

## 33. Dispute Resolution

### Federal Guidelines

#### §300.152 Minimum State complaint procedures

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—

- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
  - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
  - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
- (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
- (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
  - (i) Findings of fact and conclusions; and
  - (ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must—

- (1) Permit an extension of the time limit under paragraph (a) of this section only if—
  - (i) Exceptional circumstances exist with respect to a particular complaint; or
  - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and
- (2) Include procedures for effective implementation of the SEA's final decision, if needed, including—
  - (i) Technical assistance activities;

- (ii) Negotiations; and
- (iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.

(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

- (i) The due process hearing decision is binding on that issue; and
- (ii) The SEA must inform the complainant to that effect.

(4) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600) (Authority: 20 U.S.C. 1221e-3)

### **§300.153 Filing a complaint**

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child—

- (i) The name and address of the residence of the child;
- (ii) The name of the school the child is attending;
- (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
- (iv) A description of the nature of the problem of the child, including facts relating to the problem; and

- (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. (Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

(Authority: 20 U.S.C. 1221e–3)

## State Guidelines

### NC 1504-1.7 Mediation

(a) General. Each LEA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under these Policies, including matters arising prior to the filing of a petition for a due process hearing, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--

- (i) Is voluntary on the part of the parties;
- (ii) Is not used to deny or delay a parent's right to a hearing on the parent's request for a due process hearing, or to deny any other rights afforded under Part B of the IDEA; and
- (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) An LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--

- (i) 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 under sections 671 or 672 of the IDEA; and
- (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3) (i) The SEA must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of Exceptional Children and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The SEA must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--

- (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- (ii) Is signed by both the parent and a representative of the LEA who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable by the SEA through the State complaint process, in any State court of competent jurisdiction, or in a district court of the United States.

(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under the IDEA.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under these Policies--

- (i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
- (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the agency to serve as a mediator.

(Authority: 20 U.S.C. 1415(e); 34 CFR 300.506; 115C-109.4)

**NC 1504-1.8 Filing a Petition for a Due Process Hearing**

(a) General.

(1) A parent or an LEA may file a request for a due process hearing on matters related to the identification, evaluation or educational placement of a child with a disability, the provision of FAPE to the child or a manifestation determination.

(2) The petition for a due process hearing must allege a violation that occurred not more than one year before the date the parent or LEA knew or will have known about the alleged action

that forms the basis of the due process petition, except that the exceptions that apply to the timelines described in NC 1504-1.4(a)(1) and (2) apply to the timeline in this section.

(3) A parent may not file a petition on behalf of a student who has reached the age of majority unless the court has granted guardianship to the parent.

(b) Information for parents. The LEA must inform the parent of any free or low-cost legal and other relevant services available in the area if--

(1) The parent requests the information; or

(2) The parent or the LEA files a petition for a due process hearing under this section.

(Authority: 20 U.S.C. 1415(b)(6); 34 CFR 300.507; 15C-109.6)

### **NC 1504-1.11 Resolution Process**

(a) Resolution meeting.

(1) Within 15 days of receiving notice of a parent's petition for a due process hearing, and prior to the initiation of a due process hearing under NC 1504-1.12, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the petition that--

(i) Includes a representative of the LEA who has decision-making authority on behalf of that LEA; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney. If the parent plans to be accompanied by an attorney under this section, the parent must give prior notice of this fact to the LEA.

(2) The purpose of the meeting is for the parent of the child to discuss the issues and facts in the due process petition so that the LEA has the opportunity to resolve the dispute that is the basis for the petition for a due process hearing.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in NC 1504-1.7.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

(1) If the LEA has not resolved the issues of the due process hearing petition to the satisfaction of the parent within 30 days of the receipt of the due process petition, the due process hearing may occur.

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(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under NC 1504-1.16 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a petition for a due process hearing to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using procedures in NC 1503-4.3(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process petition.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's petition for a due process hearing or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in NC 1504-1.16(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the SEA, through the State complaint process, pursuant to NC 1504-2.8.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B); 34 CFR 300.510; 115C-109.7)

## NCVA Policy

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Disputes that are resolved at the local level may preserve and even strengthen the relationship between the school and the parent. While the parent always has the right to request Mediation or a Due Process Hearing and will always be informed of this right, many times issues can be resolved at a less intense level as system personnel and parents seek mutual understanding and agreement. The following four (4) step process may be used to resolve problems before they grow to the level requiring Mediation or a Due Process Hearing:

Step One: Contact the assigned Exceptional Children Teacher or Academic Administrator - Special Programs via email and/or by phone.

Step Two: Hold an IEP team meeting to discuss concerns of the IEP team members.

Step Three: If 'Step Two' is unsuccessful, contact the NCVA Executive Director.

Step Four: If 'Step Three' is unsuccessful, contact the National Academic Administrator - Special Programs.

Step Five: If 'Step Four' does not resolve the matter, contact the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

Although the goal will always be to resolve disputes at the local level, sometimes situations require the assistance of persons not directly involved with the issues at hand. School administration will contact K12 legal to apprise them of any possible or pending Mediations or Due Process Hearings.

## 34. Stay Put

### Federal Guidelines

During the pendency of any administrative or judicial proceeding, including mediation (if the school district or other public entity voluntarily agrees to participate in mediation), unless the school district and the parents or student (if at least 18 years of age or emancipated) otherwise agree, the student shall remain in his or her present educational placement and continue in his or her present eligibility status and Exceptional Children and related services, if any. If mediation fails to resolve the dispute between the parties, the parent (or student if 18 years of age or older or emancipated) shall have 10 days after the mediation concludes to file a request for a due process hearing in order to continue to invoke the “stay-put” provisions of this subsection (j). The costs for any Exceptional Children and related services or placement incurred following 60 school days after the initial request for evaluation shall be borne by the school district if the services or placement is in accordance with the final determination as to the Exceptional Children and related services or placement that must be provided to the child, provided that during that 60 day period there have been no delays caused by the child's parent.