

Dispute Resolution 101

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Purpose of Webinar

- Provide information about available dispute resolution processes in special education
 - Snapshot of each process
 - Highlight key differences
- Please feel free to ask questions about these processes, but understand that I cannot provide legal advice.

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A few words about conflict. . .


- **Conflict defined: Folger, Poole, & Stutman (2000)**
 - Interdependence, incompatibility, and interference
 - Conflict is inevitable
 - Conflict can be managed constructively or destructively
- **Common symptoms of negative conflict**
 - Fractured trust
 - Lack of communication
 - Perceptions narrow and harden
 - Position v. Interest statements
 - Focus is on "winning"
 - Use of personal attacks, blaming, and threats



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A few words about communication...


- Effective communication skills help clarify points of concern and assist in problem-solving.
 - Know yourself and stay student-centered
 - Focus on the present
 - Communicate your perspective clearly
 - Prioritize, plan, and practice
 - Actively listen to all members of the IEP team to learn their perspective
 - Ask open-ended questions and seek clarification
 - Bring an open mind and ideas/options



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Informal Dispute Resolution

- Questions and concerns about student's programming?
 - Speak with Teacher
 - Request IEP team meeting
 - Contact Special Education Director
- CDE informal dispute resolution protocol:**
Encourage parents to attempt resolving a dispute by first contacting the special education director.



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Formal Dispute Resolution Options under IDEA

- Mediation: **34 CFR § 300.506**
- State Complaint: **34 CFR §§ 300.151-300.153**
- Due Process Complaint: **34 CFR §§ 300.507-300.516**

Additional information on dispute resolution, including regulations, brochures and model forms are available on CDE website at: <http://www.cde.state.co.us/spedlaw>

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Matters **not** covered by IDEA


- Section 504 claims, including harassment and discrimination. May file complaint with OCR.
- Personnel decisions made by school administration. See CDE grievance policy.
- Criminal charges or tickets filed against student by school personnel.
- Abuse and neglect

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CO Dispute Resolution Numbers

YEAR	MEDIATION	STATE COMPLAINT	DUE PROCESS
2013 (YTD)	34	11	12
2012	36	14	24
2011	51	13	20
2010	41	18	22

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Mediation 

- Problem-solving process facilitated by a neutral mediator that requires the parties to work together towards a mutually agreeable solution.
- **Voluntary** and free to both parties.
- Written agreements are enforceable in state or district court.
- Discussions during mediation are confidential and may not be used as evidence in a subsequent state or due process complaint.

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Mediation

- In Colorado, only a **parent** or public agency may request mediation. **ECEA Rule 2.33**
- Mediation can be used to resolve any dispute under Part B of IDEA as long as the parent has not revoked consent for provision of services or failed to provide initial consent for services.
- Mediation may be requested by contacting the mediation coordinator at (303) 866-6889 or by faxing a mediation request form to (303) 866-6767.

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Key differences between mediation and state or due process complaint.

- Quickest potential resolution, easiest process to initiate and navigate
- Least adversarial
- IDEA matters that cannot be subject of due process hearing may be subject of mediation.
- Parties have more control in the process and decision making.
- Agreements made in mediation may be more creative, broad and workable than remedies available through state and due process complaint.

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State Complaint

Individuals or organizations who believe that a public agency responsible for the provision of special education services is not in compliance with state (ECEA) and federal (IDEA) regulations may file a signed written complaint with CDE.



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State Complaint

- **A state complaint *must* include:**
 - A statement that the public agency has violated a requirement of Part B of IDEA, its implementing regulations, or a special education law found in ECEA that occurred not more than one year prior to the date the complaint is filed with CDE.
 - The facts on which the statement is based: Who, what, when, and how. May include documentation, such as IEP, that supports the allegation.

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State Complaint


- **State complaint *must* include (cont'd)**
 - Signature and contact information for the person filing the complaint;
 - If alleging violations with respect to a specific child: the child's name and address, *and* a proposed resolution to the dispute;
 - Complaint must be filed with the Special Education Director of the public agency at the same time it is filed with CDE.
- **Model forms and state-level complaint procedures available at <http://www.cde.state.co.us/spedlaw>**

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State Complaint

- **What does this process look like and how long does it take?**
 - Response (15 days) and Reply (10 days)
 - Interviews and on-site investigation
 - Extensions of 60-day timeline
 - Exceptional circumstances
 - Mediation
 - Final decision and appeal

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Due Process Hearing 

- A due process hearing may be used to resolve any dispute related to the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) for a specific child.
- Only parents, students who have reached the age of majority, or a public agency may request a due process hearing.
- Due process hearings are conducted by ALJs who are trained in special education law.

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Due Process Complaint

- Model forms available on CDE website for filing a due process complaint.
 - Due process complaint must be filed with CDE and the Special Education Director of the Administrative Unit.
 - CDE has two business days to forward a due process complaint to the Office of Administrative Courts (OAC).
 - OAC conducts the due process hearings.

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Due Process Timelines and Requirements

Resolution meeting:
15 days from notice to the AU and before hearing may be held.

- Not required if parties jointly waive or agree to use mediation.
- Consequences for failing to convene or participate in resolution meeting.

Resolution Period: 30 days

Hearing and final decision: 45 days from end of 30 day resolution period, unless extended by ALJ at the request of either party.

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Expedited Due Process

- **Dispute must involve parental disagreement with disciplinary placement, manifestation determination, or belief by an AU that maintaining student in current placement is substantially likely to result in injury to student or others.**
- **Expedited timelines:**
 - Resolution meeting: 7 days
 - Hearing: 20 school days
 - Decision: 10 days from hearing

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Key differences between state and due process complaints

- Time period for filing the complaint
 - Due Process(2 yrs)/ State Complaint (1 yr)
- Formality of process
- Who may file
 - SC allows nonparents and organizations to file
- Subject matter
 - SC allows broader subject matter for dispute, including ability to file on behalf of a group of students
- Remedies available

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Dispute Resolution Resources

- **CDE website:** <http://www.cde.state.co.us/spedlaw>
- **CADRE website:** <http://www.directionservice.org/cadre/parent/matrixCMK.cfm>
- **OSEP 2013 Dispute Resolution Guidance Memo:** http://www.directionservice.org/cadre/pdf/OSEP_Q&A_memo7-23-13.pdf

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