



NEW MEXICO

Public Education Department

Effective Dispute Resolution

Alternative Dispute Resolution- Joanie Roybal
State-Level Complaints- Will Lusk-Claiborne
Due Process Hearings- Marsha Zenderman

*From: New Mexico's Integrated Special
Education Accountability System, pp. 14-17*

Session Goals

- By the end of this session you will:
 - Know the basics of each option for dispute resolution
 - Know your PED contacts for Dispute Resolution
 - Some of the main causes of disputes.

This session is packed with information. Please save questions until the end or email them to the appropriate contact.

Alternative Dispute Resolution (ADR)

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ADR Coordinator
Parent Liaison

New Mexico Public Education Department
Special Education Bureau

Parent Concerns

- Calls, **Email**, Letters
- **Governor's Quorums (Requests)**
- SEB communicates with the Local Education Agency (LEA) - Special **Education Director** about parent concerns
- Provide options outlined in the **Parent and Child Rights in Special Education**

Before Alternative Dispute Resolution (ADR)

- **SEB refers parent to LEA's Special Education Director**
- **Parents are provided with ADR options and their Parent and Child Rights in Special Education**

Dispute Resolution Options

Informal

- SEB addresses parental concerns
- SEB refers parent to Special Education Director
- Third party assisted intervention (Mediation)

Formal

- Complaint Process
- Due Process Hearings (DPH)

ADR Options

- Mediation
- Facilitated Individualized Education Program (FIEP)

**Must Be Mutually Agreed Upon By
Both Parties**

ADR for State-Level Complaints and Due Process Hearing Complaints

- If **ADR addresses all concerns:**
 - SEB Complaint Officer and the DPH Officer is notified
 - In most cases, DPH is settled in full and the Complaint is withdrawn
- If **ADR does not address all concerns:**
 - Complaint is investigated and the DPH is scheduled

MEDIATION

- Requested at **ANYTIME** by parent(s) or the LEA
- Utilizes **State-approved, State-funded** Mediators
- **Mediate** disputed matters related to IEP or non-IEP issues
- Results in a **Mediated Agreement** by both parties the majority of the time
- Parties may participate in other **ADR** options if mediation is unsuccessful
- Mediations are **not** IEP meetings

Mediator/Facilitator

Role:

- **Contractors** of the State
- Assigned on a **rotational-basis** to cases
- **Neutral** person to assist the district and parent to come to **a Mediated Agreement/FIEP**
- Keep to the meeting's **agenda** and **issues**

They are Not:

- Advocates
- To interpret the law

Third Party Assisted Intervention

6.31.2.13 (G)(2)(b) NMAC

- **Mediation** is the only ADR
- Can be requested **anytime**
- On the ADR **Form** (SEB website)
- Submitted to the **SEB**
- Is a **mutual request**
- The **issues/concerns** in a dispute are clearly stated

Third Party Assisted Intervention

- Outlines the **concerns/issues**
- Briefly describes **attempts** to resolve the matters
- Outlines some possible **outcomes** or **solutions**
- Request for **Mediation** can be initiated by the district or the parent(s) of a student

Third Party Assisted Intervention

- Mediator assigned . . . **State pays**
- Occurs within **14 days**
from date of assignment
- Result can be a **mediated agreement**
- May/may not require an **IEP**
- If mediation does not settle dispute . . .
other **ADR options** are available

Compliance with Mediated Agreements (After Mediation)

- A **Mediated Agreement** usually settles dispute
- Written agreement must be sent to all parties within 7 days of the meeting
- Must be signed and returned
- Deadline is **60 days** after the mediated agreement (p. 17)

Mediation Facts

- Discussions at a mediation are confidential.
- Mediated Agreements are legally binding contracts, and either party can seek enforcement in court.
- Complainants may also file a complaint for failure to abide by a Mediated Agreement.

Facilitated Individualized Education Program (FIEP)

- Facilitator is state-approved, **state funded**
- SEB pays for **FIEP meeting** when requested as ADR for a State-Level Complaint or Due Process Hearing Complaint (DPH)
- The result is a “**New IEP**”
- State-Level Complaint /DPH is **settled**
- Other **ADR options** available if not successful

Requests for Alternative Dispute Resolution (ADR)

- Third-Party Assisted Intervention-
requested by **parent(s) or LEA** at **any** time
(Mediation)
- State-Level **Complaints**
- **Due Process** Hearings

ADR Is Not . . .

Intended to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other right afforded under IDEA Part B.

Benefits of Early ADR

- High rate of **compliance** by all parties
- **Decisions** hold up over time
- Financially beneficial to all parties
- Mutually **satisfactory** outcomes for all parties
- Preserves **relationship** (parent/student/school)
- Facilitates Communication

Continuation of Benefits of Early ADR

- Better results for **kids**
- Fewer **formal** disputes
- Focuses on **Student/Parent /School**
- More **communication** and **collaboration**
- Less **tracking and reporting** APR

Formal State-Level Complaints

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What is a State-Level Complaint?

(6.31.2.13(H)(2)(a) NMAC)

- May be filed by the LEA, the parent/guardian, or by a 3rd party.
- Complainants may pursue ADR or a DPH when a complaint is filed. These options are not available to 3rd party complainants.
- May be filed with respect to a specific child or about systemic noncompliance in the LEA.
- Must allege violations that occurred not more than one calendar year before the complaint was filed.

Complaints Must Contain...

(6.31.2.13(H)(2)(a) NMAC)

- Must be **written**
- Must be submitted to **SEB (or Secretary of Ed.)**
- Signed by complainant **or** representative
- A statement that the LEA/departments violated a requirement of federal law or regulation.
- A statement of the facts
- A proposed resolution to the dispute

Complaints Must Contain...

(6.31.2.13(H)(2)(a) NMAC)

- If filing a complaint about a specific child
 - the name of the school the child is attending;
 - the name and address of the residence of the child; or
 - in the case of a homeless child or youth, contact information for the child and the name of the district that they attend.

Any complaint received that does not contain all needed elements will be declined. SEB will send an explanation and further guidance.

Common Causes of State-Level Complaints

- Written response to **requests for evaluation**
- Implementation of the **IEP**
- Disciplinary Removals
- Least Restrictive Environment (**LRE**)
- Inadequacies in the **IEP**
- Parental participation in the **IEP process**

State-Level Complaint Form

- **Complaint Form** On SEB Web Page – www.ped.state.nm.us/seo/
- Form in English, and **Spanish**
- Use of this form is not required, but the complaint must contain all **required elements**, regardless of which form is used.
- **Can be sent to the SEB by mail, email, or fax.**

State-Level Complaint Timeline

Per 34 CFR §300.152(a), all complaints must be investigated and resolved within sixty (60) days of receiving the complaint.

- Exceptions to the 60 day timeline:
 - If both parties agree to ADR and send a written request to the complaint investigator for a timeline extension
 - If a DPH is filed concerning the same issues
 - If there are other unforeseen circumstances beyond the control of the parties (*very rare*)
 - The complaint is withdrawn by complainant.

Complaint Process

- Complaint is received and reviewed for completeness
- Complaint is “**date stamped**”
- Complaint is forwarded to the **Office of General Counsel**
- An **Acknowledgement Letter** is sent to all parties. This letter identifies:
 - The issues to be investigated
 - Identifies the complaint investigator
 - Identifies the timeline for the investigation
 - States what documentation and additional information will be required of parent(s) and the LEA

Complaint Process (Continued)

- Investigation commences
- LEA and parents submit documentation and information from Acknowledgement Letter.
- **Complaint Resolution Report (CRR)** is due within 60 days of complaint's "**date stamp**", unless there is an exception
- ADR Coordinator initiates **ADR options, if requested by complainant**

State-Level Complaints and ADR

- Complainants are still able to request ADR. The 60-day timeline of the State-Level Complaint continues, *unless there is a request for an extension from both parties.*
- **Complainants are urged to withdraw complaint if resolved through ADR. The CRR, if issued after the Mediated Agreement, will take precedence over the Mediated Agreement**

State-Level Complaints and Due Process Hearings (DPH)

(6.31.2.13(H)(4) NMAC and 34 CFR §300.152(c))

If a DPH request is filed for the same issues raised in a State-Level Complaint, the State-Level Complaint is held in abeyance (i.e. the timeline is paused) until the conclusion of the hearing and any civil action.

If any issue in the complaint is not addressed by the DPH, the complaint investigator must issue a report for this issue within the timeline.

If an issue is raised in a complaint that was previously decided in a Due Process Hearing with the same parties, the DPH decision is binding.

Complaint Resolution Report (CRR)

- CRR is issued within the 60-day timeline
- Includes any violations of the LEA and may contain a **Corrective Action Plan (CAP)**
- CAP **is monitored** for correction of the violations
- CAP **must be corrected** within one (1) year of the CRR
- Non-Compliance may affect **Indicator 15** for the LEA in their Final Determination

CRR- Possible Outcomes

- Investigation of Complaint Declined - **Letter**
- Successful ADR - **Complaint Withdrawn**
- No violations found - **CRR issued, case closed**
- If violations found - CRR and CAP issued
 - **A CAP may consist of LEA policy review, specific actions for identified students, or a change in practice. CAPs may also mandate compensatory services or tuition reimbursement.**

New Mexico Must . . .

- Conduct **timely** investigations
- Document **compliance** for every CAP
- Treat every **CAP** as relevant to general supervision and monitoring

State-Level Complaint

Closing Points

- State-Level Complaints may lead to CAPs.
- State-Level Complaints are bound by federally-mandated timelines.
- CAPs arising from complaints must be followed and the identified noncompliance must be corrected within one year.
- Lastly, documentation is *of paramount importance. Good record keeping is in everyone's best interest.*

Due Processing Hearings

Marsha Zenderman

**Office of
General Counsel**

**New Mexico Public Education
Department
Special Education Bureau**

Due Process Hearing Complaint

34 CFR § 300.532(c) & 6.31.2.13(H)(2)(a) NMAC

- Must be **written**
- Is submitted to **OGC – SEB**
- Signed by complainant **or** by a designated representative
- Cites **violation** of laws or regulations
- Contains a **statement(s)** and/or **supporting facts**

Due Process Hearing Complaint

34 CFR § 300.532(c) & 6.31.2.13(H)(2)(a) NMAC

- Includes **supporting** facts
- Has information about a **specific** child
- Alleges incidents that occurred within **two years** or are **ongoing**
- Efforts were made to **resolve** complaint
- Asks for “expedited hearing,” **if necessary**

Due Process Hearings (DPH)

6.31.2.13 (I) NMAC

Forum to review appropriateness of the following for a particular child with a disability the public agency

- **Identification**
- **Evaluation**
- **Educational placement or FAPE**

How Due Process Hearing Complaints Processed

- An **impartial hearing officer** is appointed
- A **mediator** or **IEP facilitator** can be assigned if ADR is requested
- Parent is sent a copy of the **Procedural Safeguards** with a copy of the Hearing Officer Appointment Letter

Timelines for DPH Complaints

- Response to DPH Officer within **10 school days** after the DPH
- DPH received, **Resolution** Session can take place within **15** days from date of DPH receipt by SEB
- If an **Expedited** DPH is requested, a Resolution Session may take place within 7 days of DPH being filed

Timelines for DPH Complaints (Con't)

- ADR available, **1 business day** of jointly deciding to participate
- SEB must receive **signed ADR** prior to appointment of mediator
- **Within 45 Days**, the DPH held and DPH Officer mail a written decision to the parties and the Secretary of Education
- State **monitors** timelines

Final Words

- OSEP demands **are increasing**
- OSEP “**drilling down**” to LEA level
- Dispute resolution is part of **general supervision**
- OSEP’s requirements affect **all participants** in the resolution process
- All approved forms for dispute resolution are on the SEB website
- http://ped.state.nm.us/ped/SEB_index.html

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