

# Parent and Child Rights in Special Education

## Procedural Safeguards Notice

An Explanation of Procedural Safeguards Available Under Provisions of the Individuals with Disabilities Education Act (IDEA) and the Colorado Rules for the Administration of the Exceptional Children's Educational Act (ECEA)

### **DUE PROCESS COMPLAINT PROCEDURES**

#### **FILING A DUE PROCESS COMPLAINT**

34 CFR §300.507

##### **General**

You or the administrative unit may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the administrative unit knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The administrative unit specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The administrative unit withheld information from you that it was required to provide you under Part B of the IDEA.

##### **Information for parents**

The administrative unit must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the administrative unit file a due process complaint.

#### **DUE PROCESS COMPLAINT**

34 CFR §300.508

##### **General**

In order to request a hearing, you or the administrative unit (or your attorney or the

administrative unit's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential. You or the administrative unit, whichever one filed the complaint, must also provide the Colorado Department of Education with a copy of the complaint.

### **Content of the complaint**

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the administrative unit at the time.

### **Notice required before a hearing on a due process complaint**

You or the administrative unit may not have a due process hearing until you or the administrative unit (or your attorney or the administrative unit's attorney), files a due process complaint that includes the information listed above.

### **Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the administrative unit) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the administrative unit) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the administrative unit in writing immediately.

### **Complaint amendment**

You or the administrative unit may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the administrative unit) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

## **Administrative Unit response to a due process complaint**

If the administrative unit has not sent a prior written notice to you, as described under the heading Prior Written Notice, regarding the subject matter contained in your due process complaint, the administrative unit must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the administrative unit proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the administrative unit used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the administrative unit's proposed or refused action.

Providing the information in items 1-4 above does not prevent the administrative unit from asserting that your due process complaint was insufficient.

## **Other party response to a due process complaint**

Except as stated under the sub-heading immediately above, **Administrative Unit response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## **MODEL FORMS**

34 CFR §300.509

The Colorado Department of Education must develop model forms to help you file a due process complaint and a State complaint. However, the Colorado Department of Education or the administrative unit may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint.

CDE's model forms may be accessed at <http://www.cde.state.co.us/spedlaw/info.htm> for due process, state complaints and mediation.

## **MEDIATION**

34 CFR §300.506

### **General**

Mediation is available to allow you and the administrative unit to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading Filing a Due Process Complaint.

### **Requirements**

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the administrative unit's part;
3. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and** Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The administrative unit may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; **and**
2. Who would explain the benefits and encourage the use of the mediation process to you.

The Colorado Department of Education maintains a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The Colorado Department of Education must select mediators on a random, rotational, or other impartial basis.

The Colorado Department of Education is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the administrative unit.

If you and the administrative unit resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. Is signed by both you and a representative of the administrative unit who has the authority to bind the administrative unit.

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

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

### **Impartiality of mediator**

The mediator:

1. May not be an employee of the Colorado Department of Education or the administrative unit that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of an administrative unit or the Colorado Department of Education solely because he or she is paid by the Department or administrative unit to serve as a mediator.

### **THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING** 34 CFR §300.518

Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the administrative unit agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the administrative unit is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the administrative unit must provide those special education and related services that are not in dispute (those which you and the administrative unit both agree upon).

### **RESOLUTION PROCESS** 34 CFR §300.510

#### **Resolution meeting**

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the administrative unit must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the administrative unit who has decision-making authority on behalf of the administrative unit; **and**
2. May not include an attorney of the administrative unit unless you are accompanied by an attorney.

You and the administrative unit determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the administrative unit has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the administrative unit agree in writing to waive the meeting; **or**

2. You and the administrative unit agree to use the mediation process, as described under the heading **Mediation**.

### **Resolution period**

If the administrative unit has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the administrative unit have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the administrative unit is not able to obtain your participation in the resolution meeting, the administrative unit may, at the end of the 30- calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the administrative unit's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the administrative unit fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

### **Adjustments to the 30-calendar-day resolution period**

If you and the administrative unit agree in writing to waive the resolution meeting, then the 45-calendar- day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the administrative unit agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the administrative unit agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the administrative unit withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

### **Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the administrative unit must enter into a legally binding agreement that is:

1. Signed by you and a representative of the administrative unit who has the authority to bind the administrative unit; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the Colorado Department of Education, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

### **Agreement review period**

If you and the administrative unit enter into an agreement as a result of a resolution meeting, either party (you or the administrative unit) may void the agreement within 3 business days of the time that both you and the administrative unit signed the agreement.