

Navigating a Child Complaint

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When disagreements arise between parents and a Missouri school district regarding special education issues under Part B of the Individuals with Disabilities Education Act (IDEA), there are three basic options to resolve the dispute: voluntary mediation, due process, or child complaints. Mediation is often the cheapest and quickest method of dispute resolution, but it also requires the greatest amount of cooperation between the parties involved. The Department of Elementary and Secondary Education (DESE) provides mediation services at no cost, but the process is voluntary and requires the parties to meet face to face, without attorneys, to informally discuss the issues and work toward an agreeable solution. If the dispute is contentious, mediation is likely not a practical option. Due process hearings, on the other hand, are much more formal. The parties, usually with the aid of attorneys, present evidence and witness testimony to a hearing officer in a trial-like setting. The hearing officer then issues a binding decision that may be appealed to a state or federal court. The hearing may last several days and the entire process may take several months. This article will examine the third option for dispute resolution: the child complaint.

The Complaint

DESE is responsible for receiving, investigating, and resolving complaints alleging that statutes and/or regulations implementing IDEA have been violated. This process is known informally as the child complaint process. The child complaint process is different from mediation and due process because the parties to the dispute often never meet face to face. Instead, DESE investigates the complaint and renders a final decision as to the compliance of the District's conduct and state and federal legal requirements.

The process begins when a parent, advocate, or other interested party files a complaint with the DESE Office of Special Education. The complaint must be received by DESE within one year from the date of the alleged violation. Federal law requires that the complaint must include a statement describing how the district has violated the IDEA, including the supporting facts. A complaint may not be filed anonymously. It must be signed by the complainant and include contact information. If the complaint pertains to a specific child,



the complaint must also disclose the child's name, address, and the school he or she is attending. The complainant must propose a resolution to the problem, to the extent possible. A model complaint form is available on the DESE website.

The Investigation

Upon receipt of the complaint, DESE assigns the matter to an Assistant Commissioner of Special Education. The Commissioner then reviews the complaint and provides written notice to the district and the complainant identifying the elements of the complaint and the parameters of the investigation. At this point the district may provide a written response to the complaint, which can include a proposal to resolve the issues, or a request to participate in voluntary mediation. If the complaint cannot be resolved at this stage, DESE will proceed with its investigation.

The primary methods of data collection during the investigation are document requests and phone interviews. DESE may not show up to a district unannounced. If the investigation requires an onsite visit, DESE must provide advance notice to the district including a statement of the records to be made available, staff to be interviewed, and any need for access to school facilities. Complaints must be investigated and resolved within sixty (60) calendar days, unless the parties agree to a longer timeframe or an extension of time is granted.

The Resolution

At the conclusion of the investigation, DESE issues a decision letter setting forth findings of fact, conclusions of law, and a decision. The findings outline the results of the investigation, including any information gathered from document requests, interviews, and onsite investigations. There are three basic conclusions that DESE can reach: (1) the district is not out of compliance; (2) the district is out of compliance, but has taken voluntary corrective action bringing the district into compliance; or (3) the district is out of compliance and must take corrective action within a timeframe set by DESE. Corrective actions may include, but are not limited to, technical assistance activities, negotiations, or other actions to achieve compliance. There are no appeals to the child complaint findings. However, if a parent believes their child has been denied a free appropriate public education (FAPE), or that there is an unresolved issue concerning identification, evaluation, or educational placement of the child, the parents can file a due process complaint and proceed to an evidentiary hearing.

The Pros and Cons

Although the child complaint process may take several weeks to complete, it is typically faster and more economical than a due process hearing. Attorneys are neither required to participate in the process, nor prohibited, which gives districts flexibility when considering how to respond to a complaint. The process is also less confrontational than mediation or due process, which can be a good or bad thing. Instead of attempting to informally reach a resolution, or squaring off in a formal hearing, the parties essentially turn the dispute over to DESE and wait for a decision. This may seem ideal in situations where a parent or advocate is unpleasant or irrational. However, this also means that the district has less control over how information is presented. Because the parties do not meet face-to-face unless mediation takes place, the district does not have the opportunity to cross-examine witnesses or otherwise formally challenge the story being presented by the complainant.

The Takeaway

According to data obtained from DESE, a total of 157 allegations of IDEA violations were received during the 2016-2017 school year through the child complaint process. Not surprisingly, the largest number of allegations pertained to IEP implementation and modification. Of the allegations that DESE investigated and issued decisions upon, districts were found to be out of compliance 44% of the time. The data indicates that child complaints are becoming more and more common. Districts need to be familiar with the basics of how the child complaint process works, and should be prepared for how to respond if and when a complaint is received. If districts have questions or concerns regarding child complaints, legal counsel should be contacted.