

STATE & FEDERAL REGULATIONS

RESOLVING CONFLICTS; FAPE; FERPA; TITLE IX

Resolving Conflicts

MEDIATION

Mediation is a process that may be used to resolve disagreements between the parents of a child with a disability and MSD. An employee of the Office of Administrative Hearings (OAH) who is qualified and trained in effective mediation techniques conducts the mediation. The individual selected by OAH will not have a personal or professional conflict of interest.

A request for mediation is made to MSD and to OAH. To assist parents with filing a request for mediation a form is available from MSD. The MSD Compliance Officer is available for assisting parents with the filing of a mediation request.

- Mediation is at no cost to the parent or to MSD;
- Parents or MSD may be accompanied and advised by counsel during mediation;
- A mediation session will generally occur within 20 days of the receipt of a written request at a location convenient to the parents/students and MSD;
- Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or MSD may be asked to sign a confidentiality pledge before the start of the mediation;
- An agreement reached by the parties in the mediation must be set forth in a written agreement that is enforceable in any state court that has the authority to hear this type of case or in a federal district court;
- MSD may not use mediation to deny or delay the parent's right to a hearing on the parent's due process complaint.

MEETING TO ENCOURAGE MEDIATION

MSD may offer to parents, who elect not to use the mediation process, to meet at a time and location convenient to the parents, to explain the benefits of the mediation process and encourage parents to use the process.

STATE COMPLAINT

Individuals and organizations have the right to file a state complaint with the Maryland State Department of Education (MSDE). In order for the State to conduct an investigation, the written complaint must meet specific criteria as required in the IDEA regulations. If an individual or an organization believes that MSD has violated a federal or state law or regulation concerning an early intervention or special education requirement, or that MSD has not implemented a due process

hearing decision, a state complaint may be filed. The complaint must be filed with MSDE and should be addressed to: **The Assistant State Superintendent, Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201.**

The person or organization that files a state complaint with MSDE must also send a copy of the complaint to MSD *at the same time*. To assist with filing the complaint, detailed procedures and a form are available on the MSDE website at www.marylandpublicschools.org, or by calling the Division's Complaint Investigation and Due Process Branch at (410)767-7770.

A state complaint must include:

- A statement that MSD has violated a requirement of federal or State law or regulation;
- The facts upon which the statement is based;
- The signature and contact information for the person/organization filing the state complaint;
- If the state complaint is alleging a violation with respect to a specific child:
 - The name and address of residence of the child
 - The name of the school the child is attending
- In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
- A description of the nature of the problem of the child, including facts relating to the problem;
- A proposed resolution of the problem to the extent known and available to the party at the time the state complaint is filed.

A state complaint must allege a violation that has occurred not more than one year prior to the State receiving the complaint.

RESOLVING A STATE COMPLAINT

Mediation and other less formal methods to resolve the disagreement are available and are encouraged. If the parties resolve the complaint, MSDE does not need to conduct an investigation under the federal regulations.

RESOLVING A STATE COMPLAINT THAT IS THE SUBJECT OF A DUE PROCESS HEARING

MSDE must set aside any part of the state complaint that is being addressed in a due process hearing until the conclusion of that due process hearing. Any issue in a state complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above.

DUE PROCESS COMPLAINT

A parent or MSD may file a due process complaint on any matter relating to the identification, evaluation, early intervention services or educational placement, or the provision of a free appropriate public education (FAPE) to a child. The due process complaint must allege a violation that happened not more than two years before the parent or MSD knew or should have known about the alleged action that forms the basis of the due process complaint. This timeline does not apply if the parent could not file a due process complaint within the timeline because MSD specifically misrepresented that it had resolved the issues identified in the due process complaint, or MSD withheld information from the parent that it was required to provide under IDEA. To file a due process complaint, the parent or MSD (or the parent's attorney or MSD's attorney) must submit a due process complaint to the other party and to OAH.

To assist parents in filing a due process complaint, a Request for Mediation and Due Process Complaint form is available from the MSD Compliance Officer or on the MSDE website at www.marylandpublicschools.org.

For further assistance, contact the MSD Compliance Officer at (301)360-2039 or the MSDE Division of Special Education and Early Intervention Services at (410)767-7770.

MSD RESPONSE TO A DUE PROCESS COMPLAINT

If MSD has not sent a prior written notice to the parents regarding the issues raised by the parent in the due process complaint, MSD shall send the parent a response, within 10 days of receiving the due process complaint, containing:

- An explanation of why MSD proposes or refuses to take the action(s);
- A description of any other options that MSD considered and the reasons why those options were rejected;
- A statement that the parents of a child with a disability have protections under the procedural safeguards and a copy of the procedural safeguards;
- Sources for parents to obtain assistance in understanding the provisions of the IDEA.

The party receiving the due process complaint must send the initiating party a response that specifically responds to the issues in the due process complaint, within 10 calendar days of receiving the due process complaint.

STUDENT'S STATUS DURING PROCEEDINGS

While any administrative or judicial proceeding (except as provided under the discipline section) is pending, unless the parent and MSD agree otherwise, the child must remain in his or her current early intervention or educational placement. If the decision of an ALJ agrees with the parents that a change of early intervention services or education placement is appropriate, that placement becomes the child's current placement while any subsequent appeals are pending.

RESOLUTION PROCESS

Within 15 calendar days of receiving a parent's due process complaint, and before the due process hearing begins, MSD must hold a meeting with the parent and a relevant member or members of the Individualized Family Service Plan (IFSP) team or Individualized Education Program (IEP) team who have specific knowledge of the facts identified in the parent's due process complaint. The meeting:

- Must include a MSD representative who has decision-making authority on behalf of MSD;
- May not include an attorney representing MSD unless the parent brings an attorney.

The parent and MSD determine the relevant members of the IFSP or IEP team to attend. The purpose of the meeting is for the parents to discuss the due process complaint and the facts that form the basis of the complaint, so that MSD has the opportunity to resolve the dispute. Resolution time limit: 30 days from receipt of the parent's due process complaint.

DUE PROCESS HEARING

The parents or MSD have the opportunity for an impartial due process hearing when filing a due process complaint.

HEARING DECISION

The ALJ decision on whether a child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that the child did not receive FAPE only if the procedural inadequacies:

- Interfered with the child's right to FAPE;
- Significantly interfered with the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the child;
- Caused a deprivation of an educational benefit.

SEPARATE DUE PROCESS COMPLAINT

Nothing in the procedural safeguards section of IDEA prevents a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

TIMELINES AND CONVENIENCE OF A DUE PROCESS HEARING

Not later than 45 calendar days after the end of the 30 calendar day period for resolution meetings or, as described under "Adjustments to the 30 Calendar Day Resolution Period" or "Expedited Timelines," no later than 45 calendar days after the end of the adjusted time period:

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties.

An ALJ may grant specific extensions of time beyond the 45 calendar day time period at the request of either party. Each hearing must occur at a time and place that is reasonably convenient to the parents/student and MSD.

EXPEDITED TIMELINES

MSD is responsible for arranging an expedited due process hearing when a due process complaint is filed on behalf of a child with a disability, regarding:

- The placement of a child with a disability in an interim alternative education setting;
- A manifestation determination.

FINALITY OF HEARING DECISION

An ALJ decision is final unless appealed by either the parents or MSD.

APPEAL

Any party to the hearing who does not agree with the findings and decision has the right to appeal by bringing a civil action in any state court of competent jurisdiction or in a district court of the United States within 120 days of the date of the ALJ decision.

In any civil action, the court will:

- Receive the records of the administrative proceedings;
- Hear additional evidence at the parent's request or at MSD's request;
- Base its decision on the preponderance of the evidence; and
- Grant the relief that the court determines to be appropriate.

ATTORNEYS' FEES

In any action or proceeding brought under IDEA, the court may award reasonable attorneys' fees to:

- The parents or guardians of a child with a disability who is the prevailing party;
- To a prevailing party who is MSDE or MSD against the attorney of the parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation;
- To a prevailing party who is MSDE or MSD against the attorney of the parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

FAPE

All children in the U.S. are entitled to a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Education Act (IDEA). FAPE provides special education and services at public expense in accordance with an Individualized Education Program (IEP) designed to help the child receive educational benefits. The law requires that this FAPE take place in the Least Restrictive Environment (LRE). IDEA guarantees equal opportunity; it does not guarantee a specific level of achievement or even a high school diploma.

FAPE requires that all students in special education have an annual IEP meeting. During the meeting, team members develop the individualized education plan for a student to provide the support and resources necessary for the best opportunity for success. Members of an IEP team may vary, but parents must always be invited to participate. Federal and state regulations require that efforts be made to afford parents the opportunity to participate.

FAPE requires that all IEPs are tracked for progress at least three times during a school year and that the school has data to verify instruction and the tracking of a student's progress.

FERPA

The Family Education Rights and Privacy Act (FERPA) is a federal statute. FERPA ensures that parents have access to their children's educational records and that the privacy rights of parents and children are protected by limiting access to these records without parental consent.

FERPA rights include:

- The right to inspect and review the student's education records within 45 days of the student or parent's request;
- The right to request the amendment of the student's education records that the student/parent believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- The FERPA requirement for schools to obtain the student/parent's permission before allowing personally identifiable information to be shared with a third party. Schools are not required to obtain consent before releasing information to those who have a legitimate educational interest in the records or the student's education; and
- The right to file a complaint with the U.S. Department of Education concerning failures by the institution to comply with the requirements of FERPA.

FERPA permits school officials to disclose, without consent, education records, or personally identifiable information from education records, to appropriate parties (typically, law enforcement officials, public health officials, or trained medical personnel) in connection with an emergency, if knowledge of that **information is necessary to protect the health or safety of the student or other individuals**. See 34 CFR §§ 99.31(a)(10) and 99.36. This exception to FERPA's general consent requirement is temporally limited to the period of the emergency and generally does not

allow for a blanket release of personally identifiable information from the student's education records.

MSD forwards education records to other agencies or institution that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer (§99.7)

TITLE IX

Title IX of the Educational Amendments of 1972 is the landmark legislation that bans sex discrimination in schools, whether it be in academics or athletics. Title IX states:

The Supreme Court has confirmed that all schools have an obligation under Title IX to prevent and address harassment against students, whether perpetrated by peers or by employees of the school system. Sexual harassment in education includes any unwanted and unwelcome sexual behavior that significantly interferes with a student's access to educational opportunities.

MSD must designate at least one professional employee as the Title IX coordinator to oversee compliance efforts and investigate any complaints of sex discrimination. The Title IX Coordinator is available to school faculty, staff and students.

Tara Holloway is the designated Title IX Coordinator for MSD.

Email: tara.holloway@msd.edu

Videophone: (240)575-2938

Phone: (301)360-2039