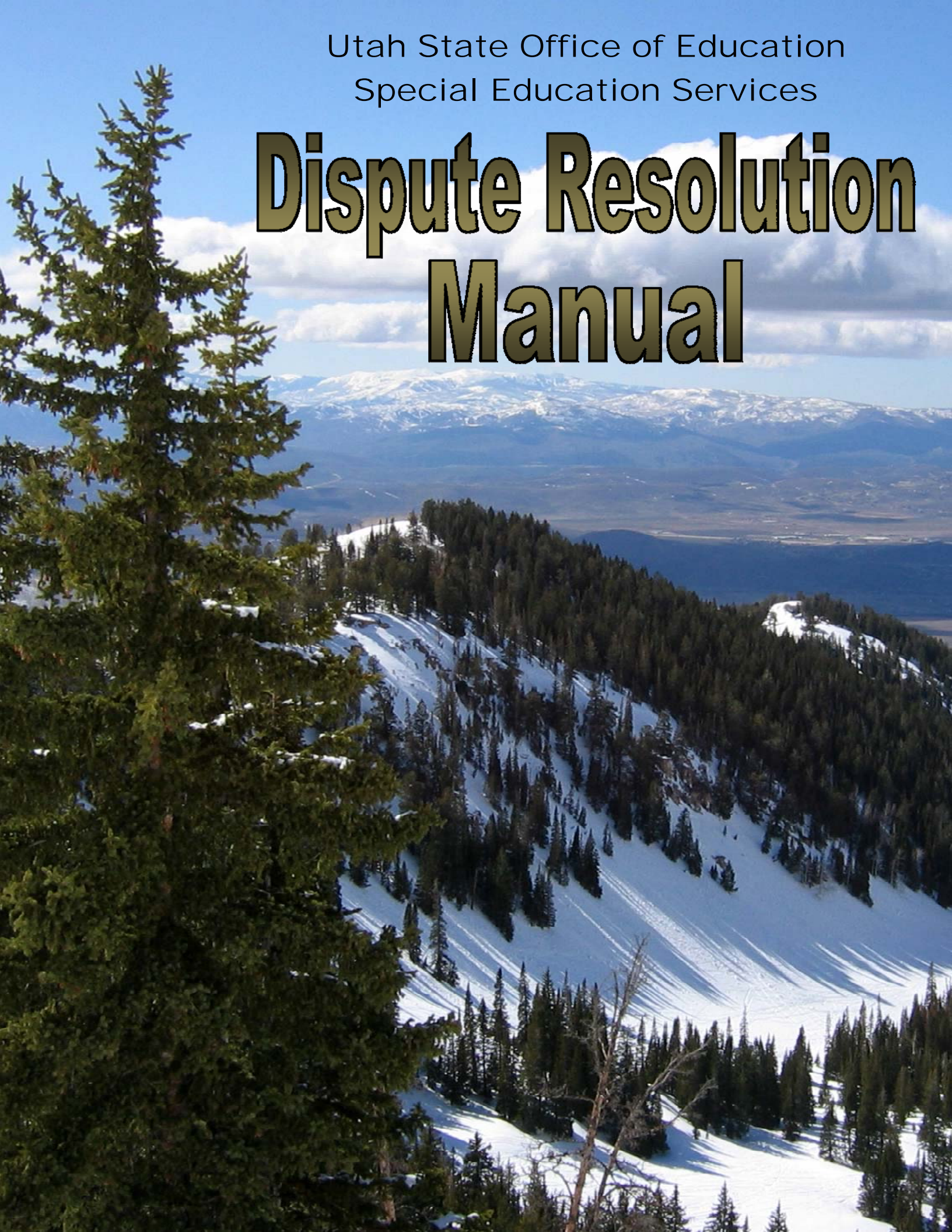


Utah State Office of Education
Special Education Services

Dispute Resolution Manual



Introduction

This document was developed by the Utah State Office of Education (USOE), Special Education Services section. The opinions expressed herein do not necessarily reflect the position of the United States Department of Education.

This document is provided as a guide for the prevention and resolution of disputes pertaining to students with disabilities eligible for services under the IDEA and Utah State Board of Education Special Education Rules. If any portion of this document conflicts with Federal law or regulations, the law or regulation takes precedence.

If additional copies are needed, readers are encouraged to duplicate current copies of the handbook, as there is no copyright on the information. Readers may also choose to download the handbook from the web by accessing the homepage listed above. The format of the handbook may be slightly different on the version that is downloaded.

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Please contact the USOE Special Education Services if you have questions regarding information contained within this handbook.



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OVERVIEW OF UTAH'S DISPUTE RESOLUTION SYSTEM

The USOE Special Education Services Section is charged with general supervisory responsibility for Utah's Local Education Agencies (LEAs) under the Individual's with Disabilities Education Act (IDEA). The USOE provides technical assistance and guidance to all Utah LEAs and other Utah stakeholders. This manual describes the ways that Utah implements the dispute resolution requirements of the IDEA and reaches beyond those requirements with the goal of developing best practice strategies designed to facilitate collaboration between parents, LEAs, and other stakeholders for the benefit of students with disabilities. The IDEA encourages the early resolution of special education disputes. The U.S. Department of Education Office of Special Education Programs (OSEP) has challenged States to develop systems to "address informal resolution of family concerns"¹.

The costs of formal complaint investigations and due process hearings can be devastating to families, states, and LEAs. All of these factors suggest that States and LEAs will economize resources and improve outcomes for students with disabilities with tools devoted to early dispute resolution.

The Consortium for Appropriate Dispute Resolution (CADRE) has described a process of early dispute resolution in its article, "Beyond Mediation: Strategies for Appropriate Early Dispute Resolution in Special Education" (2002). Conflict management is viewed on a continuum, with the earliest stage being prevention and continuing on to the most expensive option, legal remedies. Prevention strategies address conflicts regarding special education before they occur or when they are still in the early stages. As parents and LEAs move toward disagreement, CADRE suggests that parent-to-parent models or telephone intermediaries can help resolve the disagreement. Once the disagreement rises to the conflict state, useful tools may include facilitation, mediation, or third-party consultation. If the conflict is not resolved, then it will likely proceed into the procedural safeguard stage toward formal IDEA State complaint or due process complaint. The final state in CADRE's model is review of a due process hearing officer's decision or litigation.

The USOE firmly embraces the value of conflict prevention and early conflict resolution. With that in mind, the USOE and its partners have developed options for conflict prevention and early conflict resolution beyond those required by the IDEA.

Devoting resources and energy to thinking about dispute resolution in terms of early conflict management has many potential savings, the most important of which is the human element. Despite an LEA's best efforts, some disputes will proceed to formal resolution. Keep in mind that all of the early dispute resolution tools are voluntary and CANNOT be used to deny or delay a parent's right to file a formal IDEA State complaint or proceed to due process hearing.

The Procedural Safeguards of the IDEA and Utah State Board of Education Special Education Rules articulate three formal mechanisms for resolving disputes:

1. Mediation
2. Formal IDEA State Complaint
3. Due Process Hearing Complaint

¹ *Special Education Early Dispute Resolution Guidance, Compiled by Lenore Knudtson, Program Specialist Center for Technical Assistance in Special Education March 2008.*

There is no requirement to proceed through the above options in any specific order. Any of the above mechanisms may be filed simultaneously; however, if a formal State complaint and a due process hearing complaint are simultaneously filed, issues raised in the formal State complaint will be set aside for determination by the due process hearing officer. In order to proceed to a civil action, a decision on the merits of the case must be rendered by a due process hearing officer.

Mediation

A neutral, impartial, trained mediator may be sought voluntarily by parents and LEA staff to assist in their negotiations with each other. Mediation includes assistance to convene and conduct a meeting to clarify issues, focus on the needs of a student, and to explore and evaluate possible solutions in a confidential setting. Mediators are trained neutrals, skilled in helping people to hear and understand each other and to work jointly to find solutions to difficult issues in special education. Mediators do not take the role of anyone's advocate, but support and assist everyone in the negotiation process.

Formal IDEA State Complaint

A formal IDEA State complaint is generally an expression of some disagreement with a procedure or a process regarding special education programs, procedures, or services. A formal IDEA State complaint is considered a request that the USOE Special Education Services investigate an alleged violation of a right of a parent and/or student with disabilities who is eligible, or believed to be eligible, for certain services based on Federal and State laws and regulations governing special education. The State's complaint system for special education does not handle violations of Civil Rights related to disability. These matters are addressed directly with the Office of Civil Rights of the United States Department of Education. In addition, the formal State complaint system cannot address personnel issues or general education matters. These matters are under the control of the LEA. Any matter which is under the exclusive control of the LEA will not be addressed in the special education formal State complaint system. LEAs are responsible for the general day-to-day operation of schools, including supervision of personnel and the administration of programs. A formal IDEA State complaint can be filed by anyone. The formal IDEA State complaint process involves a review of the alleged procedural violations. A formal IDEA State complaint can also focus on any particular process or procedure that is a violation of special education law or regulation.

Due Process Complaint Hearing

A due process complaint hearing is a process wherein a party alleges an issue relating to the identification, evaluation, or education of a student, or the provision of a free appropriate public education (FAPE) for the student. Due process complaint hearings are likely to involve disputes between the parent and the LEA over the appropriateness or nature of the student's special education program or services.

Capacity Building and Prevention

Utah believes that the best and easiest way to manage conflict is to prevent it in the first place. Increasing the capacity of individuals in LEAs and parents to meaningfully collaborate and problem-solve offers a proactive strategy for conflict management.

Options:

- **Participant and Stakeholder Training**

Utah equips stakeholders (i.e., parents, educators, and service providers) with skills that enhance their capacity to communicate, negotiate, and prevent conflict from evolving and becoming problematic.

- **Conflict Prevention Professional Development**

Utah engages stakeholder organizations in providing training in conflict resolution processes to promote resolution of special education disputes at the local level. This professional development focuses on skill building in effective communication, problem-solving, and interest-based negotiation. Professional development is available to LEAs, families, and others in part- and full-day sessions at various times throughout the year and in locations across the State.

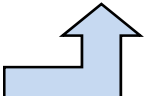
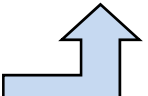
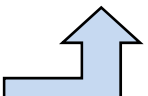
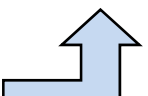
- **Collaborative Rulemaking**

Utah utilizes a collaborative rulemaking process to build consensus among stakeholders regarding State Board of Education Special Education Rules. The USOE also solicits input through a public process.

Conflict Resolution Options

Clearly identified conflicts may be effectively addressed through utilization of capable third parties. These collaborative conflict resolution options are characterized by interest-based problem solving and are available by themselves as early dispute resolution strategies or in connection with a due process complaint hearing or formal State complaint. Mediation is a strategy for conflict resolution provided by the IDEA. The USOE, LEAs, and stakeholders have developed additional options and strategies such as IEP Coaches, Parent Consultants, Problem Solving Facilitation, and IEP Facilitation.

Utah State Special Education Dispute Resolution System Flowchart

No time limits. Usually months to years.	<p>Supreme Court</p> <p>Decision is binding for the entire country</p>		
	<p>10th Circuit Court</p> <p>Decision is binding for all areas in the circuit's jurisdiction. Agencies In other circuits use as guidance.</p>	May be appealed to the Supreme Court.	
	<p>Federal District Court or State Court</p> <p>Decision applies to the specific case. Used as guidance by other courts and agencies.</p>	May be appealed to 10th Circuit Court.	
45 Days	<p>Due Process Hearing</p> <p>Filed with USOE. Hearing Officer appointed. Decision applies to the specific case only. These decisions are often read by other Hearing Officers and Complaint Investigators in all parts of the country.</p>	May be taken to district court.	
60 Days	<p>Formal IDEA State Complaint Appeal</p> <p>Appeal decision to USOE. Independent investigation and decision. USOE Complaint Investigator's decision is final.</p>	No appeal.	
	<p>Formal State Complaint</p> <p>Filed with local district superintendent/charter administrator, copied to USOE. District/charter school investigation and decision.</p>	May be appealed to USOE within 10 days.	
No timeline	<p>Mediation</p> <p>Available at any time by request of parent or district/charter school. Both parties must agree to process. Trained mediator assigned by USOE. Settlement agreement binding on both parties.</p>	Enforceable by court.	
About 60 days	<p>Problem Solving Facilitation</p> <p>Requested by district/charter school or parent at any time through one of four entry points. Both parties must agree to process. USOE-assigned facilitator keeps communication open to resolve concerns.</p>		

EARLY DISPUTE ASSISTANCE

Once a conflict seems likely to emerge or appears imminent, assistance may be provided to families and LEA personnel for capably addressing the issues. Key early dispute assistance strategies employed in Utah are:

- **Parent-to-Parent Assistance**

This approach recognizes that parents are a valuable source of assistance to other parents. Examples of Utah's parent-to-parent assistance are as follows.

- ♦ IEP Coaches: The Utah Parent Center (UPC) has developed a cadre of IEP Coaches available to assist parents in preparing for IEP meetings (and even attending IEP meetings with parents when possible).
- ♦ Parent Consultant: The USOE, LEAs, and the UPC work together to create the option for an LEA to have a parent consultant from the UPC as a part of their LEA staff. The LEA provides the funding for the consultant's salary and the consultant is provided with office space in an LEA building in order to be easily accessible for parents and education staff. Though the consultant is paid by the LEA, that individual is also considered part of the UPC and receives ongoing training from the UPC and USOE, as well as the LEA.

- **Case Manager**

LEAs or the USOE may assign a case manager who generally assists in remedying miscommunication and misinterpretation of the IDEA and Utah State Board of Education Special Education Rules. Along with facilitating family-school communication and assisting in the understanding of special education law, case managers clarify issues and facilitate problem-solving between teachers, service providers, and family members.

- **Intermediary – Telephone and Electronic**

LEAs and the USOE utilize this strategy which involves intervening with parents and LEA personnel by telephone as soon as a request for assistance has been made. The inquiry by the parent is viewed as an opportunity to help clarify the problem, identify informal ways of addressing the matter, and proceed with providing technical assistance when appropriate.

- **Facilitation**

Many of Utah's LEAs utilize IEP facilitators who are not part of the IEP team (from their LEA or another) when there is a sense from any of the participants that the issues at an IEP meeting are being addressed unproductively, when an adversarial climate exists, or when a meeting is expected to be particularly complex and controversial.

Facilitation

The Facilitation system is a process utilizing an impartial, neutral facilitator to guide the process of the meeting and to assist members of the IEP team in communicating effectively. An IEP is developed by a collaborative team whose required members share responsibility for the process, content, and the results. Facilitation is the process of helping the IEP team complete a task, solve a problem, or come to agreement to the mutual satisfaction of the participants. A facilitator may be useful when the LEA personnel want to concentrate on the IEP issues to be determined rather than on the meeting process; if communication between parents and LEA personnel is becoming tense; or if parents and LEA personnel are becoming apprehensive about the next IEP meeting.

There are two kinds of facilitation: LEA-Sponsored and USOE-Sponsored.

- **LEA-Sponsored Facilitation**

Many of Utah's LEAs utilize IEP facilitators not part of the team (from their LEA or another) when there is a sense from any of the participants that the issues at an IEP meeting are being addressed unproductively, when an adversarial climate exists or when a meeting is expected to be particularly complex and controversial.

- **USOE-Sponsored Problem Solving and IEP Facilitation Requests**

The USOE maintains a list of trained facilitators who are available at no cost to the LEA or parent, upon request, when difficult conversations are anticipated. USOE-sponsored facilitators are available by mutual agreement of the LEA and parents. The USOE has created a model form that is available on the USOE Special Education Services website². When a request is received, USOE Special Education Services staff ensures that both parties have agreed to the use of facilitator. USOE-sponsored facilitation is also available, by mutual agreement, at resolution meetings resulting from a due process hearing complaint.

Facilitation Requests

The USOE maintains a list of trained facilitators who are available at no cost to the LEA or parent, upon request when difficult conversations are anticipated. USOE-sponsored facilitators are available by mutual agreement of the LEA and parents. The USOE has created a model form for requesting a facilitator that is available on the USOE Special Education Services website³. When a request is received, USOE Special Education Services staff ensures that both parties have agreed to the use of the facilitator prior to the selection and assignment of a facilitator.

Facilitator Selection

The USOE generally assigns facilitators using the same rotating schedule utilized for assigning Mediators and Due Process Hearing Officers (DPHOs). However, due to the often urgent nature of the request, the USOE will proceed through the list in a rotational fashion and select the facilitator available in the necessary time frame. The USOE and its facilitators strive to meet urgent requests to the best of their ability.

Facilitator Qualifications and Impartiality

The USOE ensures that facilitators are qualified and impartial as follows:

- The USOE recruits facilitators by posting flyers with dispute resolution training programs and organizations within the State.
- Facilitator candidates are trained in facilitation or interest-based problem solving. Generally, candidates provide evidence of facilitation training. However, USOE Special Education Services Section may choose to provide facilitation training when needed.

² USOE – Special Education. Problem Solving Facilitation Intake form. <http://www.schools.utah.gov/sars/DOCS/law/facilitation.aspx>

³ USOE – Special Education. Problem Solving Facilitation Intake form. <http://www.schools.utah.gov/sars/DOCS/law/facilitation.aspx>

- In order to be placed and remain on the facilitation roster, facilitators attend training offered by USOE Special Education Services Section.
- When facilitators are assigned, the potential facilitator is asked about any bias including personal knowledge of the student or family, or other circumstances that might lead to partiality in the proceedings or the decision.

Facilitation Results

It is important to remember that facilitation is not the same as mediation.

- During a meeting facilitated by a USOE assigned facilitator, the facilitator will endeavor to keep effective communication in progress.
- Facilitators will not speculate or otherwise inform the parties about the law, legal implications, or interpret the IDEA, Utah Board of Education Special Education Rules or any other applicable rule, regulation, or statute.
- During a facilitated meeting, the USOE Compliance Coordinator or Law and Policy Coordinator will be available by telephone to provide technical assistance regarding the IDEA, Utah Board of Education Special Education Rules and other relevant information to the parties upon their mutual request.
 - Conference call or speaker phone capability is required for this communication to ensure that all parties are included in the conversation.
 - The USOE Compliance Coordinator or Law and Policy Coordinator will not render judgment on the facts of the case.
- Policies and procedures for LEA facilitated meetings may vary and information regarding LEA facilitated meetings should be obtained from the particular LEA.
- If, based on the outcome of the facilitated meeting, a written agreement, other than an IEP, is desired, that agreement should be drafted by the parties.
- If the student's IEP is changed during the facilitated meeting, the IEP team may write a new IEP or amend the existing IEP to reflect the outcome. The LEA is responsible for following up with the required notice and consent forms. The revised IEP is then implemented.

MEDIATION

Mediation is a voluntary process that can be used to resolve disagreements between the parents of a student with a disability and the LEA responsible for the student's education. Requests for mediation are sometimes made with a very short time frame. Because effective mediation often depends upon the expedient availability of a mediator, the USOE strives to locate a mediator who is available within the time frame needed.

To begin the process of mediation, both parties must agree to mediate. Either the parents or an LEA representative may suggest this option initially by asking the other party if they are willing to mediate the disputed issues. The cost of mediation is borne by the USOE; there are no costs to either the parents or the LEA.

The use of mediation can have the following benefits over a formal State complaint or due process hearing:

- Mediation uses the strengths of both participants to solve problems.
- Because it is voluntary throughout the process, and because a mediator has no authority to order any particular resolution, mediation is a safe way for both parties to offer and consider alternatives.
- Mediation can be less antagonistic.
- Mediation is less time consuming.
- Mediation is less costly for both parties.
- If an agreement is reached, it is written and committed to by the parties themselves, rather than ordered by a hearing officer or the USOE.
- A negotiated agreement may help with future positive relationships.

Forms to request mediation are available on the USOE website⁴ or upon request to the USOE Special Education Services. Mediation request forms should also be available in each LEA.

Mediation Process

The USOE Special Education Services has established mediation procedures to allow LEAs and parents to resolve any matter regarding special education, including matters arising prior to the filing of a due process complaint.

Provisions for special education mediation in Utah are as follows:

- The mediation process is voluntary for both the parents and the LEA.
- Mediation may not be used to deny or delay a parent's right to a due process hearing, or any other parent right.
- Mediation is conducted by a qualified, impartial mediator who is trained in effective mediation techniques.
- The USOE maintains a list of qualified mediators and appoints the special education mediator.
- The USOE is responsible for the costs of mediation.

⁴ USOE – Special Education. Parent Request for Mediation form. <http://www.schools.utah.gov/sars/DOCS/law/mediationrequest.aspx>

- Mediation must be provided in a timely manner and at a location that is convenient for both parties in the dispute.
- Agreements reached during mediation must be in writing and must include the resolution of each issue for which agreement was reached.
- Discussions during mediation must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. This provision for confidentiality does not apply where State law provides for disclosure. For example, information pertaining to child abuse or threats of harm addressed by State statute.
- During mediation, the USOE Compliance Coordinator or Law or Policy Coordinator will be available by telephone to provide technical assistance regarding the IDEA, Utah State Board of Education Special Education Rules and other relevant information to the parties upon their mutual request.
 - Conference call or speaker phone capability is required for this communication to ensure that all parties are included in the conversation.
 - The USOE Compliance Coordinator or Law and Policy Coordinator will not render judgment on the facts of the case.
- Each party understands that the agreement is legally binding upon them.
- The agreement may be enforced in State or Federal court.

The goal of the parties in mediation is to reach an agreement that is workable for all. If an agreement is reached, it is put in written form by the mediator and signed by both parties. If issues prove to be irresolvable, the mediator will declare that an impasse has been reached and the mediation will be terminated.

The USOE tracks mediation requests throughout the State and reports annually on the percentage of mediations held that resulted in successful mediation agreements.

Mediation Requests

When parents or LEA personnel disagree about a special education issue, either party may request mediation in writing. In order to facilitate easy access to mediation, the USOE has developed a model form that may be downloaded from the USOE website. Both parties must agree to participate in mediation. Once both parties agree to mediation, they must complete and sign the required forms, which are faxed and/or mailed to the USOE State and Federal Compliance Officer. This one-page form is available on the USOE Special Education Section website⁵ or by request to the USOE. The USOE will accept mediation requests in person, by fax or U.S. mail. If only one party submits the request for mediation, the USOE will contact the other party to determine and document whether that party agrees to participation in the mediation process. In order to expedite the process, USOE staff will accept mediation requests by telephone and complete the information for the requesting party when possible. The USOE does not accept electronic mediation requests.

[USOE Request for Mediation Form](#)

The mediation form includes contact information for use by the mediator. The contact information consists of the name, address, and phone number of the parties, and the name and birth date of the student. This form also notifies the parties that the mediator will be acting as a neutral third party, to develop an agreement that is mutually satisfactory and will not provide legal representation, counseling or therapy services to the parties. The model form reminds the parties of the voluntary nature of mediation and that mediation may not deny or delay a parent's right to a hearing on the parent's due process complaint. Finally, the mediation form reminds the parties

⁵ USOE – Special Education: Request for Mediation form. <http://www.schools.utah.gov/sars/DOCS/law/mediationrequest.aspx>

that discussions during the mediation will be confidential and will not be used during subsequent proceedings pertaining to the student's case.

Mediation and Due Process Complaint Hearing

Mediation may be requested even if a due process complaint has been filed. When this occurs, mediation must be completed within the due process complaint hearing timeline, and mediation may not be used to delay the parents' right to due process. However, the due process complaint hearing timeline may be extended by the due process hearing officer for a specific period of time during the mediation process if requested by the parties (34 C.F.R. 300.515(c))⁶. In the case of a timeline extension, the timeline for the due process hearing will begin if either party withdraws from the mediation. Mediation is often viewed as a win-win situation, a positive process that may often avoid potential litigation. Mediation must be available to resolve disputes relating to any matter under Part B of the IDEA.

Availability of Mediation

The USOE ensures that mediation is available at any time through:

- 1) Stating this requirement in the Utah State Board of Education Special Education Rules and in all LEA Special Education Policy and Procedures Manuals;
- 2) LEA provision of Procedural Safeguards to parents at required intervals;
- 3) Including mediation requirements in training for LEA personnel and parents;
- 4) Posting the Utah State Board of Education Special Education Rules on the USOE website⁷, and
- 5) Discussing mediation verbally when questions, informal and formal complaints are made to the USOE.
- 6) Bearing the costs of mediation between parents and LEAs.

Mediator Selection

Mediators are assigned by the USOE on a rotating basis. When a request for mediation is received and both parties have agreed to participate, the USOE contacts the next mediator on the list. If necessary, the USOE will leave a message for the mediator to contact the USOE and contact the next mediator on the list. The first mediator available will be assigned unless that individual is not available to meet with the parties within the timeframe needed. If a mediator is not available during the timeframe needed, the USOE will proceed to the next mediator on the list. Once assigned, the mediator will be removed from that rotation.

The mediator contacts both parties and arranges for mediation. The location must be convenient to the parties and should be acceptable to everyone. A neutral location is preferred. If the mediator is not familiar with neutral locations in the area where the mediation could occur, they will usually ask the LEA representative for suggestions (such as a room in a county courthouse, public library, or the Utah Parent Center). In some cases where neutral sites are not readily available, mediations can be held on LEA property.

⁶ US Dept. of Ed. IDEA (34 C.F.R. 300.515(c)). <http://idea.ed.gov/explore/home>

⁷ USOE – Special Education Rules. <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Rules-and-Regulations.aspx>

Mediator Qualifications and Impartiality

Only the USOE may appoint mediators to the Special Education Mediator panel. The role of the mediator is to help the parties reach a mutually agreeable resolution. The mediator must be neutral and will not take sides with either party. Rather, the mediator will assist the parties in finding common ground and exploring possible solutions regarding the dispute. The USOE ensures that mediators are qualified and impartial as follows:

- The USOE recruits mediators by posting notices with local mediator training organizations and mediation groups.
- Mediator candidates must submit evidence of successful completion of a mediation training program and must attend ongoing State-sponsored dispute resolution training when offered, or provide evidence of other training in the area of special education dispute resolution.
- Mediators may also participate in quarterly conference calls from the Technical Assistance for Excellence in Special Education (TAESE).
- When mediators are assigned, the potential mediator is asked about any bias including personal knowledge of the student or family, or other circumstances that might lead to partiality in the proceedings or the decision.
- USOE Special Education Mediators may not advocate for the interests of either LEAs or parents in education matters unless disclosure to the parties occurs and both parties agree to use that mediator.

Mediation Participants

Mediation is an informal process that includes discussion of the issues and proposed resolutions. Generally, discussions include the mediator, the parents, and an LEA representative. During mediation, the LEA representative must be someone who is knowledgeable about the issues and has decision making authority. The likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, either the parents or the LEA representative may ask an outside advocate to attend. If the parents are not able to participate fully and need assistance (because of reasons such as not speaking English, having a disability themselves, or not fully understanding the issues or procedures), the parents may wish to have an advocate to assist them.

In Utah, attorneys are not barred from participation in special education mediations. However, mediations generally prove to be more successful when the parties work on their own, without attorneys present. Ultimately, because mediation is a voluntary process, any party that objects to the presence of an attorney may withdraw from the mediation. If for some reason, attorneys or advocates become involved in a mediation session, the mediator will establish ground rules for the participation of advocates or attorneys, again in an effort to ensure that discussions are between the parties to the dispute.

It is important to remember that discussions during mediation are confidential. Though the requirement for confidentiality is included in the mediation request form a confidentiality agreement signed by the parties may be required prior to mediation.

Mediation Results

During mediation, the mediator works with both parties to reach a legally binding agreement. If mediation discussions result in both parties' reaching agreement, the mediator records the results in a written mediation agreement, which is signed by both parties. When the issues in mediation involve IEP decisions, the mediation agreement may become part of the student's IEP if agreed to by the parties. It is not necessary for the IEP team to meet because the decisions are enforceable and have been made during the mediation with the responsible parties involved (the parents and the LEA representative). The actions agreed upon in the mediation should be implemented immediately, unless the mediation agreement specifies otherwise.

If the IEP is changed by adding the mediation agreement, the IEP team may write a new IEP or amend the existing IEP to reflect the mediation agreement. The LEA is responsible for following up with the required notice and consent forms. The revised IEP is then implemented. If the mediation agreement is not part of the IEP the LEA must ensure that any person responsible for implementing the agreement is informed of their responsibilities.

However, if the mediation is not successful, the mediator may declare that the mediation is at impasse and suggest that both parties consider other methods for dispute resolution, such as formal IDEA State complaints and/or due process complaint hearings.

Frequently Asked Questions about Mediation

1. **What is mediation?**

Mediation is a voluntary process that can be used to resolve disagreements between the parents of a student with disability, or a student suspected of having a disability, and the LEA such as a school district or charter school responsible for the student's education.

2. **Who conducts the mediation?**

An impartial mediator, appointed by the USOE, who is trained in mediation skills and techniques.

3. **What role does the mediator have in trying to resolve the disagreement?**

The role of the mediator is to help reach an agreement. The mediator is neutral and will not take sides with either party, but will assist the parties in finding common ground and exploring possible solutions regarding the dispute.

4. **If I request mediation does the LEA (i.e., school district or charter school) have to participate?**

No. Mediation is voluntary; both parties to the dispute have to agree to use mediation.

5. **If the LEA requests mediation do I have to participate?**

No. As indicated in question #4, mediation is voluntary.

6. **Can I request mediation without filing a due process complaint?**

Yes. You may request mediation at any time to help resolve a dispute. In fact it is preferable to try to resolve a disagreement as early as possible and prior to filing a due process complaint.

7. Who can I bring with me to mediation?

You may bring anyone you believe will be helpful in resolving the dispute. This may include a trusted friend, relative, advocate, or an attorney. The USOE pays the costs for the mediator, which does not include costs related to either party inviting others to participate.

8. What is the cost for mediation?

Mediation is at no cost to you or the LEA. The cost of mediation is paid for by the State.

9. What happens when we reach an agreement at mediation?

The mediator will draft an agreement for you and the LEA to sign and you will receive a copy.

10. What happens if we go to mediation and we cannot reach an agreement?

If you participate in mediation and do not reach an agreement with the LEA you may:

- a. Attempt mediation again at a later date;
- b. Proceed with a hearing (if you initially filed a sufficient due process complaint);
- c. File a due process complaint; or
- d. Seek another means of resolving the dispute.

If you proceed to a due process complaint hearing and your mediator was also a hearing officer, that same hearing officer will not be assigned to your due process hearing.

11. How soon after requesting mediation can I expect it to occur?

The USOE will attempt to schedule the mediation as soon as possible, but mediation may not deny or delay your right to a due process hearing.

12. What happens if the LEA refuses to honor the agreement reached at mediation?

The written, signed mediation agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States.

13. May I or the LEA use discussions held and offers made at the mediation in future proceedings?

No. Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process complaint hearing or civil action. Parents and the LEA may be asked to sign a confidentiality pledge before the start of the mediation.

14. How do I request mediation?

It is preferred that the request be submitted on the USOE Special Education Mediation form. However, any written request that includes all the required information shall initiate the mediation process. You may obtain a form by calling or writing to the LEA responsible for the student's education or the USOE. The form is also available on the USOE website at <http://www.schools.utah.gov/sars/DOCS/law/mediationrequest.aspx>.

15. Where do I send my request for mediation?

Your request must be sent to the USOE Director of Special Education. The form may be sent by mail, fax, or hand-delivery.

- Mailing Address: Utah State Office of Education
250 East 500 South
P.O. Box 144200
Salt Lake City, UT 84114-4200

- Physical Address: 250 East 500 South, Salt Lake City, UT 84114
- Fax Number: 801-538-7991

Generally mediation requests are responded to within two business days of receipt. If you do not receive a response from the USOE within that timeframe, please call (801-538-7898) to inquire about the status of your request to ensure that it was received. Electronic (email) requests for mediation are not valid.

16. What if I want to withdraw my request for mediation or change my mind about participating in mediation requested by the LEA?

Mail, fax, or hand-deliver a signed letter stating that you wish to withdraw your request to the USOE Special Education Services section, as soon as possible. The letter may include information as to why the request is being withdrawn.

Again, mediation is voluntary; therefore, if you decide that you no longer wish to try to resolve the dispute by mediation, or do not want to participate in a request by the LEA you need not do so.

17. You have not answered all of my questions. Where do I go for help?

First, please refer to the Procedural Safeguards document provided to you by the LEA. It is also available online at the USOE Special Education Services website at <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Procedural.aspx>. Other questions you have may be addressed to the appropriate personnel from the LEA responsible for the student's education, the Utah Parent Center (801-272-1051), or the USOE (801-538-7898).

FORMAL IDEA STATE COMPLAINT

Formal IDEA State Complaints are one of the methods parents, individuals, or organizations have to resolve special education disagreements with the LEA. Filing a formal IDEA State complaint is one of the Procedural Safeguards afforded under the IDEA and Utah State Board of Education Special Education Rules. A formal IDEA State Complaint may be filed by anyone, including a complaint filed by an organization or individual from another state.

Ensuring Access

The USOE ensures that parents, individuals, or organizations have access to the model formal IDEA State complaint form by:

- Posting the form on the USOE website⁸.
- Making the form available through the Utah Parent Center, the Disability Law Center, other advocacy groups, the USOE State and Federal Compliance Officer, USOE Special Education Services support staff, and the LEAs who also provide the model form through email, fax, and U.S. Mail upon request of the parent and/or others.

There is no requirement that a complainant use the model form provided by the USOE. If a complainant chooses not to use the model form, the form may be useful to the complainant as a guide to ensure that all required elements of the complaint are included prior to submission.

Complaint Investigators

USOE Complaint Investigators are responsible for investigating issues pertaining to the IDEA and Utah Special Education Rules. Complaints pertaining to matters outside the jurisdiction of the IDEA and Utah Special Education Rules will be redirected to the degree possible.

Tier 1 – The LEA is responsible for assigning an investigator for Tier 1 of the formal IDEA State complaint process. The LEA may assign a staff member or contract with an individual to act on their behalf.

Tier 2 – By stakeholder determination, on appeal to the USOE, either the USOE Law and Policy Coordinator or the USOE Compliance Coordinator will complete the appeal investigation and issue a report of findings to the complainant and LEA.

USOE Complaint Investigators receive training by attending State, regional, or national conferences or other professional development and by participating in complaint investigator workgroups, listserves, and quarterly meetings with TAESE.

⁸ USOE – Special Education Formal IDEA State Complaint form. <http://www.schools.utah.gov/sars/DOCS/law/statecomplaint.aspx>

Requirements for Filing a Formal IDEA State Complaint

The USOE has adopted procedures for resolving any formal State complaint under Part B of the IDEA and the Utah State Board of Education Special Education Rules, including a complaint filed by an organization or individual from another State.

The complaint must be submitted in writing to the District Superintendent or Charter School Administrator of the LEA in which the alleged violation has occurred, and the party filing the complaint must forward a copy of the complaint to the USOE State Director of Special Education at the same time the party files the complaint with the LEA. If the parents are unable to file in writing, they may contact the LEA or USOE for assistance. The complaint must include the following:

- a. A statement that the LEA has violated a requirement of Part B of the IDEA or the Utah State Board of Education Special Education Rules.
- b. The facts on which the statement is based.
- c. The signature and contact information for the complainant.
- d. If alleging violations with respect to a specific student:
 - (1) The name and address of the residence of the student;
 - (2) The name of the school the student is attending;
 - (3) In the case of a homeless student, available contact information for the student and the name of the school the student is attending;
 - (4) A description of the nature of the problem of the student, including facts relating to the problem; and
 - (5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is received.

The USOE does not accept electronic filings or electronic signatures for requests for formal IDEA State complaints. However, the USOE will accept a formal IDEA State Complaint by fax or will provide a self-addressed stamped envelope to the complainant upon request. Time sensitive documents received after business hours or on non-business days will be date stamped on the next business day by USOE staff.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than two years prior to the date the complaint is received by the LEA.

Ensuring Timely Resolution of a Formal IDEA State Complaint

The USOE tracks the number of formal IDEA State complaints, monitors adherence to the requirements of Part B of the IDEA including the timeline for resolution and reports annually to OSEP with the data collected. In order to ensure the accuracy of data, the USOE date stamps each formal IDEA State complaint when it is received by the USOE and begins the 60-day timeline from the date when both the LEA and the USOE have received the complaint. The USOE does not accept electronic filings or electronic signatures for requests for formal IDEA State complaints. However, the USOE will accept a formal IDEA State complaint by fax or will provide a self-addressed stamped envelope to the complainant upon request.

Once the USOE receives a formal IDEA State complaint, the LEA is contacted to determine whether the LEA has also received the complaint. If the LEA has not received the complaint, the USOE will forward a copy of the complaint to the LEA. The 60-day timeline will commence when both the USOE and LEA possess the complaint.

The USOE ensures timely resolution of formal State complaints as follows:

Tier 1 — LEA-level investigation and resolution of complaint. The USOE sends a letter to complainant(s) and the LEA regarding formal IDEA State complaint timeline requirements. The USOE prompts the LEA for the Tier 1 investigation decision prior to the expiration of the 30-day timeline.

Tier 2 — A USOE-assigned complaint investigator is assigned immediately upon receipt of an appeal of the LEA decision. A written decision is issued within 60 days of the initial receipt of the complaint, to ensure compliance with the 60-day timeline of the IDEA. The USOE tracks the timeline to ensure completion of the report within the 60-day timeline.

The LEA shall resolve the complaint within thirty calendar days unless exceptional circumstances exist (e.g., delay by a complainant to provide necessary information). An extension of time shall not exceed ten calendar days. Within this time limit, the LEA shall:

- Provide the complainant a copy of the Procedural Safeguards as required by Part B of the IDEA and Utah State Board of Education Special Education Rules.
- Have an opportunity to resolve the complaint to the satisfaction of the complainant. If the complaint is resolved, the complainant may withdraw the complaint, in writing, to the LEA and the USOE.
- Carry out an independent on-site investigation, if the LEA determines that such an investigation is necessary.
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- Review all relevant information and make a determination as to whether the LEA is violating a requirement of Part B of the IDEA or of the Utah State Board of Education Special Education Rules.
- Issue a written decision to the complainant, with a copy sent to the State Director of Special Education, that addresses each allegation in the complaint and contains:
 - Findings of fact and conclusions, and
 - The reasons for the LEA's final decisions.
- Determine procedures for the effective implementation of the LEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
- Inform the complainant in writing of the right to appeal the decision for review to the USOE, and the procedures for doing so.

The USOE's investigation and decision in an appeal follows the same procedures and results in a written decision to the complainant and the LEA within 60 days of the original complaint.

Extending the 60-day Timeline

The USOE may extend the 60-day timeline when the complainant and the USOE agree due to exceptional circumstances. The USOE and LEA shall permit an extension of the time limit only if:

- Exceptional circumstances exist with respect to a particular complaint; or

- The parent, individual, or organization and the LEA involved agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution available in the State.

The USOE has not defined the term “exceptional circumstances.”

Appeals Process for a Formal IDEA State Complaint

The USOE has a 2-Tier compliance system that functions as an appeals process. The complainant may appeal the decision of the LEA (Tier 1) to the USOE (Tier 2). The appeal request must be received by the USOE State Director of Special Education within ten calendar days of the receipt of the LEA’s final decision. The procedures for investigation of the complaint on appeal to the USOE shall be the same as those outlined above for the LEA’s investigation. Within the remaining days of the 60-calendar-day time period after receipt of a written request for appeal, the USOE shall issue a final, written decision on the complaint. The USOE State and Federal Compliance Coordinator tracks all deadlines and responses to ensure completion within the required timeline.

In resolving a formal IDEA State complaint in which it has found a failure to provide appropriate services, the USOE, pursuant to its general supervisory authority under Part B of the IDEA, must address:

- How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and
- Appropriate future provision of services for all students with disabilities.

Addressing all Allegations

The USOE ensures there is a response to each allegation in a formal IDEA State complaint by having the USOE State and Federal Compliance Officer review each complaint decision, at both the LEA and USOE level, to verify that each allegation included in the complaint is addressed. If all allegations are not addressed in the decision, the USOE State and Federal Compliance Officer notifies the LEA of the discrepancy and requires that the written decision be amended within five days. The USOE State and Federal Compliance Officer will review USOE-level formal IDEA State complaint appeal decisions and ensure that all allegations are addressed prior to the issuance of the decision.

Ensuring the Implementation of a Formal IDEA State Complaint Decision

The USOE ensures implementation of formal IDEA State complaint decisions as each decision and resulting corrective actions/timelines for corrective actions ordered are tracked and completion verified by the USOE State and Federal Compliance Officer. Each corrective action completed and any evidence submitted by the LEA triggers a revised corrective action letter sent to the LEA. A final letter to the LEA and the complainant is sent by the USOE when the formal State complaint is closed out, upon completion of all aspects of the corrective actions in the complaint decision. The decision monitoring and the tracking of corrective actions ordered in formal State complaint decisions is incorporated into the UPIPS monitoring system and relies on calendar prompts built into the Indicator 15 Database.

Frequently Asked Questions about a Formal IDEA State Complaint

1. What is a formal IDEA State complaint?

A complaint is a statement that an LEA, which means a school district or a charter school, has violated a requirement of Part B of the IDEA and/or the Utah State Board of Education Special Education Rules.

2. Who can file a formal IDEA State complaint?

Any individual or organization who believes that an LEA has violated the IDEA and/or the Utah State Board of Education Special Education Rules. This includes a parent/parents or any other concerned individual or organization.

3. How do I file a formal IDEA State complaint?

It is preferred that you file your formal IDEA State complaint using the "Formal IDEA State Complaint" form, however, any written request that includes all the required information shall initiate the formal IDEA State complaint process. You can obtain a form by calling or writing to the LEA responsible for the alleged violation or the USOE Special Education Services section (801-538-7898). The form is also available on the USOE Special Education Services website at <http://www.schools.utah.gov/sars/DOCS/law/statecomplaint.aspx>.

4. Where do I send my formal IDEA State complaint?

Your formal IDEA state complaint must be sent to the district Superintendent or charter school Director of the LEA responsible for the alleged violation **and** to the USOE Director of Special Education. The form may be sent by mail, fax or hand-delivery. *The USOE Director of Special Education does not accept formal IDEA State complaints by email.*

The mailing address is PO Box 144200, 250 East 500 South, Salt Lake City, UT 84118-4200; the physical address is 250 East, 5600 South, Salt Lake City, UT; the fax number is 801-538-7991.

When received by the USOE, a written confirmation will be sent within 2 business days.

5. What is the time limit for filing a formal IDEA State complaint?

A formal IDEA State complaint must allege a violation that occurred not more than one (1) year prior to the date that the formal IDEA State complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or you are requesting compensatory services for a violation that occurred not more than two (2) years prior to the date the formal IDEA State complaint is received by the LEA.

6. What is the formal IDEA State complaint timeline?

The timeline for the resolution of a formal IDEA state complaint is 60 days.

The LEA responsible for the alleged violation will resolve the formal IDEA State complaint within 30 days unless exceptional circumstances exist (e.g., delay by a complainant to provide necessary information.) An extension of time shall not exceed ten (10) calendar days.

If you decide to appeal the decision to the USOE Director of Special Education, the USOE will have the remainder of the 60-day timeline to issue a final decision.

7. What happens after I file a formal IDEA State complaint?

The LEA will resolve the complaint by:

- a. carry out an independent on-site investigation, if it determines such an investigation is necessary;
- b. give you the opportunity to submit additional information either orally or in writing, about the allegation(s) in the complaint;
- c. review all relevant information and make a determination as to whether the LEA is violating a requirement of Part B of the IDEA and/or Utah State Board of Education Special Education Rules;
- d. issue a written decision to you, with a copy sent to the USOE Director of Special Education that addresses each allegation in the formal IDEA State complaint and contains findings of fact and conclusions, and the reasons for the LEA's final decision(s);

- e. permit an extension of the time limit if exceptional circumstances exist or you and the LEA agree to engage in mediation or another dispute resolution process available in the state;
- f. determine procedures for the effective implementation of the LEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve IDEA and Utah State Board of Education Special Education Rules compliance; and,
- g. inform you in writing of your right to appeal the decision for review to the USOE within 10 days of receipt of the decision and the procedures for doing so.

8. What is timeline for appealing the LEA decision of a formal IDEA State complaint?

After receipt of the written decision from the LEA, you have 10 days to appeal the decision to the USOE Director of Special Education for independent state review.

9. What happens after the USOE Director of Special Education receives my appeal to the LEA's decision?

The USOE follows the same procedure as outlined in #8 above to resolve the formal IDEA State complaint appeal. The USOE will investigate and issue a final, written decision within 60 days of receipt of the original formal IDEA State complaint.

10. What happens if the USOE finds there is a violation of the IDEA and/or the Utah State Board of Education Special Education Rules?

The USOE will issue a written corrective action plan addressing how the LEA shall remediate any denial of services, including, as appropriate, the awarding of monetary reimbursement, and also addressing appropriate future services for all students with disabilities.

11. May I submit a formal IDEA State complaint regarding an issue that has previously been decided by a Due Process Hearing?

If an allegation is raised in a complaint filed under a previous due process hearing decision, then the due process hearing is binding on that issue. A complaint alleging an LEA's failure to implement a due process decision, however, must be submitted directly to the USOE Director of Special Education and resolved by the USOE.

12. Where may I find more information about formal IDEA State complaints?

You may find more information about formal IDEA State complaints in the Utah State Board of Education Special Education Rules available online at <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Rules-and-Regulations.aspx> and in the Procedural Safeguards Notice provided by LEAs or online at <http://www.schools.utah.gov/sars/DOCS/law/ps0611.aspx>. Both documents are also available from the USOE by calling 801-538-7898. Information is also available from the Utah Parent Center at 801-272-1051 and the Disability Law Center at 1-800-662-9080.

DUE PROCESS COMPLAINT HEARING

A due process complaint hearing is a set of procedures that seeks to ensure fairness of educational decisions and accountability, both for parents and for LEAs. Due process rights begin when LEAs, or the parents, request an initial evaluation to determine whether or not a student is eligible and needs special education and/or related services. Every special education due process complaint hearing and review must be provided at no cost to the student, or the parent of the student. The cost of the due process complaint hearing (due process hearing officer, location, provision of transcripts) is borne by the USOE. Attorney's fees and other associated costs, such as expert witness fees, are borne by the parties.

The due process complaint hearing provides a forum where disagreements about the identification, evaluation, educational placement, and provision of a free appropriate public education for students with disabilities may be adjudicated.

Usually parents and LEA personnel assume their responsibilities in regard to the education of students with disabilities and have little or no difficulty in reaching mutual agreement about the initiation, continuation, or termination of special education services. When disagreements arise, due process is available to bring in an impartial special education due process hearing officer to make a ruling. Ultimately, the intent of Federal and State special education due process requirements is to protect the rights of students with disabilities from inappropriate actions by LEAs or by parents.

Parents are encouraged to contact the Utah Parent Center, the Utah Disability Law Center, other parent advocacy groups, or the USOE Special Education Services section to seek assistance (see section on [Contact Information and Partnerships](#)).

The special education due process complaint hearing procedures are somewhat complicated. This section describes these procedures, but it is not a substitute for competent legal advice. Parents considering a request for a due process complaint hearing are encouraged to consult with an attorney who is knowledgeable in special education law.

Qualifications and Impartiality of Due Process Hearing Officers

The USOE ensures that Due Process Hearing Officers (DPHO) have the knowledge and ability to conduct hearings.

- The USOE requires DPHOs to be attorneys.
- TAESE assists the USOE in the recruitment of DPHOs by posting notices with the IDEA due process hearing officer workgroups in other States and at trainings for due process hearing officers provided by TAESE.
- The USOE recruits DPHOs by posting notices with the Utah State Bar Association.
- The USOE also accepts applicants from outside the State if the interested individual is a licensed attorney and provides evidence of knowledge and experience with the IDEA special education hearings in other states.

Only the USOE may appoint hearing officers to the USOE Special Education DPHO roster. Applicants must be knowledgeable in the Utah State Board of Education Special Education Rules that apply to due process hearings in Utah. Every other year, at a minimum, DPHOs must have a full day of training on updates to the IDEA and case law illustrating precedents, usually provided in conjunction with the annual Utah Special Education Law Institute. If a DPHO cannot participate in the USOE-sponsored training, he/she must submit evidence of training in recent IDEA case law. Candidates for the DPHO panel must submit other evidence of their status as attorneys and evidence of understanding of the IDEA. Approximately four times per year all DPHOs are invited to participate in a hearing officer conference call provided through the TAESE.

Impartiality

DPHOs may not advocate for or represent the interests of either LEAs or parents in education matters; and must adhere to the ethical requirements of the Utah State Bar Association, including those rules pertaining to conflicts of interest.

Ensuring Consistency with IDEA Federal Regulations and State Special Education Rules

The USOE ensures that due process hearing decisions are consistent with the IDEA Federal regulations and Utah State Board of Education Special Education Rules through regular training and by requiring the DPHO to cite relevant regulations and case law in their decisions. The USOE reviews decisions after issuance and discusses any inconsistencies with the DPHO. If a DPHO makes repeated poor decisions, as judged by the USOE, they may be removed from the panel.

Filing for a Due Process Complaint Hearing

Either the LEA or the parents of a student with a disability may initiate a special education due process complaint hearing to resolve differences about a student's identification, evaluation, educational placement, or provision of a free appropriate public education⁹. If the student is between the ages of 18-21, the student has the right to file for a due process hearing, unless a court has determined otherwise.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. There are some exceptions to this timeline, including when an LEA has misrepresented that it has resolved the problem or the LEA has withheld information that it was legally required to give to the parent¹⁰ (34 C.F.R.300.507(a)(2))¹¹.

To make a request for a due process hearing, the party filing the request, or the attorney for that party, sends a copy of a Due Process Complaint Notice to the other party and to the USOE Director of Special Education.

The USOE tracks the number of due process hearing complaints, monitors adherence to the requirements of the IDEA including the time line for resolution and reports annually to OSEP with the data collected. In order to ensure the accuracy of data, the USOE date stamps each complaint when it is received by the USOE and begins the timeline when both the LEA and the USOE have received the complaint. Once the USOE receives a complaint, the LEA is contacted to determine whether the LEA has also received the complaint. If the LEA has not received the complaint, the USOE will forward a copy of the complaint to the LEA. The timeline will commence when both the USOE and LEA possess the complaint. The USOE then assigns a DPHO to the case.

⁹ USOE Special Education Rules: IV.I.(1) <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Rules-and-Regulations.aspx>

¹⁰ Utah State Board of Education SER IV.I

¹¹ US Dept. of Ed. IDEA (34 C.F.R.300.507(a)(2)). <http://idea.ed.gov/explore/home>

The USOE does not accept electronic filings or electronic signatures for requests for due process complaint hearings. However, the USOE will accept a due process complaint hearing request by fax or will provide a self-addressed stamped envelope to the complainant upon request. Time sensitive documents received after business hours or on non-business days will be date stamped on the next business day by USOE staff.

Notice of filing of a due process complaint is confidential and must contain the following information:

- Name of the student;
- Address of the student's residence (or in the case of a homeless student or youth, available contact information for the student);
- Name of the school the student is attending;
- Description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts related to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at that time.

When the LEA receives this request for a due process complaint hearing, LEA personnel are required to:

- Inform parents about mediation;
- Inform parents of free or low-cost legal services; and
- Provide a copy of the Procedural Safeguards document for the first due process complaint in the school year.

Ensuring Parent/Guardian Access

The USOE ensures that parents and others have access to the model due process complaint form by:

- Posting the form on the USOE website¹².
- Making the form available through the Utah Parent Center, the Disability Law Center, other advocacy groups, the USOE State and Federal Compliance Officer, USOE Special Education Services section support staff, and the LEAs who also provide the model form through email, fax, and U.S. Mail upon request of the parent and/or others.

Assigning a Special Education Due Process Hearing Officer

The USOE is responsible for due process complaint hearings, including the assignment of due process hearing officers. After August 2009, any newly appointed Due Process Hearing Officer must be an attorney. A DPHO can have no personal or professional interest that would conflict with his/her objectivity. The DPHO may not be an employee of the LEA that is responsible for the student's education. Additionally, the DPHO may not represent parents, students, or LEAs in educational matters.

In order to ensure impartiality, the USOE assigns DPHOs from the USOE-approved list of DPHOs on a rotating basis, with the next hearing assigned to the next DPHO in the rotation. If the DPHO is not available to take the call, the USOE leaves a message and proceeds through the list. Of those DPHOs contacted, the first DPHO to accept the assignment is offered the case. If this procedure results in bypassing a DPHO, the USOE returns to that place on the list for the next hearing request, removing the newly assigned DPHO from that rotation. When approached, the potential DPHO is asked about any bias including personal knowledge of the student or family,

¹² USOE – Special Education. Due Process Hearing request form. <http://www.schools.utah.gov/sars/DOCS/law/dphrequest.aspx>

or other circumstances that might lead to partiality in the proceedings or the decision. The USOE maintains a tracking sheet to ensure that DPHOs are assigned in rotating order.

In the event that a hearing is re-filed on the same, or nearly the same issues, the DPHO originally assigned to the case may be contacted first and assigned if that DPHO is available.

Resolution Meeting Requirement

When the parent has requested a due process complaint hearing, the LEA must schedule a resolution meeting within 15 days of receiving the complaint notice. The LEA must convene a resolution meeting with the parents and the member or members of the IEP team who have specific knowledge of the facts identified in the request for due process and a representative of the LEA who has the authority to make binding decisions on behalf of the agency. The parent and the LEA determine which members of the IEP team will attend the meeting. The LEA may not bring their attorney to the resolution meeting unless the parents are accompanied by their attorney. If both parties so desire, the USOE will provide a facilitator, at USOE expense, to assist with the resolution session. The resolution process provides the LEA with 30 days in which to attempt to resolve the parents' concerns. The time period may be shortened if:

- 1) A resolution is reached; or
- 2) If the parties mutually agree to waive the resolution process and proceed to hearing.

The parties may, by mutual agreement, choose to engage in mediation in lieu of the resolution process. The parties may stipulate, in their agreement to mediate, whether they are waiving the resolution process in the entirety; or, if the 30-day timeline will run during the resolution period and continue if the parties reach an impasse prior to expiration of the 30-day time period. Absent such agreement, if the parties disengage from mediation without resolution in fewer than 30 days, the 45-day timeline for the due process hearing will begin. If the parties choose mediation and agree in writing to continue the mediation at the end of the 30-day resolution period, the 45-day timeline will not begin until the parent or LEA withdraws from the mediation process.

The purpose of the resolution meeting is for the parents of the student to discuss and explain the due process complaint, including the facts that form the basis of the complaint. The LEA then has an opportunity to resolve the complaint. If the meeting results in resolution of the complaint, the parties develop a legally binding written agreement that both the parent and the representative of the LEA signs. The agreement is, by law, enforceable in any State or Federal court. However, the law also permits either party to void the agreement within three business days of the date the agreement was signed.

If a resolution of the due process complaint is not reached at the meeting and the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the LEA's receipt of the due process complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process complaint hearing will commence.

Failure of the parent to participate in a resolution meeting when they have not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held. In addition, if the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the LEA may, at the conclusion of the 30-day resolution period, request that the DPHO dismiss the parents' due process complaint.

If an agency fails to hold and participate in a resolution meeting within 15 days of receiving a due process complaint, the parents may request the DPHO begin the due process hearing and commence the 45-day timeline for its completion. A resolution meeting is not required if the parent and the LEA agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint.

Implementation of the Dispute Resolution Process Timelines

Upon receipt of a due process complaint, the USOE State and Federal Compliance Officer sends a letter to the LEA, the DPHO, and complainant reminding them of the resolution session requirement. If needed, the USOE State and Federal Compliance Officer will prompt the DPHO to address the timeline requirement with all parties.

The DPHO copies the USOE State and Federal Compliance Officer on all emails/documents related to the assigned case, enabling the USOE State and Federal Compliance Officer to track all due process timelines, including those regarding the resolution session. Resolution session requirements are also a part of the regular DPHO training.

The USOE also ensures that LEAs properly implement the resolution process by requiring that the LEAs include the resolution session procedure in their Special Education Policy and Procedures Manuals.

Prehearing Requirements

The party receiving a due process complaint hearing notice must send to the party filing the notice, a response that specifically addresses the issues raised in the complaint within 10 days of receiving the complaint.

If either the LEA or the parent believes that a notice of due process it has received does not meet the legal notice requirements, they may submit to the DPHO a notification of insufficiency of the due process notice. A notice of insufficiency must be submitted within 15 days of the date of the party's receipt of the due process notice. The DPHO has an additional five days to determine whether or not the original complaint notice is sufficient. The DPHO shall immediately notify the parents and the LEA in writing of his/her decision.

Matters of standing or jurisdiction should be addressed and ruled upon by the DPHO as prehearing requirements.

If the LEA has not sent a prior written notice to the parent regarding the problem described in the parent's due process complaint notice, the LEA, within 10 days of receiving the complaint, must send to the parent a response that includes:

- 1) An explanation of why the agency proposed or refused to take the action raised in the complaint;
- 2) A description of other options that the IEP team considered and the reasons why those options were rejected;
- 3) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- 4) A description of the other factors that are relevant to the agency's proposed or refused action.

When a due process complaint is amended, the timelines start over. A party may amend its due process complaint notice only if:

- a) The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or

- b) The DPHO grants permission not less than five days before a due process hearing occurs.

Within five business days prior to a hearing, each party must disclose to the other party any evidence the party plans to use at the hearing, including all evaluations and recommendations based on the evaluations that they intend to use at the hearing. Failure to timely provide this evidence to the other party gives the other party a right to prohibit presentation of the evidence at the hearing.

If the LEA and the parents agreed to the resolution meeting, but have not resolved the issues within 30 days of the date the notice of due process was received, the hearing may begin. Also, note that, if both parties agree in writing to waive the resolution meeting, the 45-day timeline to complete the due process hearing begins the day after the written agreement is signed.

Prehearing Procedures

Within a reasonable amount of time, the DPHO shall provide the parent, the LEA, and the USOE written notice of the date, time and place of the hearing. The DPHO shall ensure that the hearing is conducted at a time and place reasonably convenient to the parties involved.

At the discretion of the DPHO, a pre-hearing conference shall be held in order to:

- a. Clarify the issue(s) of the hearing.
- b. Review the hearing rights of both parties.
- c. Review the procedures for conducting the hearing.
- d. Afford both parties the opportunity for disclosure. In no event will such a pre-hearing conference be held later than five days prior to the hearing.

Each party shall disclose to the other the full name, title, occupation, and place of employment of each witness; a capsule summary of the witnesses' testimony; and any other evidence to be presented. These disclosures must be made at least five days prior to the hearing.

During a prehearing conference conducted pursuant to this section, or in the alternative through the delivery of a written notice, the DPHO shall ensure that the parents are provided a full explanation of their hearing rights.

Conducting a Due Process Complaint Hearing

The due process complaint hearing must be held at a time and place reasonably convenient to the parent of the student with a disability. If the parties are unable to determine a location for the hearing, the USOE will make arrangements for a location. The parties shall be notified in writing of the time and place of the hearing at least five days prior to the hearing.

Both parties have the right to be present at the hearing and be accompanied and advised by legal counsel, attorneys able to practice law in Utah, and people who have special knowledge about students with disabilities. Parties may be accompanied, but not represented, by advocates. The DPHO may administer oaths before hearing testimony.

The parties have the right to present evidence; and confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of a subpoena. Each party may present witnesses in person or present their testimony by affidavit, including expert medical, psychological, or educational testimony.

Each party has a right to prohibit the introduction of evidence or from raising any issue at the hearing that was not raised in the due process complaint notice, disclosed at least five days prior to the hearing, or raised in a prehearing conference held prior to the hearing.

Both parties have the right to have a written or, at the option of the parent, an electronic, verbatim record of the hearing. They also have the right to a written, or at the option of the parent, electronic decision, including the findings of facts and conclusions. Both the record of the hearing and the decision of the special education DPHO must be provided at no cost to the parents.

In addition to the rights noted above, parents are assured of their right to have the student who is the subject of the hearing present. Hearings will be closed to the public, unless the parent specifically requests an open hearing.

Reaching a Due Process Complaint Hearing Decision

Any action of the DPHO resulting from a due process complaint hearing shall be final and subject to appeal in a civil action.

The 45-day timeline for completion of a due process complaint hearing starts on the day after one of the following events occurs:

- Both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
- The parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30-day resolution period; or
- Both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation.

Within 45 calendar days after the expiration of the 30-calendar-day resolution period, or the adjusted time periods resulting from the resolution process or mediation, a final written decision must be reached by the DPHO in the hearing and a copy of the decision mailed, or electronically delivered upon request, to each of the parties.

Extending the 45-day Timeline

A DPHO may grant extensions of time upon request of either party, unless the due process complaint hearing is an expedited hearing. The DPHO must maintain documentation of a written request for extension of timelines from a party. This evidence may be requested by the USOE anytime a timeline is extended. The DPHO copies the USOE State and Federal Compliance Officer on all documents/emails related to the assigned case, enabling the USOE State and Federal Compliance Officer to track all due process timelines, including the decision timeline.

A written notice of the result of any hearing must be given to the LEA providing for the hearing and must be sent by certified mail to the parent, or attorney of the student, within 24 hours after the result is determined. In addition, the DPHO must send a copy of the findings and decision to the USOE Director of Special Education.

Transmittal of Findings and Decisions

The USOE State and Federal Compliance Officer reports annually to the Utah Special Education Advisory Panel (USEAP) on the findings and decisions from due process complaint hearings. Personally identifiable information

must be redacted from the decision before it is made available to USEAP and the public. The redacted decisions from the most recent 10 years are posted on the USOE website¹³.

Issuing of Written Decisions

LEAs must include due process decision timeline requirements in their Special Education Policy and Procedures Manuals. The USOE State and Federal Compliance Officer sends a letter to the LEA, the DPHO, and complainant reminding them of the decision timeline requirement. The DPHO copies the USOE State and Federal Compliance Officer on all emails/documentation related to the assigned case, enabling the USOE State and Federal Compliance Officer to track all due process timelines, including the decision timeline. The USOE State and Federal Compliance Officer prompts the DPHO 15 days prior to the expiration of the 45-day timeline to ensure the timeline requirement is met.

Ensuring Implementation of Due Process Hearing Officer Decisions

Each DPHO decision and all resulting corrective actions ordered are tracked and completion verified by the USOE. Tracking is accomplished through the UPIPS Indicator 15 Database. Each corrective action completed and evidence submitted triggers a revised corrective action letter from the USOE to the LEA. A final letter to the LEA and the parents is sent when the due process complaint is closed out, upon completion of all aspects of the corrective action(s) from the DPHO decision. In addition, DPHO decisions are mailed to the LEA and the complainant.

Stay-Put

While the due process hearing is pending, the student involved in the complaint must remain ("stay-put") in the current educational placement, unless:

- The parents and the LEA agree to a different placement.
- The proceedings arise in connection with the initial admission of the student to school, in which case the student will be placed in the appropriate regular education classroom or program, unless otherwise directed by a DPHO because a student's behavior is substantially likely to result in injury to the student or to others.
- The student is in an interim alternative educational setting for disciplinary reasons.

If the decision of a DPHO in a special education due process complaint hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the LEA and the parents.

Appealing the Due Process Complaint Hearing Decision/Civil Action

The decision of the DPHO is final. After a due process hearing has been completed, either the parents or the LEA may pursue a civil action through a State or Federal court for reimbursement of attorneys' fees.

If either party is dissatisfied with the findings of the DPHO, that party has the right to bring a civil action with respect to the complaint notice requesting a due process complaint hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in

¹³ USOE – Special Education. Results from Due Process Hearings.
<http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Dispute.aspx>

controversy. Federal and State regulations allow the civil action by either party. The Utah State Statute adds the timeline that a civil action must be filed within 30 calendar days after the postmark on the written DPHO's decision.

Attorney Fees

If the parents prevail in the due process hearing or upon appeal, a court of competent jurisdiction may award some or all of the attorney fees they have paid in conjunction with the due process complaint hearing. Only a Court can award attorney fees to the parents. The special education DPHO has no authority to do so. However, there may be limitations on the amount paid. For example, if it is found that the parents prolonged the process or if the fees charged are more than the hourly rate usually charged, the judge has the authority to reduce the award paid to the parents.

The LEA may be awarded attorney fees if a parent files a due process complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. The LEA may be awarded attorney fees if the parent's request for a due process complaint hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Frequently Asked Questions about Due Process Complaints

1. What is a due process complaint?

A due process complaint is a formal complaint regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for a student with a disability or suspected of having a disability, which may result in a due process hearing.

2. Who can file a due process complaint?

A parent or a LEA such as a school district or charter school may file a due process complaint.

3. How do I file a due process complaint?

It is preferred that you file your due process complaint using the *Due Process Hearing Request* form, however, any written request that includes all the required information shall initiate the due process complaint process. You may obtain a form by calling or writing to the LEA responsible for the student's education or the USOE Special Education Services section. The form is also available on the USOE Special Education website at <http://www.schools.utah.gov/sars/DOCS/law/dphrequest.aspx>.

4. Where do I send my due process complaint?

Your due process complaint must be sent to the LEA responsible for the student's educational program and to the USOE Director of Special Education. The form may be sent by mail, fax, or hand-delivery. The USOE Director of Special Education does not accept due process complaint hearing requests by email.

- Mailing Address: Utah State Office of Education
250 East 500 South
P.O. Box 144200
Salt Lake City, UT 84114-4200

- Physical Address: 250 East 500 South, Salt Lake City, UT 84114
- Fax Number: 801-538-7991

When received by the USOE, a written confirmation will be sent within two business days.

5. What is the time limit for filing a due process complaint?

A due process complaint must be filed within two years of the date you knew, or should have known, about the alleged action/violation that is the reason for the complaint. There are limited exceptions to this timeline; please refer to the Procedural Safeguards document you received from the LEA for additional information.

6. Before having the opportunity for a due process complaint hearing, what steps must be taken to try to resolve the complaint?

Before having the opportunity for a due process complaint hearing there is a 30-day resolution period. This time period allows you and the LEA time to try to resolve the dispute. Either you or the LEA may agree to attempt to resolve the dispute using mediation, or the LEA must schedule a resolution meeting, unless both parties agree in writing to waive the meeting. For more information regarding the mediation process, please refer to the Procedural Safeguards document, or the Frequently Asked Questions about Special Education Mediation.

7. What is a Resolution Meeting?

The resolution meeting provides an opportunity for you and the LEA to resolve the disagreement prior to the initiation of a due process complaint hearing by discussing the facts that form the basis of the due process complaint and possible solutions.

8. Who can attend the Resolution Meeting?

You and the LEA determine who is appropriate to attend the resolution meeting. You, relevant members of the IEP team, and a LEA representative who has decision-making authority must attend the resolution meeting. Other participants may include your child, your advocate, or your attorney. However if an attorney accompanies you, the LEA's attorney may also attend.

9. Do I need to ask for a Resolution Meeting?

No. Whenever a due process complaint is filed by a parent, the LEA must arrange for a Resolution Meeting unless the parties agree in writing to waive the Resolution Meeting or the parties agree to attempt to resolve the disagreement through mediation.

10. When must the Resolution Meeting be held?

The LEA is required to hold the resolution meeting within 15 days of receiving the due process complaint from you. If the LEA fails to hold the resolution meeting within 15 days of receiving your complaint or fails to participate in the meeting, you may contact the assigned DPHO and request the due process hearing timeline immediately begin.

11. What if I fail to attend the Resolution Meeting?

If the LEA is unable to obtain your participation at the resolution meeting after reasonable efforts have been made, the LEA may request that the DPHO dismiss your due process complaint.

12. How long do we have to try to resolve the disagreement?

Generally, you and the LEA have 30 days to resolve the disagreement. However, if you and the LEA agree that progress is being made and you wish to extend the time, it may be permissible to do so.

13. What happens if we do not reach an agreement in the Resolution Meeting?

If you and the LEA do not come to resolution, you can agree to extend the resolution period and continue to meet to reach a satisfactory resolution. If both parties agree, you can try to resolve the dispute through mediation; or you may proceed to a due process complaint hearing.

14. What happens at a due process complaint hearing?

A due process complaint hearing is conducted by a DPHO appointed by the USOE who will take evidence from both parties and make a decision about a dispute. For specific information regarding the due process complaint hearing procedures and rights, please refer to the Procedural Safeguards document.

15. Do I need an attorney?

No; however, because of the legal nature of the proceedings parents often are represented by counsel but may go to a due process hearing and represent themselves.

16. What is the due process complaint hearing timeline?

If the LEA has not resolved the due process complaint to your satisfaction within 30 days of receiving the complaint (the resolution period), the due process complaint hearing may occur. The DPHO then has 45 days to conduct the hearing and issue a final decision.

17. What if I want to withdraw my due process complaint?

You may mail, fax, or hand-deliver a signed letter stating that you wish to withdraw your due process complaint to the USOE Director of Special Education, and the LEA, as soon as possible. The letter may include information as to why the due process complaint is being withdrawn.

18. You have not answered all of my questions. Where do I go for help?

First, please refer to the Procedural Safeguards document given to you by the LEA or the Utah State Board of Education Special Education Rules, which are available at <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/Procedural.aspx>. Other questions you have may be addressed to the appropriate personnel from the LEA responsible for the student's education, the Utah Parent Center, or the USOE Special Education Services section. You may also refer to the document "OSEP Questions and Answers on Procedural Safeguards and Due Process Procedures" on the USOE Special Education Services website at <http://www.schools.utah.gov/sars/DOCS/law/qapsgdp.aspx>.

IDENTIFICATION OF NONCOMPLIANCE

The USOE monitors compliance with State and Federal requirements under the IDEA 2004 with the Utah Program Improvement Planning System (UPIPS) as part of its general supervision to assist LEAs in the process of improving outcomes for students with disabilities. UPIPS emphasizes a risk-based data-driven, systematic approach to compliance and improvement of results.

Each LEA is monitored yearly during a five-year cycle that includes self-assessment, on-site visits, desk audits, fiscal compliance and accountability reviews, annual performance reports (APR), and/or additional requested State and Federal data reporting (including data showing correction of noncompliance). Dispute resolution procedures data including formal IDEA State complaints and due process complaints and mediations are also reviewed and integrated into the process.

The USOE uses multiple databases to identify possible noncompliance.

- A USOE Special Education Section internal database, known as the Indicator 15 Database, contains all the information from monitoring (including desk audits), formal IDEA State complaints, due process complaints, LEA Special Education Policy and Procedures Manuals, and fiscal compliance data. The USOE Special Education Monitoring Specialist reviews the data for every LEA at least annually to identify noncompliance of any kind.

Notification of Findings of Noncompliance

Written notifications of findings of noncompliance occur as soon as possible and generally within three months of discovery. Except for findings identified through formal IDEA State complaints or due process complaint hearings, individual instances of noncompliance in an LEA involving the same legal requirement under the IDEA and Utah Special Education Rules are grouped together as one finding. Thus, an LEA will have multiple findings of noncompliance for the same time period if the LEA is noncompliant with more than one legal requirement.

Local programs are notified of findings in writing as soon as possible after the finding is verified and generally no later than within three months. If a finding is identified through a formal IDEA State complaint or due process complaint hearing decision, notice is provided within approximately one month (immediately upon completion of the decision).

CORRECTION OF NONCOMPLIANCE

The USOE clarifies timely correction in each part of its General Supervision system as follows:

- Dispute Resolution Procedures (including formal IDEA State complaints): No later than within one year or sooner based on orders/decisions from Dispute Resolution process outcomes.

Criteria for Determining Correction of Noncompliance

In the process of determining that an LEA corrected noncompliance on all APR indicators, monitoring findings, dispute resolution processes, State and Federal data, fiscal requirements, and policies and procedures, the USOE follows guidance provided in OSEP's 09-02 Memorandum¹⁴ and the FAQ on Noncompliance and Correction¹⁵, including:

- Accounting for all instances of noncompliance, identifying where the noncompliance occurred, the percentage level of noncompliance, and the root cause of the noncompliance to ensure that noncompliance does not reoccur;
- Reviewing both prongs of verification: (1) evidence of correction of noncompliance in each individual case of noncompliance (e.g., files reviewed, fiscal requirements), and (2) evidence that the LEA is correctly implementing the specific regulatory requirements--has achieved 100% compliance--based on a review of updated LEA data from a sample of other similar files, fiscal records, or other documentation;
- Reviewing evidence of complaint and hearing decision orders implemented;
- Requiring the correction of LEA noncompliance in the policies, procedures, and practices that contributed to or resulted in the noncompliance;
- Evidence of training on system-wide noncompliance as well as changes in policies, procedures, and practices, including agenda and attendance records; and
- Determining the LEA is correctly implementing the relevant specific regulatory requirements based upon an USOE review of updated LEA data.

Correction occurs when the LEA revises noncompliant policies, procedures, and/or practices and the USOE verifies the corrected noncompliance based on a review of updated data and notifies the LEA of the correction in writing. The data must reflect 100% compliance before the USOE concludes and reports that noncompliance has been corrected. Database verification data may be pulled from LEAs at any point in time; however, the USOE must consider all database data since the previous data review in determining whether noncompliance has been corrected.

¹⁴ OSEP 09-02 Memorandum. <http://www.schools.utah.gov/sars/DOCS/law/oseptcmemo.aspx>

¹⁵ OSEP Determination FAQ. Posted 10/19/2006. <http://spp-apr-calendar.rfcnetwork.org/getfile/view/id/427>

Methods Used to Monitor Timely Correction of Noncompliance

The USOE obtains timely correction of noncompliance by providing technical assistance to LEAs via phone, email, and in person as well as assigning mentors with expertise in specific areas of the IDEA and compliance issues to new LEA Special Education Directors and local programs at risk. Provision of technical assistance as result of noncompliance is tracked in a database and reviewed by the Monitoring Specialist.

- Sanctions are applied as per Utah's Determination Process. The IDEA funding may also be delayed if LEA noncompliance continues uncorrected past the timeline.
- Corrective action plans are systematically monitored throughout the year.
- Policies and procedures are reviewed for correction of any noncompliance problems.

The USOE tracks and documents all corrections through the internal Indicator 15 Database tracking system and formal letters to LEAs.

- For each instance of noncompliance, the LEA is notified of the finding in writing and is required to write a Corrective Action Plan (CAP) which describes the technical assistance/professional development necessary to correct the noncompliance.
- The LEA submits documentation as part of the CAP process to the USOE showing that the noncompliance was corrected, which the USOE verifies.
- After the USOE has determined noncompliance is corrected, written notification is sent to the LEA indicating the compliance criterion of 100% was met.

Enforcement of Correction of Noncompliance

The USOE uses enforcement actions and sanctions if the LEA does not, in a timely manner:

- Demonstrate corrected noncompliance within one year of notification (or sooner if required) and
- Provide evidence of such correction to the USOE.

All noncompliance from formal IDEA State complaints, due process complaints, and other data sources is integrated into the UPIPS Indicator 15 Database tracking system. Enforcement actions are selected based upon the level of noncompliance, type of noncompliance, and targeted on a continuum to address the root cause of the noncompliance. The range of enforcement options or sanctions includes:

- Notification of noncompliance to LEA Superintendent or Charter School Director and LEA Special Education Director or LEA Charter School Board.
- Additional on-site monitoring visits.
- If the LEA is a charter school, contact with the State Charter School Board and/or Technical assistance to the LEA from a consultant selected by the LEA or USOE. Provision of technical assistance is tracked in a database and reviewed by the USOE Monitoring Specialist.
- Connecting the LEA to supports and best practices in other LEAs.
- Additional resources, such as funding, training, and materials.
- Notification of status of Program Improvement Plan (PIP) to LEA Superintendent or Charter School Director and LEA Special Education Director or LEA Charter School Board.

- Imposition of special conditions on the IDEA Part B funding.
- Delay of the IDEA Part B funding until adequate compliance is reached.
- Provision of consultant to assist LEA with implementation of PIP.
- Technical assistance to revise PIP. Provision of technical assistance is tracked in a database and reviewed by the USOE Monitoring Specialist.
- LEA Determination level.

CONTACT INFORMATION AND PARTNERSHIPS

Utah State Office of Education (USOE)

Address: 250 East 500 South

P.O. Box 144200

Salt Lake City, Utah 84114-4200

Phone: (801) 538-7587

Fax: (801) 538-7991

Website: <http://www.schools.utah.gov/sars/default.aspx>

Utah Parent Center (UPC)

Address: 230 West 200 South

Suite 1101

Salt Lake City, UT 84101

Phone: (801) 272-1051

Fax: (801) 272-8907

Website: <http://www.utahparentcenter.org/>

Utah Disability Law Center (DLC)

Address: 205 North 400 West

Salt Lake City, Utah 84103

Phone: 1-800-662-9080

Website: <http://www.disabilitylawcenter.org/>

Technical Assistance for Excellence in Special Education (TAESE)

Address: 1780 North Research Parkway

Suite 112

North Logan, Utah 84341

Phone: (435) 797-9009

Fax: (435) 797-9018

Website: <http://www.usu.edu/taese/>

Utah Special Education Advisory Panel (USEAP)

The Utah Special Education Advisory Panel (USEAP) is an advisory panel appointed by the Utah Board of Education who focuses on issues involving the education of students with disabilities.

Website: <http://www.schools.utah.gov/sars/USEAP.aspx>.

ACRONYMS

APR	Annual Performance Report
CADRE	Consortium for Appropriate Dispute Resolution
CAP	Corrective Action Plan
DPHO	Due Process Hearing Officer
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
LEA	Local Education Agency (school district or charter school)
OSEP	Office of Special Education Programs
PIP	Program Improvement Plan
SEA	State Education Agency
TAESE	Technical Assistance for Excellence in Special Education
UPC	Utah Parent Center
UPIPS	Utah Program Improvement Planning System
USBE	Utah State Board of Education
USEAP	Utah Special Education Advisory Panel
USOE	Utah State Office of Education