

# Resolving Disputes with Parents Series

## Part 5 - The Resolution Process

IDEA The resolution process became part of IDEA in 2004! IDEA now requires that school systems convene a resolution meeting within 15 days of receiving notice that a parent has filed a due process complaint and before the school system initiates the due process hearing. The purpose of the resolution meeting is for parents to discuss their due process complaint and the facts that form the basis of that complaint, so that the school system has the opportunity to resolve the dispute without holding a due process hearing.

### The Resolution Process, Summarized

The resolution process is new in IDEA, so not much is known about it yet, except how it is described within the law and its implementing regulations. States are busy implementing this newest addition to IDEA's dispute resolution options; as time goes by, we'll learn more about state policies and local implementation. It's important to know that, unlike mediation, the resolution process is not voluntary. IDEA requires it, as described at §300.510. This summary will take a look at the basic details of how the resolution process is expected to work.

### Timelines

The LEA must convene the meeting within 15 days of receiving a parent's due process complaint, and before convening a due process hearing. There are only two circumstances in which the resolution meeting may be skipped:

- if both parties agree in writing to waive the meeting or
- if both agree to use the mediation process instead

Interestingly, convening a resolution meeting is not required if the public agency files the due process complaint.

### Participants

IDEA states that the parents and relevant member or members of the IEP team who have specific knowledge of the facts identified in the parent's due process complaint. The group must include a representative of the public agency who has decision-making authority on behalf of that agency [§300.510(a)(1)].

And who decides which IEP team member(s) are "relevant?" IDEA is very clear about this: The parent and the LEA together determine the relevant member or members of the IEP team that will attend the resolution meeting. Furthermore, "relevant" members will be those with "specific knowledge of the facts identified in the parent's due process complaint" [§300.510(a)(1)].

Wondering if attorneys may be involved in the resolution meeting? Simple answer: The LEA's attorney may not be included in the meeting unless an attorney accompanies the parent [§300.510(a)(1)(ii)].

Wondering if participants must keep the information shared in a resolution meeting confidential? The answer is: No. IDEA provisions for the resolution process do not mention confidentiality at all.

## Failure to Participate

What happens if one of the disputing parties (parent or LEA) fails to show up for, and participate in, the resolution meeting? Or if the LEA doesn't follow through on its obligation to schedule the meeting?

Provided that the parents and LEA haven't agreed in writing to waive the resolution meeting, what happens when either fails to participate in the meeting will depend on which party we're talking about.

- **When parents fail to participate:** The LEA can ask the hearing officer to dismiss the parents' due process complaint.
- **When the LEA fails to schedule the meeting or participate in it:** Parents may seek the intervention of the hearing officer to begin the timeline for a due process hearing [§300.510(b)(5)].

## Results of the Meeting

If a resolution to the dispute is reached at the resolution meeting, the parent and the LEA must enter into a legally binding, written agreement [§300.510(d) and (e)]. That agreement:

- must be signed by the parent and a public agency representative with “the authority to bind the agency”
- is 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
- may be voided by either party (the parent or the LEA) within three business days of the date the agreement was signed.

If the parents and the LEA fail to reach an agreement during the resolution process (or agree to waive the process altogether), the next step will be the due process hearing, a more formal, often costly legal proceeding.

## The Next Set of Timelines: Due Process Hearings

A different timeline attaches to due process hearings: 45 days to reach a decision in the hearing. This timeline starts ticking the day after one of the following events occurs:

- Both parties agree in writing to waive the resolution meeting
- Both parties agree in writing that no agreement is possible; or
- Both parties agree in writing to continue mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. [§300.510(c)(3)]