, November). *Facilitated IEP meetings: An emerging practice*. Retrieved June 6, 2007, from <http://www.directionservice.org/cadre/facilitatediep.cfm>

Starting View

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State Complaints

- What is a State complaint?



Clicks 1-4


Clicks 1-4: Each time you click, another bullet appears and the picture changes.

State Complaints

- What is a State complaint?
- Who may file one?
- What information must be included?
- What are the SEA's procedures for handling the complaint?
- Are there time limits?



CLICK AGAIN to advance to next slide.

(discussion on next page) 



And now: A look at requirements in the final Part B regulations related to State complaints. These are found at §§300.151 through 300.153, are presented on **Handout E-9**, and will be excerpted in boxes at relevant points in this discussion.

The slide is designed to let you walk through the content, bringing up a question (e.g., “What information must be included?”) and then answering it, using the information provided below and in the Part B regulations.

The 2004 Amendments to the IDEA and prior versions of the IDEA statute do not include State complaint procedures. Rather, it is the final Part B regulations and their predecessors that have required each State to adopt written procedures for resolving any complaint that meets the definition of a “State complaint” under the Part B regulations [§300.151(a)(1), see box at right].

The Department explained the importance of each State having effective complaint procedures in the Analysis of Comments and Changes accompanying publication of the final Part B regulations in the Federal Register:

We believe that the broad scope of the State complaint procedures, as permitted by the regulations, is critical to each State’s exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other

individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA with a powerful tool to correct noncompliance with Part B of the Act or Part 300 [of the regulations]. (71 Fed. Reg. 46601)



In response to a public comment, the Department explained further:

We believe the State complaint procedures, which are directly under the control of the SEA, provide the parent and the school district with mechanisms that allow them to resolve differences without having to resort to a more costly and cumbersome due process

§300.151 Adoption of State complaint procedures.

(a) *General.* Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA’s discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency’s decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

complaint, which by its nature, is litigious. (71 Fed. Reg. 46606)

The final Part B regulations provide that the SEA must widely disseminate its State complaint procedures under §§300.151 through 300.153 to parents and other interested individuals, including PTI centers, protection and advocacy agencies, independent living centers, and other appropriate entities. You'll find this requirement at §300.151(a)(2), cited in the box on the previous page and on Handout E-9.

Many of the provisions regarding State complaint procedures that were a part of the previous regulations are retained. But there are some significant changes that you should know about. We'll highlight these with the "New in IDEA!" icon as we review requirements for State complaints.

What is a State complaint?

A State complaint, which can be filed by an organization or individual, including an organization or individual from another State, must be *signed* and *written*. The complaint must meet applicable procedures in §§300.151 through 300.152 and the content requirements in §300.153 (see the box at the right).

Who can file a State complaint?

Not only may a child's parent file a State complaint but so may any organization or individual (including those from another State)—see §300.151(a)(1) and §300.153(a). This is an important difference between State

complaints and due process complaints and mediation. Those two dispute resolution options—due process complaints and mediation—require either the child's parent or the public agency to initiate the process.

The person who files a State complaint is referred to as the "complainant." This term is used in the regulations at §300.152(a)(2) and (a)(5) and is also used in this module.

What information must be included in a State complaint?

This is an important question, because the final Part B regulations expand the specific content

to be included in a "State complaint." This represents a key change from the previous regulations; relevant provisions are found at §300.153(b) (see provisions in the box on this page and on Handout E-9).

With the audience, go over the elements that the final Part B regulations require be included in a State complaint, so they appreciate the methodical and reasoned nature of the process.



§300.153(b): What a State Complaint Must Include

- (b) The complaint must include—
- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child—
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

KEY CHANGE—A new provision in the final Part B regulations, found at §300.509(a), requires each SEA to develop a model form to assist parents and other parties in filing a State complaint. However, the SEA or LEA may not *require* the use of its model forms. Another form or document may be used so long as the form or document includes the content required for filing a State complaint. [§300.509(b)]



KEY CHANGE—It is important to note that the party filing the State complaint must also send a copy of the State complaint to the LEA or public agency serving the child at the same time the State complaint is filed with the SEA. This new provision is found at §300.153(d).



In response to a public comment, the Department explained the reasoning behind the new provision:

The purpose of requiring the party filing the complaint to forward a copy to the LEA or public agency serving the child, at the same time the complaint is filed with the SEA, is to ensure that the public agency involved has knowledge of the issues and an opportunity to resolve them directly with the complaining party at the earliest possible time. The sooner the LEA knows that a complaint is filed and the nature of the issue(s), the quicker the LEA can work directly with the complainant to resolve the complaint. (71 Fed. Reg. 46606)

What happens if the complainant does not include all required information?

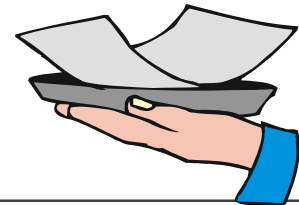
This question arises because IDEA's due process procedures specify what must occur if the SEA receives a due process complaint that is insufficient [see §300.508(d), "Sufficiency of complaint"]. Unlike due process, however, the Part B regulations governing the State complaint process do not even *mention* "sufficiency of complaint."

The Department has addressed this issue directly in its *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*. We've provided both the question and the Department's answer in the box on this page.

What is the SEA's obligation when it receives a State complaint?

The SEA must have procedures that comply with the requirements in §300.152. The first part of §300.152—(a)—is presented in the box on the next page; participants will find all of §300.152 on **Handout E-9**.

As you can see, the SEA's obligations include ensuring that State complaints are resolved within the required timeline—60 days from the date the complaint is filed unless an extension of the timeline is permitted for reasons that are outlined in the regulations [§300.152(a) and (b)(1)]. We'll review the timeline



When the Complaint Doesn't Include All Required Information in a State Complaint

From the Department's *Q&A on Procedural Safeguards and Due Process Procedures*¹

Question A-2: What is an SEA's responsibility to conduct a complaint investigation if the written complaint submitted to the SEA does not include the content required in 34 CFR §300.153?

Answer: The regulations do not specifically address an SEA's responsibility when it receives a complaint that does not include the content required in 34 CFR §300.153. However, in the *Analysis of Comments* accompanying the regulations, the Department indicates that when an SEA receives a complaint that is not signed or does not include contact information, the SEA may choose to dismiss the complaint. In general, an SEA should adopt proper notice procedures for such situations. For example, an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be investigated and timelines not commence until the missing content is provided.

requirements in more detail later. First, here's a rundown of the basic steps involved in resolving a State complaint, with discussion to follow.

- The SEA must carry out an independent on-site investigation, if the SEA determines that an investigation is necessary [§300.152(a)(1)].
- The SEA must give the complainant the opportunity to submit additional information about the complaint, either orally or in writing [§300.152(a)(2)].
- The SEA must provide the public agency with the opportunity to respond to the State complaint [§300.152(a)(3)].
- The SEA must review all relevant information, make an independent determination on the complaint, and issue a written decision to the complainant [§300.152(a)(4)-(5)].
- The SEA must have procedures to ensure effective implementation of the SEA's final decision [§300.152(b)(2)].

Now for some discussion!

Opportunity to submit additional information. The SEA must give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. This provision was carried over from prior regulations and gives the complainant the opportunity to clarify the allegations in a complaint that meets the requirements of §300.153(b), either orally or in writing.

The Beginning of...

§300.152 Minimum State complaint procedures.

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—

- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
 - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
- (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
- (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision.

[§300.152(a)]

Opportunity to respond. Under a new provision in the final Part B regulations, the SEA must provide the public agency with the opportunity to respond to the State complaint, including, at a minimum:

- at the discretion of the public agency, a proposal to resolve the complaint; and
- an opportunity for a parent who has filed a complaint with the public agency to voluntarily engage in mediation consistent with §300.506. [§300.152(a)(3)]

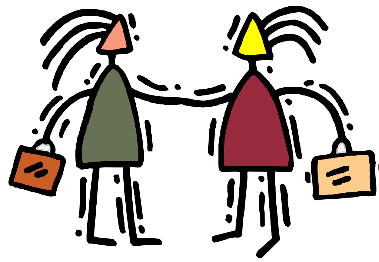
KEY CHANGE—This is a key change from the previous regulations. The Department provided the following explanation of the reasons for this important change in the Analysis of Comments and Changes:



Section 300.152(a)(3) was proposed to encourage meaningful, informal resolution of disputes between the public agency and parents, organizations, or other individuals by providing an opportunity

for parties to resolve disputes at the local level without the need for the SEA to resolve the matter. We believe that, at a minimum, the State's complaint procedures should allow the public agency that is the subject of the complaint the opportunity to respond to a complaint by proposing a resolution and provide an opportunity for a parent who has filed a complaint and the public agency to resolve a dispute by voluntarily engaging in mediation...Resolving disputes between parties at the local level through the use of mediation, or other alternative means of dispute resolution, if available in the State, will be less adversarial and less time consuming and expensive than a State complaint investigation, if necessary, or a due process hearing and, ultimately, children with disabilities will be the beneficiaries of a local level resolution. (71 Fed. Reg. 46603)

Opportunity to engage in mediation or other method of dispute resolution. The regulations also require that the SEA offer the parent and the public agency the opportunity to voluntarily engage in mediation or other alternative methods of dispute resolution, if available in the State, to resolve the issues in a State complaint. However, the regulations do *not* require the State to offer the opportunity to voluntarily engage in mediation when an individual other than the child's parent files a State complaint.



Regarding this provision, the Department provided the following explanation in the Analysis of Comments and Changes:

Although we do not believe we should regulate to require that mediation be offered to non-parents, there is nothing in the Act or these regulations that would preclude an SEA from permitting the use of mediation, or other alternative dispute resolution mechanisms, if available in the State, to resolve a State complaint filed by an organization or individual other than a parent...In fact, we encourage SEAs and their public agencies to consider alternative means of resolving disputes between the public agency and organizations or other individuals, at the local level, consistent with State law and administrative procedures. It is up to each State, however, to determine whether non-parents can use mediation or other alternative means of dispute resolution. (71 Fed. Reg. 46604)

SEA review, determination, and decision. Let's get back to the procedures each SEA must have in place for State complaints. The SEA must review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B

of the IDEA (the statute) or the Part B regulations (34 CFR Pt. 300). This requirement is found at §300.152(a)(4)—which is cited in the box on the previous page and on **Handout E-9**.

The SEA must then issue a written decision to the complainant that addresses each of the allegations in the State complaint. The written decision must include findings of fact and conclusions and the reasons for the SEA's final decision. [§300.152(a)(5)]

Remedies for denial of appropriate services. If the SEA found, through its complaint resolution, that there has been a failure to provide appropriate services, the SEA must, pursuant to its general supervisory authority, address the failure, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement). The SEA must also address the appropriate future provision of services for all children with disabilities [see §300.151(b)(1)-(2), cited in the box on the next page]. The final Part B regulations give the SEA broad flexibility and discretion in determining the appropriate remedy or corrective action when resolving a State complaint (71 Fed. Reg. 46602).

The SEA must also have procedures in place to ensure effective implementation of the SEA's final decision, if needed. This includes technical assistance activities, negotiations, and corrective actions to achieve compliance. The provision governing this requirement is found at §300.152(b)(2), cited on the next page and on **Handout E-9**.

What is the time limit for filing a State complaint?

KEY CHANGE—The final Part B regulations include a very important change concerning the time limit for filing State complaints. The new requirement, found at §300.153(c), states:



The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

The Department received many comments about changing the time limit for filing a complaint available under the previous regulations. The 1999 Part B regulations allowed complaints to be filed under certain circumstances for alleged violations that occurred up to three years prior to the date the complaint was received. The Department explained the reasons for changing the time limit for filing a State complaint in the Analysis of Comments and Changes, as follows:

We believe a one-year timeline is reasonable and will assist in smooth implementation of the State complaint procedures. The references to longer periods for continuing violations and for compensatory services claims [included in the 1999 Part B regulations] were removed to ensure expedited resolution for public agencies and children with disabilities. Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will

help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State complaint become so stale that they are unlikely to be resolved. However, States may choose to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline, just as they are free to add additional protections in



other areas that are not inconsistent with the requirements of the Act and its implementing regulations. (71 Fed. Reg. 46606)

How long does the SEA have to resolve a State complaint and issue a final decision?

The SEA's procedures must include a time limit of 60 days after the complaint is filed for specified activities to take place in the complaint resolution process. These include:

- conducting an independent on-site investigation, if the

The Middle of...

§300.152 Minimum State complaint procedures.

(a) ...

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

[§300.152(b)]

SEA determines that an investigation is necessary;

- giving the complainant the opportunity to submit additional information, either orally or in writing, providing the public agency with the opportunity to respond to the complaint;
- having the SEA or the public agency responsible for resolving the complaint review all relevant information and make an independent determination; and
- issuing a final decision on the allegations in the State complaint. [See §300.152(a)(1)-(5), cited in the box on page 18-25.]

The SEA's complaint procedures must permit extension of the 60-day timeline for issuing the complaint decision, only if exceptional circumstances exist with respect to a particular complaint. See §300.152(b), cited in the box on the previous page and on **Handout E-9**.

KEY CHANGE—Also, under a new provision added to the final Part B



regulations in 2006, the timeline may be extended if the parent and the public agency involved agree to extend the time to engage in mediation (or other alternative means of dispute resolution, if available in the State). If the complaint is filed by an individual or organization other than the parent, the timeline may also be extended through agreement between the public agency and the other individual or organization filing a complaint if mediation or other alternative means of

dispute resolution is available to the individual or organization under State procedures [§300.152(b)(1)(ii)]. This means that the fact that the parties agree to use mediation is not sufficient by itself to warrant an extension of the 60-day timeline. The complainant organization or individual and the public agency must also agree to extend the timeline as a result of the decision to use mediation.



What is the SEA's obligation to investigate a State complaint if the party filing the complaint and the public agency resolve the dispute through mediation?

An agreement reached through mediation consistent with §300.506(b)(6) of IDEA is legally binding. Such an agreement is enforceable in an appropriate State or federal court [§300.506(b)(7)]. Therefore, as the Department explained in the Analysis of Comments and Changes:

... an agreement reached through mediation is not subject to the SEA's approval. Parties are encouraged to resolve a State complaint at the local level without the need for the SEA to intervene. If a complaint is resolved at the local level or is withdrawn, no further action is required by the SEA to resolve the complaint. (71 Fed. Reg. 46605)

So, if the agreement results in a complaint resolution and is implemented, the SEA would have no further obligation to investigate or otherwise resolve the complaint.

What happens if a State complaint and a due process complaint are filed to resolve the same issue?

The final Part B regulations address this very situation. Section 300.152(c)(1) provides that, if a State complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the SEA must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing. But any issue in the State complaint that is *not* a part of the due process hearing action must be resolved using the time limit and State complaint procedures described above. These requirements are stated at §300.152(c)(1)—which appears on **Handout E-9** and in the box on the next page.

It is important to note that, the final Part B regulations implementing the 2004 Amendments to IDEA retain the provision from the 1999 Part B regulations regarding the relationship between a State complaint and a due process hearing. Under §300.152(c)(2)—also in the box on the next page—if an issue that is included in a State complaint has previously been decided in a due process hearing that involved the same parties, the due process decision is binding on that issue,

and the SEA must inform the complainant to that effect.

If that decision is not appealed, under its general supervisory responsibilities the SEA has an obligation to ensure a final hearing decision is implemented [§300.149 and 300.514(a)]. Therefore, the Part B regulations at §300.152(c)(3) also provide that State complaints alleging that a public agency has failed to implement a due process hearing must be resolved by the SEA.

Is there a process to appeal an SEA decision on a State complaint?

There is no provision in the Part B regulations for an appeal of the SEA's decision on a State complaint. In responding to a public comment, the Department provided the following explanation regarding this matter in the Analysis of Comments and Changes:

The regulations neither prohibit nor require the establishment of procedures to permit an LEA or other party to request reconsideration of a State complaint decision. We have chosen to be silent in the regulations about whether a State complaint decision may be appealed because we believe States are in the best position to determine what, if any, appeals process is necessary to meet each State's needs, consistent with State law.

If a State chooses, however, to adopt a process for appealing a State complaint decision, such process may not

The End of...

§300.152 Minimum State complaint procedures.

(a) ...

(b) ...

(c) *Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

[§300.152(c)]

waive any of the requirements in §§300.151 through 300.153. Section 300.152 requires that the SEA issue a final decision on each complaint within 60 calendar days after the complaint is filed, unless the SEA extends the timeline as provided in §300.152(b). This means that, absent an appropriate extension of the timeline for a particular complaint, the State must issue a final decision within 60 calendar days.

However, if after the SEA's final decision is issued, a party who has the right to request a due process

hearing (that is, the parent or LEA) and who disagrees with the SEA's decision may initiate a due process hearing, provided that the subject of the State complaint involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings (or other time limit imposed by State law) has not expired. (71 Fed. Reg. 46607)



Summary

The final Part B regulations include important changes in the procedures States must adopt for resolving written complaints filed under the State complaint procedures. As discussed in the Department's Q&A on procedural safeguards and due process,² this includes:



- a new requirement to forward a copy of the State complaint to the public agency serving the child;
- new content requirements for complaints; and
- a revised time limit for filing complaints.

These changes are all noteworthy and, together, will hopefully provide public agencies, parents, and others with streamlined and effective State complaint processes for resolving disputes.

Time for Review?

A volume of information has been presented on this slide, even with its focus narrowed to State complaint procedures. Clearly, there's a lot to know—and a lot for participants to absorb and remember.

Consider taking a moment to review what's been said, either at length or in brief. You can also invite questions from the audience.

Organizing the Review

How you shape a review here will likely depend on whether or not audience members came to this training session already well-versed in IDEA's provisions and you've focused primarily on what's changed, or whether participants have just heard about State complaint procedures for the first time (or nearly so) and the foundation of knowledge had to be built from the ground up. For a mixed group, you might consider dividing the audience into those two categories, asking folks to self-report themselves into either group (e.g., "All the know-it-alls" on the left, all the "what-was-that-again's?" on the right). Then you can handle each group separately, via some of the suggestions below or an approach of your own devising.

Some Suggestions

There are numerous ways to shape a review; you may already have one in mind. What's listed below are only suggestions to consider.

- *True/false.* Ever popular! You make the statement, the audience tells you whether it's true or false—and, most importantly, *why* it's true or false. If false, what's the correct information?

True/false is more fun when the audience is formed into teams, with questions alternated between them. You might even form the teams and have them prepare true/false questions for each other.



- *Fill in the blank.* Either conducted orally or in writing via a worksheet you prepare, fill in the blank (also known as *cloze*) is a standard in many a classroom. You can emphasize specific content over other content by what words or phrases you leave blank in a passage or list that participants then have to fill in.

A perfect example is what IDEA requires be included in a State complaint. You can provide several items in that list but leave two or more to be filled in.

- *Trainer questions.* A quicker review can take the form of you asking review questions and the audience giving you the answers.
- *Audience questions.* Consider simply opening the floor up for participants' questions. Answers can be provided either by you or the audience. Tying the answers back to the regulations is always a good idea. Have the audience find the answer in the regulations, just to be sure.

Space for Notes



¹ Quote from page 2 of: U.S. Department of Education. (2007, January). *Questions and answers on procedural safeguards and due process procedures for parents and children with disabilities*. Washington, DC: Author. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C6%2C>

² *Id.*

View 1

Mediation

- Description



Slide loads with this view.

Clicks 1-5


Mediation

- Description
- Benefits
- Procedures
- SEA's obligations
- Confidentiality of discussions
- Enforcement of written agreement



Clicks 1-5: Each time you click, another bullet appears and the picture changes.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



New topic, different approach to resolving disputes: Mediation.

Again, the slide is designed to allow you to walk through the key points and content of IDEA's provisions regarding mediation. Mediation has already come up as part of the discussion of State complaints. Remember? The SEA's complaint procedures must allow the parent and public agency, if they choose, to engage in mediation in order to resolve the allegations in a State complaint. But there's more.

The provisions in the final Part B regulations regarding mediation are provided on **Handout E-10** and are found at §300.506. They will be referenced through the following discussion.

What is mediation?

Mediation refers to a process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and public agency. The Committee on Education and the Workforce, U.S. House of Representatives, described mediation as follows:

Mediation is defined as an attempt to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and school officials to sit down with an independent mediator and discuss a problem, issue, concern, or complaint in

order to resolve the problem amicably without going to due process.¹

What are the benefits of using mediation to resolve a dispute under IDEA?

While mediation cannot guarantee specific results, it can be an efficient and effective method of dispute resolution between the parents and the school district or, as appropriate, the SEA or other public agency. Here are some of the benefits that can come from using mediation.

- Mediation often results in lowered financial and emotional costs, especially when compared to a due process hearing.
- Given its voluntary nature and the ability of the parties to devise their own remedies, mediation often results in written agreements because parties have an increased commitment to, and ownership of, the agreement.
- Some parties report mediation as enabling them to have more control over the process and decision making, thus serving as an important tool of self-empowerment.
- Remedies are often individually tailored and contain workable solutions that are easier for the parties to implement since they have both been involved in developing the specific details of the implementation plan. Because the parties reach their own agreement, as opposed to

having a third party decide the solution, they generally are more likely to follow through and comply with the terms of that agreement.²

As part of its technical assistance and dissemination (TA&D) network, OSEP has funded a center that specializes in dispute resolution, including mediation. It's called CADRE, the Consortium for Appropriate Dispute Resolution in Special Education, also known as the National Center On Dispute Resolution. We've already mentioned CADRE in this module—see our *Thank You's* on page 18-6 and CADRE's contact information on page 18-20 (where IEP facilitation is discussed). CADRE is an excellent resource for the field.

Through its work in this area, CADRE has identified a range of benefits of mediation for parents, educators, and services providers, including:

- Families can maintain an ongoing and positive relationship with the school and benefit from partnering with educators or service providers in developing their child's program.
- Conflicts that arise out of misunderstandings or lack of shared information can be resolved through mediators helping parents, educators, and services providers to

communicate directly with one another.

- Special education issues are complex and can best be solved by working together.
- Mediation tends to be faster and less costly than adversarial approaches such as due process hearings and court proceedings.
- Mediation results in agreements that participants find satisfactory and research shows that people tend to follow the terms of their mediated agreements.²

CADRE reported the following statistics on use of mediation in the 50 States (DC and outlying areas not included). In the 2004-2005 school year:

- All Mediations Held: 6,577
- All Mediation Agreements: 4,997 (76%)³

When is mediation an option to resolve a dispute under IDEA?

IDEA requires States to ensure that mediation is available, whether or not a party files a due process complaint. Participants can find the relevant regulation on **Handout E-10** at §300.506(a), which is also provided in the box on this page.

The availability of mediation has been expanded under the 2004 Amendments to IDEA [see section 615(e)(1) of the Act and §300.506(a) of the final Part B regulations]. Now, *any* dispute, including matters that arise prior



The Beginning of...

§300.506 Mediation.

(a) *General.* Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

[§300.506(a)]

to the filing of a due process complaint, can be the subject of mediation. (71 Fed. Reg. 46696)

When is mediation not available to resolve a dispute under IDEA?

The final Part B regulations make clear where mediation *cannot* be used.

First, a bit of context regarding what's known as IDEA's "consent override procedures"—which are the procedural safeguards in Subpart E, including mediation under §300.506.

Public agencies have the option of using their consent override procedures (including mediation) to pursue the initial evaluation or reevaluation if parents of children who are enrolled in public school or seeking to enroll their child in public school:

- refuse consent to the initial evaluation or reevaluation; or
- fail to respond to a request to provide consent. [§300.300(a)(3) and (c)(1)(ii)]

Since IDEA makes use of these procedures optional, the decision whether to use these procedures is left to the discretion of the public agency.

However, the regulations now make clear that public agencies *may not* use their consent override procedures if parents of parentally-placed private school children or home-schooled children:

- refuse consent to the initial evaluation or reevaluation; or
- fail to respond to a request to provide consent. [§300.300(d)(4)]

Further, the final Part B regulations make clear that public agencies *may not* use their consent override procedures (again, this refers to the procedural safeguards in Subpart E, which include mediation), if the parent:

- fails to respond to a request for consent; or
- refuses consent to the initial provision of special education and related services under Part B of IDEA. [§300.300(b)(3)]

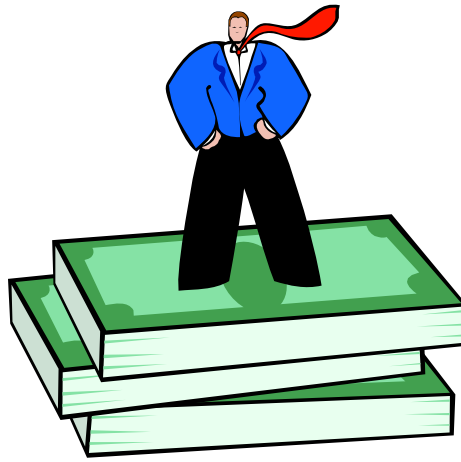


What are the SEA's obligations for the mediation process?

There were no provisions regarding mediation in the law or the Department's regulations prior to 1997. The Department advised States that mediation could be used so long as it was not mandatory and it did not operate to deny or delay a parent's right to a due process hearing.

The 1997 Amendments to IDEA included, for the first time, provisions for public agencies to establish and implement procedures allowing for the use of mediation as a means of resolving disputes between a public agency and the parents of a child with a disability. In that version of the law, Congress explicitly outlined the States' obligations to establish and implement procedures to allow parties to disputes to resolve their differences through mediation and, at a minimum, to make mediation available whenever a due process hearing was requested.

A State's obligations for ensuring that the mediation process meets the following requirements are essentially the same as they were under the 1997 Amendments, except that opportunities to allow parties to resolve disputes through mediation have been expanded. As noted previously, the 2004 Amendments provide for the expanded availability of mediation, and require public agencies to establish and implement procedures to make mediation available to parents and public agencies to resolve a dispute involving any matter arising under Part B, including matters



arising prior to the filing of a due process complaint.

The public agency's procedures for the mediation process must ensure that mediation:

- is voluntary on the part of the parties [§300.506(b)(1)(i)];
- may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of IDEA [§300.506(b)(1)(ii)]; and
- is conducted by a qualified and impartial mediator who is trained in effective mediation techniques [§300.506(b)(1)(iii)].

The State must make sure that each mediation session is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute [§300.506(b)(5)]. As the provisions in the box on the next page indicate (refer participants to **Handout E-10**), the SEA:

- is responsible for paying for the mediation process;
- is responsible for maintaining a list of qualified mediators

who are knowledgeable about the laws and regulations relating to the provision of special education and related services; and

- must select mediators on a random, rotational, or other impartial basis.

Selecting mediators on an impartial basis would include permitting the parties involved in the dispute to agree on a mediator. (71 Fed. Reg. 46695)

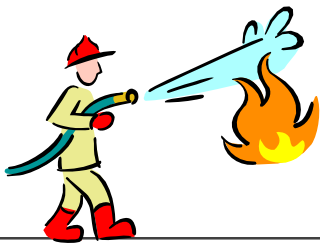
The individual serving as the mediator must not be an employee of the SEA or the school district that is involved in the education or care of the child and cannot have a personal or professional interest that conflicts with his or her objectivity [§300.506(c)]. This is very important because it preserves the impartiality of the mediator's role. The Part B regulations are very clear that the mediator is not an employee of the LEA or State agency described in §300.228 solely because he or she is paid by the agency to serve as a mediator [§300.506(c)(2)]. This is so, even though the State is responsible for paying for costs associated with mediation, including the services of the mediator [§300.506(b)(4)].

IDEA permits a public agency to establish procedures to offer parents and schools choosing not to use mediation an opportunity to meet with a disinterested party who would encourage the use of mediation and explain its benefits [§300.506(b)(2)]. In other words, the regulations *allow* States to establish such procedures, but *do not require* them to do so (71 Fed. Reg. 46695).

In any case, neither the parent nor the school district can be required to participate in mediation.

What happens during the mediation process?

While each mediation situation is unique, generally both parties to the mediation will come to the mediation session prepared to explain their own position and listen and respond to the other party's position. The



mediator will facilitate a discussion but does not “take sides” or give an opinion on the issues being disputed. The mediator works with the parties to help them express their views and positions and to understand each other's perspectives. The mediator helps the parties generate potential solutions and facilitates the parties' communication and negotiation.

If an agreement is reached to resolve the dispute, the mediator assists the parties in recording their agreement in a written, signed document.

The public agency must make sure that its representative participating in mediation has

the authority to enter into a binding agreement on its behalf [§300.506(b)(6)(ii)]. A parent may choose to have a friend or advocate attend the mediation session. And, while there is nothing in the statute or the regulations that prohibits a parent or public agency from having an attorney attend, the presence of an attorney could contribute to a potentially adversarial atmosphere that may not necessarily be in the best interests of the child.

CADRE makes available a number of useful resources on participating in mediation, including:

- suggestions on how to prepare for a mediation session www.directionservice.org/cadre/preparing.cfm
- sample “ground rules” for mediation www.directionservice.org/cadre/grs.cfm

Selected Mediation Provisions: §300.506(b)(2), (3), and (4)

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party-

(i) Who is under contract with an appropriate dispute resolution entity, or a parent training and information center or a community resource center in the State established under section 671 or 672 of the Act; and

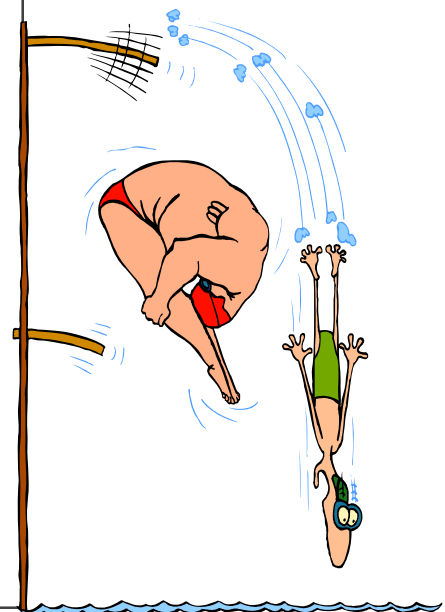
(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

[§300.506(b)(2)—(4)]



Can information shared during the mediation process be used in subsequent due process hearings or civil proceedings?

No. IDEA requires discussions occurring during the mediation process to remain confidential. Refer participants to **Handout E-10** to have a look at IDEA’s provisions in §300.506(b)(6) and (7), cited in the box below.

Because discussions that occurred during mediation must remain confidential, they may



not be used in subsequent due process hearings or civil proceedings in States receiving assistance under Part B of IDEA.

How is a mediation agreement enforced?

If the parties resolve the dispute through the mediation process, they must execute a legally binding agreement that states the resolution and is signed by both the parent and a representative of the agency who has authority to bind the agency. This is clearly stated at §300.506(b)(6) and supported by a key change in the IDEA statute and final Part B regulations as to how mediation agreements are enforced.



A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

The final Part B regulations also provide that a State may, but is not required to, develop other mechanisms, such as the State complaint procedures, to enforce mediation agreements. However, a State may not require a party to use such mechanisms or delay or deny a party from seeking enforcement of the written agreement through an appropriate court. See IDEA’s regulations at §300.537.

Summarizing Mediation

Mediation provides a positive, less adversarial approach to resolving disputes between parents and school systems. With the assistance of a skilled and impartial facilitator (the mediator), the parties involved in the dispute are encouraged to communicate openly and respectfully about their differences and to come to an agreement. The decision-making power always resides with the participants in mediation.

You may wish to wind up discussion of mediation by either:

- reviewing what was said here;
- asking participants to work in small groups to summarize its benefits, key points, required procedures, and agency responsibilities;

**More Mediation Provisions:
§300.506(b)(6) and (7)**

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

[§300.506(b)(6) and (7)]

- returning to the slide and asking participants to answer the questions, either in the large group, or via smaller group work that's done

independently, then reported back to the full group; or

- opening the floor up to questions from the audience, letting other participants

answer (with you correcting or elaborating on those answers as necessary).

Space for Notes



¹ Quote from page 13 of: Committee on Education and the Workforce, U.S. House of Representatives. (2005, February). *Individuals with Disabilities Education Act (IDEA): Guide to "frequently asked questions."* Washington, DC: Author. (Available online at: http://www.doe.state.in.us/exceptional/speced/pdf/idea_faq.pdf)

² Consortium for Appropriate Dispute Resolution in Special Education (CADRE). (1999). *Considering special education mediation: Helping parents and educators create solutions that improve results for students with disabilities.* Eugene, OR: Author. (Available online in English and Spanish at: www.directionservice.org/cadre/medinfo.cfm)

See also: www.directionservice.org/cadre/med_benefits.cfm)

³ Consortium for Appropriate Dispute Resolution in Special Education (CADRE). (2007). *From regulation to resolution: Emerging practices in special education dispute resolution.* A presentation at the OSEP Regional Implementation Meetings in Washington, DC; Los Angeles, CA: and Kansas City, MO. (Available online at: www.directionservice.org/pdf/OSEP%20Regional%20Implementation%20Meeting%20as%20PDF.pdf)

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1—Brain on overload?



2—How 'bout we all stand up?

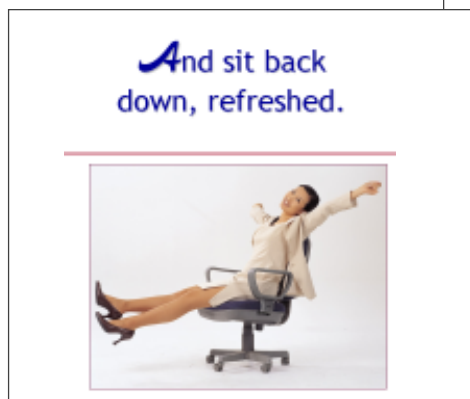
3—And stretch a bit.




4. Reach for the sky.



5—And sit back down, refreshed.



CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 10: Background and Discussion

Auto Play



Slide 10 is all about taking a *meaningful* break, a break that stimulates the mind and muscles, stirs the blood, and reactivates attention.

Tell your audience that, in a moment, the topic will shift to the top-priority topic of “due process,” which has been a critical procedural safeguard across the life of this law and very important for participants to know and understand. To get ready for the next onslaught of information (brain on overload? as the opening image of this slide says), it’s time to down-

load, stretch gently, unkink the body, and clear the mind.

Invite the audience to get to their feet. Are they up? Good, good... Now guide participants through a few simple stretches and other relaxation techniques.

Devote at least 1 minute to this break. Nothing potentially vigorous enough to strain muscles or cause accidents, but movement nonetheless, accompanied by deep breaths. Interest-

ing research exists to suggest the benefits that physical movement can bring to learning—in particular, a break that involves physical movement refreshes the brain, gets the blood flowing, loosens the kinks that develop from sitting in class or training, and releases stress even as it reactivates attention.

