



# *Dispute Resolution: When Things Aren't Going Well*

*Book 5 of 5*  
The Guide to Special Education  
in Maine: A Team Approach



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The Guide to Special Education In Maine:  
A Team Approach

## ***Dispute Resolution: When Things Aren't Going Well***

*Dispute Resolution: When Things Aren't Going Well* describes in detail what you can do when you believe your child's needs are not being met.

It is part of the fifth edition of *The Guide to Special Education in Maine: A Team Approach*. The Guide was researched, written, and reviewed by people who know the Maine special education system best: parents, educators, special education advocates, lawyers, and officers of the Maine Department of Education.

The Guide does not address every possible circumstance, regulation, or policy concerning early intervention and special education in Maine. However, it does provide an overview of the law, especially your rights and responsibilities as a parent.

*Editor's Note: In this part of the Guide, for the sake of brevity, we often use language referring to school-age children, although much of the information also applies to younger children. We apologize if our language is not always inclusive.*

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# Your Right to Disagree

The law calls for your child's IEP or IFSP team to try to reach decisions everyone can support. If consensus cannot be reached, the decision of what to do is made by the CDS case manager or school administrator running the team meeting.

However, if you believe that decision is not in accordance with the law and/or may significantly hurt your child's education and future, you have the right to challenge it.

Most people don't like to "rock the boat," especially not the boat that is carrying their child. But it still is essential that you understand your rights and options when you disagree strongly with a decision concerning your child.

Those rights include turning to the state Department of Education (MDOE) to resolve the dispute. You may seek mediation, or request a complaint investigation or a due process hearing. **Areas open to formal challenge are:**

- ◆ Identification of your child's disability,
- ◆ Evaluation of your child's strengths and weaknesses,
- ◆ Programming,
- ◆ Placement (the physical location and instructional setting in which special education services are provided),
- ◆ Provision of appropriate services for younger children (birth-3) and Free Appropriate Public Education (FAPE) for ages 3-20, as guaranteed by law,
- ◆ Manifestation determination (a decision about the relationship of your child's inappropriate or disruptive behavior and disability, made in relation to a decision of whether or not to remove your child from the school).

# First Steps

If you don't agree with something concerning your child that has been decided by the IEP or IFSP team, the first thing you might want to do is take a deep breath, and ask yourself some questions:



## **Can this be resolved at the local level?**

Have you already discussed your concerns at an IEP meeting or with your child's CDS caseworker, child care director, teacher, special education director, or superintendent of schools? Issues often can be resolved by going up the chain of command informally before turning to the state. (But still keep a written record of all conversations.)

## **What is the conflict about?**

Does the real source of disagreement have more to do with personality conflicts or perceived or real insults than services or other decisions concerning your child?

## **Is there a better solution?**

If you proceed with a complaint or a due process hearing, you will be asked to describe what solution you want. Is there a realistic alternative? There are times when the ideal is not possible; when, in fact, it is necessary to "agree to disagree."

## **How is my child doing?**

If the answer is "Okay," is it really of benefit to challenge such things as placement, methodologies, and programs?

## **Do I have accurate and complete information?**

Take the time to talk with individuals, parent organizations, agencies, or the Due Process Office in the Maine Department of Education (207-624-6644) to make sure you know the extent of your rights, the parameters of your concerns, and the process for pursuing them.

After this quiet examination, if you still believe the welfare and education of your child is at risk, then challenge the decision. It's your right. As your child's most important advocate, it is also your responsibility.

***What worked for me....***

*The first time I had a serious disagreement with my son's school, I talked with the special education director and the superintendent. But I didn't write down anything. I thought we had reached an understanding, but later realized we had heard things differently. The second time there was an issue, I made sure to put my concerns in writing. And I'm glad I did! When I decided to request a state hearing, I had the written documentation of the issue and what had been said about it to use. The best way to keep communication clear is to put your concerns in writing. I try to be clear and concise about what the problem is, and offer solutions. I keep a copy of everything I send to the school and the school sends to me. And I note on my copy to whom it was sent, when, and even how. For example, "Left with administrative assistant at main office on Jan. 2."*

# What position should I take?

<i>Soft</i>	<b>Hard</b>	<i>Principled</i>
<i>Participants are friends</i>	<b>Participants are adversaries</b>	<i>Participants are problem solvers</i>
<i>The goal is agreement</i>	<b>The goal is victory</b>	<i>The goal is wise outcomes reached efficiently and amicably</i>
<i>Make concessions to cultivate the relationship</i>	<b>Demand concessions as a condition of the relationship</b>	<i>Separating the problem from the people</i>
<i>Be soft on the people and the problem</i>	<b>Be hard on the people and the problem</b>	<i>Be soft on the people and hard on the problem</i>
<i>Trust others</i>	<b>Distrust others</b>	<i>Proceed independent of trust</i>
<i>Change your position easily</i>	<b>Dig into your position</b>	<i>Focus on interest, not positions</i>
<i>Make offers</i>	<b>Make threats</b>	<i>Explore interests</i>
<i>Disclose your bottom line</i>	<b>Mislead as to your bottom line</b>	<i>Avoid having a bottom line</i>
<i>Accept one sided losses to reach agreement</i>	<b>Demand one sided gains at the price of agreement</b>	<i>Invent options for mutual gain</i>
<i>Search for the single answer: the only one they will accept</i>	<b>Search for the single answer: the only one you will accept</b>	<i>Develop multiple options to chose from: decide later</i>
<i>Insist on agreement</i>	<b>Insist on your position</b>	<i>Insist on using objective criteria</i>
<i>Yield to pressure</i>	<b>Apply pressure</b>	<i>Reason and be open to reason and yield to principle not to pressure</i>

# Taking Your Concerns to the Maine Department of Education

The Maine Department of Education (MDOE) offers 3 main procedures for challenging decisions concerning your child's special education services: **stand-alone mediation, complaint investigation, and due process hearing.**

If you want either stand-alone mediation or a complaint investigation, fill out a **Dispute Resolution Request Form.** Use a **Hearing Request Form** if you want a due process hearing. You may get either of these forms from the MDOE's Due Process Office, either by calling and requesting them (207-624-6644), or by downloading them off the Internet: [www.maine.gov/education](http://www.maine.gov/education). Type in the search window: *hearing request* or *dispute resolution request*.

You also may choose to write your request in a letter. There is specific information that must be included. See Procedural Safeguards, Appendix 1 of Maine's Unified Special Education Regulation, Title 101. (300.153 for a complaint, 300.508 for a hearing.) Or call the MDOE Due Process Office.

The MDOE recently introduced a new form for a **Systemic Complaint Investigation.** If you believe your school district has a policy or practice that violates special education law, whether or not your child is directly affected, you might want to request a Systemic Complaint Investigation. This form also can be downloaded from the MDOE site.

Although you have the right to send in forms at the same time for both a complaint investigation and a hearing, the MDOE Due Process Office suggests that this can be confusing, and possibly ineffective since no action will be taken on a complaint investigation until a hearing pending on the same issue(s) is completed.



After filling out the form or writing the letter of request, send it to your school district. Make sure you keep a copy of the request for your own records and send another copy to:

MDOE, Due Process Office  
26 State House Station,  
Augusta, Maine 04333

It is important that your school district receive your request for a complaint investigation or a hearing. The state Due Process Office will not move ahead on your request for a hearing until it confirms that your school district has also received it in writing.

When you send off your request, you should be ready to move forward with your case, including having ready any evidence you need. The complaint investigation and hearing procedures have timelines that must be followed. If you choose to work with an advocate or attorney, you also should have already talked with them. (Note that you are not required to have an attorney; you may represent your child's interests yourself. If you choose this route, be especially mindful of deadlines and other requirements in the process.)

## Stay-put policy

Once you have requested formal dispute resolution, whether as a complaint investigation, mediation, or a hearing, your child must remain in the last agreed-upon placement during the proceedings unless you and the school agree otherwise. This is referred to as the **stay-put rule**.

One exception is when a child is transitioning from Part C to Part B. If the child has turned 3, they are no longer eligible for Part C services, even if a dispute resolution is pending.

# Mediation

Mediation, the least adversarial option, tries to resolve differences with the help of an impartial mediator.



You, your adult child, or a CDS or school official may request mediation. But both parties must agree to participate for mediation to move forward.

Although the state pays for the mediation process, you are responsible for any costs related to your preparation and attendance at the mediation session. You may ask the MDOE to provide you with information on free or low-cost legal aid and other related services.

If mediation is the only action you request at the state-level, it is called a **Stand-Alone Mediation**.

To file for stand-alone mediation, use the state’s Dispute Resolution Form, checking off Stand-Alone Mediation, or write a letter including specific information (See MUSER, XVI.2.(1) (a) ). In either case, make sure you send the request to the school district and the state, and keep a copy for yourself. For more information, see above, *Taking Your Concerns to the Maine Department of Education*.

Mediation is an option even if you are requesting a complaint investigation or a due process hearing. In fact, Maine schools are encouraged to try resolving disagreements through mediation, in the case of a complaint investigation, or through either mediation or a resolution session when a due process hearing is requested.

**Mediation is always voluntary**, but a resolution session is required when a hearing has been requested. The resolution session can be waived, however, if both parties agree or if they have chosen mediation instead. Mediation cannot be used to deny or delay a pending hearing or rights to services, and must be conducted by a qualified and impartial mediator

## Confidentiality

Everything said at mediation is confidential and cannot be used in any later actions by either the school or you. This is to allow both sides the opportunity to explore all options to see if an agreement is possible.

However, any final agreement reached through mediation is not confidential. It will be in writing and must be signed by both parties and the mediator. It may or may not become part of your child's IEP, although it sometimes guides specific changes made to the IEP. In either case, it is a binding agreement.

## Attorney or advocate

You do not have to bring an attorney with you to mediation, although you may wish to invite an advocate or other person who knows about special education. If you do not bring an attorney, neither may the school or CDS site. However, either party may consult an attorney before or after the mediation process.

If your attorney plans to attend mediation with you, the state's Due Process Office and the school district's superintendent must be notified in writing 7 days before the mediation. The two parties may agree to waive the 7-day notice requirement.

## Mediation process

When the MDOE receives a request for stand-alone mediation from a parent, it contacts the school district to see if it is willing to participate in mediation. If the request comes from the school, the MDOE contacts the parent.

If both parties agree to participate in mediation, the MDOE appoints a mediator and informs both sides of the date, time, and location of the mediation session. If the

date of the mediation is not convenient, either party may request from the mediator an extension of the mediation date.

During the first part of a mediation session, each side is given a chance to tell their version of what the problem is, and how it could be resolved. Sometimes, the mediator keeps everyone in the same room. But you can ask to be in a different room from school district personnel.

Mediation often involves a compromise by both sides, so during the session each side may meet alone to discuss possible solutions, with the mediator going back and forth between the two parties in an effort to reach a resolution. There are no time limits, and this is usually left to the discretion of the mediator.

If mediation succeeds in resolving all the issues, any requests for due process or complaint hearings will be withdrawn. If no agreement is reached, or reached only on some of the issues presented, you have to decide what you want to do. If you requested a stand-alone mediation, you can request a complaint investigation or a due process hearing. If you've already requested either of those, they will continue.

# Complaint Investigation



A complaint investigation against the school or the CDS site may be requested with MDOE if you think your legal rights or those of your child are not being met. A complaint investigation may be requested by you, an adult student, or interested party, such as a case manager or another member of the IEP team.

Examples of circumstances that might warrant requesting a complaint investigation: the school fails to process a referral for special education, or to provide services agreed to in the student's Individualized Education Program.

Specifically, a complaint investigation asks the Maine Commissioner of Education to decide if the law and regulations have been followed. The complaint investigation may also request make-up services (compensatory services) or other correcting actions be provided, and ask that agency policies to be changed so what happened to your child won't happen to others.

Generally, a complaint investigation must be filed within 1 year of the violation, unless it also is seeking compensatory educational services (comp ed). Then it can be filed up to 3 years after the violation. You may request a complaint investigation for an ongoing violation at any time.

You also may request a **Systemic Complaint Investigation**. This is a new procedure developed by MDOE to investigate special education policies that may be in conflict with state or federal law.

# Filing a complaint

A complaint investigation request must be submitted in writing. That can either be a letter to the MDOE or, perhaps easier, a completed Dispute Resolution Request Form. You can get this directly from MDOE or by downloading it from their site. On the form, check “Complaint Investigation.”

For information on how to request a complaint investigation, see section in this guide: *Taking Your Concerns to the Maine Department of Education*.

The complaint investigation request must note the specifics of the alleged violation of federal law, a proposed resolution of the problem, and a description of the child’s disability. In addition, it should contain your signature and contact information, the name and address of the child and of the school.

Send the request for the complaint investigation to the MDOE. Send a copy to the school district’s superintendent. Keep a copy for yourself.

## Complaint process



When the MDOE receives the complaint investigation request, it first decides if an investigation is needed. If it is, the MDOE’s complaint investigator:

- Examines all pertinent evidence;
  - Conducts interviews, if necessary, with individuals on both sides;
  - Conducts, if necessary, an on-site investigation;
  - Provides the parent and the school an opportunity to submit additional information, either orally or in writing;
- 
- Reviews all relevant information, and makes a preliminary determination; and
  - Drafts a proposed decision to MDOE for review and finalization by the Commissioner of Education.

The complaint investigator must complete the investigation and a written decision must be issued within 60 calendar days of when the MDOE receives the complaint investigation request.

An extension may be granted if there are exceptional circumstances or if the parties agree to additional time so they can participate in mediation. If the problems in the complaint investigation request are also raised in a due process hearing request, the complaint process will not start until after the due process hearing is completed.

The Commissioner then sends copies of the final, binding decision to both parties. That decision addresses each allegation stated in the complaint. If a violation is found, the complaint decision orders a **corrective action plan**.

The corrective action plan can be limited to your child, or can address a school district policy for children with disabilities. The MDOE, if needed, provides procedures for effective implementation of the final decision. The MDOE also is supposed to monitor the school to make sure the corrective action plan is carried out.

# Due Process Hearing

A due process hearing is a formal administrative hearing. Evidence is presented and a hearing officer issues a decision on the issues raised.

**A hearing may be sought when your disagreement with the school or CDS site involves:**

- ◆ Identification of your child's disability,
- ◆ Evaluation of your child's strengths and weaknesses,\*
- ◆ Programming,
- ◆ Placement (the physical location and instructional setting in which special education services are provided),
- ◆ Provision of appropriate services for younger children (birth-3) and Free Appropriate Public Education (FAPE) for ages 3-20, as guaranteed by law,
- ◆ Manifestation determination (a decision about the relationship of your child's inappropriate or disruptive behavior and disability, made in relation to decision of whether or not to remove your child from the school).

*\* If you disagree with the results of a school-conducted special education evaluation of your child, you may first want to ask the school for an Independent Educational Evaluation (IEE). However, you have the right to request stand-alone mediation, a complaint investigation, or a due process hearing, whether or not you've asked for an IEE.*

You have 4 years to request a due process hearing around a specific concern. There are 2 exceptions: if the school claimed to have resolved a problem when it did not, or if the school failed to give information to a parent that the parent had a right to have.

## **When the school files**

The school district must seek a hearing when it has denied a parent's request for an IEE (Independent Education Evaluation) . In addition, the school might seek a hearing if a parent refuses to let their child be evaluated.

A notice will be sent to you by the school district of the request for a hearing. You have 10 calendar days to respond. Your written response must answer the issues raised by the school. Send your response to the school. Keep a copy for your records.

# The Process of Due Process

Use the MDOE Hearing Request Form, or write a letter to request a due process hearing. Be sure to include all necessary information and answer all the questions completely. The request, also called a notice, must include:

name and address of the child,  
if the child is homeless, available contact information,  
name of the school the child attends,  
description of the problem, including facts related to it, and  
a proposed resolution.

The hearing will only address issues that are written in the request, so be sure to include all the issues. Try, however, to keep your statements brief but accurate.

Just as with mediation and complaint investigation notices, you send the original to the MDOE, and a copy to the superintendent of the school district or the CDS site manager. Also keep a copy for yourself. If the information is incomplete you will be contacted by the MDOE.

For more information on how to file a request for a due process see section in this guide: *Taking Your Concerns to the Maine Department of Education.*

The non-filing party has 10 days to respond in writing after receiving notice of the hearing request. That response must address the issues raised in the request. The school must explain its decision and list the information it used to make it. It also must describe options considered by your child's team and explain why they were rejected. The school does not have to send you a copy of this response if it has already sent you an explanation of the decision.

After the request for the hearing is received by both the MDOE and the school district, the state appoints an impartial hearing officer to your case. Both parties receive a written notice of the hearing officer's name, as well as the dates, times, and locations of the pre-hearing conference and hearing.

If both parties have agreed to mediation, the MDOE also sends a written notice of that meeting. The mediator will not be your due process hearing officer.

## Challenging the notice



Either you or the school may challenge the other's request for a hearing if you think it is not complete or specific enough.

Any challenges to the notice, by either you or the school, must be made in writing and sent to the hearing officer within 15 calendar days after receipt of the notice. The hearing officer has 5 calendar days to respond.

If the hearing officer finds the notice insufficient, the filing party is informed and may amend the hearing request. If an amended request is submitted, a new case is opened and a new timeline established.

## Resolution session

After a request for a due process hearing has been filed, the school has 30 calendar days to try to resolve the problem without a hearing. Mediation is one option. If either party declines mediation, a resolution session will be arranged unless both parties agree they don't want one. A resolution session is similar to mediation without a mediator.

In fact, the only individuals required to be at a resolution session are you and a representative with decision-making authority from the school or CDS site. However, there can be others, including members of the IEP team or attorneys. As in mediation, if you do not have an attorney at the meeting, neither may the school.

Don't skip the resolution session. If you don't attend, the school may ask the hearing officer to dismiss the case.

If the school fails to schedule a resolution session within 15 days after receiving written notice of a due process hearing request, you can ask the hearing officer to start the due process hearing timeline, which otherwise doesn't start until 30 calendar days after the school has been notified.

If you and the school want to waive the session, you need to inform the MDOE in writing: MDOE Due Process Office, 26 State House Station, Augusta, Maine 04333.

Make sure you and the school sign a confidentiality statement at the time of the resolution session. Although federal privacy law (FERPA, the Federal Education Rights and Privacy Act) applies to any written agreement or educational record that results from the resolution session, it doesn't cover discussion unless you have a signed confidentiality statement.

If you and the school reach an agreement in mediation or at the resolution session, it will be put in writing. You and the school administrator must sign the agreement. However, either side can change their mind within 3 business days of when the agreement is signed. After those 3 business days, if no one has asked that the agreement be voided, it becomes legally binding.

If no agreement is reached at the resolution session, the due process hearing moves forward. The next step is a pre-hearing conference.

## **Pre-hearing conference**

If an agreement is not reached through a resolution session or mediation, the state hearing officer convenes a pre-hearing conference to define the issues, and discuss the witness list and exhibits that will be presented at the hearing.

Only disagreements or issues noted in the hearing request and raised at a resolution session – if one was held – will be addressed in the pre-hearing conference. After the conference, the hearing officer, will issue a memo identifying, again, the questions that will be the focus of the hearing.

What is said and presented at the pre-hearing conference sets the stage for the

hearing, so preparation is important. While state regulations don't list what you should bring to the pre-hearing conference, the MDOE asks you to bring a witness list and copies of exhibits.

Unlike a complaint investigation, mediation, or resolution session, the school can have an attorney present at the pre-hearing conference and the hearing, even if the parent does not have an attorney.



During the pre-hearing conference, the hearing officer asks each side for a brief oral description of the problem and an estimate for how long the hearing might take. The witness lists for both sides are reviewed. The hearing officer has the authority to limit the number of witnesses to be called for either side. Exhibits also are reviewed. You do not have to bring to the pre-hearing

conference all the exhibits you might want to use. However, you and the school must exchange exhibits at least 5 business days before the hearing for them to be admissible.

Either you or the school may ask for witnesses to be subpoenaed for the hearing, meaning they are told they must attend and testify. You make your request in writing to the MDOE's Due Process Office. The state Education Commissioner issues the subpoena. The party asking for the subpoena is responsible for any travel costs or fees charged by the witness.

## The hearing

A hearing is conducted in a manner similar to a court trial. Each side is required to have an opening statement, testimony from witnesses with cross-examination, evidence to be submitted for the official record, and a closing statement. The hearing is electronically recorded by the court reporter, and all witnesses must swear to tell the truth.

The hearing officer may not work for either the MDOE or the school district involved in the case. They may not have a personal or professional interest that might make them biased.

Although the hearing officer is not a judge and will not be wearing a robe, the roles are similar. The hearing officer rules on any objections, is able to ask questions of the witnesses, and issues the decision after considering all of the evidence and testimony.

If you choose, the hearing can be open to the public. You also have the right to bring your child to the hearing.

The hearing officer has 15 days after the hearing concludes and the record is closed to issue a written decision. Sometimes, the hearing officer asks both sides for written closing arguments.

## **Expedited hearing**

In cases where the issue is the disciplinary removal of your child from their educational placement, you or the school may seek an expedited hearing which follows the same procedures as a due process hearing only on a much tighter timeline. From written request to determination, the timeframe is a maximum of 30 days.

A resolution session, if needed, should be held within 7 days, the hearing within 20, and the determination from the hearing officer within 10 school days after the hearing.

The same rights, procedures, and appeal options exist with an expedited hearing as with an un-expedited one.

## **Settlement offer**

You and the school may continue to talk, even if a due process hearing is pending. In fact, the school may offer you a written settlement offer before the hearing. If you accept, you need to inform the district, the state Commissioner of Education, and the hearing officer as soon as possible.

A proposed settlement offer, if not accepted, may not be used by either side in the pre-hearing conference or in the hearing.

# Things parents should bring to the hearing

*The following list was developed by a parent based on personal experience.*

- Advocate or lawyer (not required; you may represent yourself)
- Copy of the Request for Due Process Form and any documentation submitted with it
- Your exhibits
- A copy of the Maine Unified Special Education Regulations Chapter 101 and the federal regulations found in 34 C.F.R. Part 300
- Opening and Closing statements (3 copies: for you, the school, and the hearing officer)
- A prepared list of questions for each witness (yours and the school's)
- Pen and paper

## The order of events in a typical hearing

- ◆ Opening remarks by the hearing officer
- ◆ Opening statement by the party requesting the hearing
- ◆ Opening statement by the other party
- ◆ Presentation of evidence by the party requesting the hearing
- ◆ Witnesses for the party requesting the hearing
- ◆ Presentation of evidence by the other party
- ◆ Witnesses for the other party
- ◆ Rebuttal witnesses for the party requesting the hearing
- ◆ Rebuttal witnesses for the other party
- ◆ Closing remarks by the party requesting the hearing
- ◆ Closing remarks by the other party
- ◆ Concluding remarks by the hearing officer

## Appealing the decision

If you are unhappy with the decision of the hearing officer, you can appeal within 90 calendar days from the receipt of the final decision. The school district or CDS site also has the right to a civil appeal to either the Maine Superior Court or the United

States District Court. This is not considered a new hearing in court. Instead, the judge reviews the record of the due process hearing and decides if the right decision was made.

The judge will only be looking for a clear error of law, an abuse of discretion, a decision not supported by substantial evidence, or a decision that is arbitrary and capricious. It would generally not be a time for introducing new evidence or witnesses.

An appeal to court is even more involved than the due process hearing. You should consult with an attorney before deciding to appeal. Parents may obtain a copy of the transcript or a recording of their due process hearing at no cost from the Maine Department of Education.

If you appeal a decision, send a copy of the appeal to the MDOE.

## **Compliance**

The MDOE will monitor the school's compliance with a hearing order or a corrective action plan. It will also outline a compliance timetable for the school, and it will decide when compliance is complete and close the case.

If you don't think an agreement reached in mediation or in a resolution session is being carried out, you may request a complaint investigation with the state, using the Dispute Resolution Form, to ask for enforcement. You also may seek enforcement through a state court or a U.S. District Court.

# Advocates, Educational Consultants, and Lawyers

Parents sometimes are confused about the different roles of an advocate, educational consultant, and a lawyer.

Ideally, an advocate is someone with specialized training in special education and Maine Unified Special Education Regulations (MUSER). An advocate should be able to help identify the key issues, understand how they relate to special education law, and support the parent. Some advocates have formal legal training; some do not. Some advocates volunteer their services, while others charge a fee for their time and travel. Neither advocates nor educational consultants, unless they are lawyers, should give legal advice.

Educational consultants sometimes have a specific degree. Although advocates and educational consultants can be very helpful and supportive they are not allowed to represent you in legal matters because that right in Maine is reserved for attorneys.

Lawyers are trained legal experts. Most focus their law practice on a specific branch of law (i.e. corporate law, criminal law, labor law, family law, etc.) If you are seeking the services of a lawyer to assist you in dispute resolution, it is wise to ask what level of experience they have in special education law, and how much they charge.

Note: The MDOE is obliged to provide you information on low-cost or free legal assistance when you request a hearing. Also note that you are not required, even in a court appeal, to have an attorney.

# Mediators and Hearing Officers

Maine's Department of Education contracts with individuals who serve as mediators and hearing officers.

Mediators, according to state regulations, may not be employed by any Maine school administrative unit, and may not have a personal or professional conflict of interest in the particular case they are mediating. They shall be qualified and impartial individuals who are trained in effective mediation techniques and who are knowledgeable of Maine Unified Special Education Regulations.

Hearing officers may not work for a public agency or private school involved in the education or care of your child. (Public agency refers to the MDOE, your child's school district, CDS site, or the town or city where you and your child live.) Any hearing officer who might have a personal or professional conflict of interest involving your case also is excluded.

State regulations outline qualifications for hearing officers.

Lists of hearing officers or mediators and their qualifications are available from the due process office, MDOE, at (207) 624-6644.

# Who Pays for What

It costs money to proceed with a due process hearing. That's one reason so much effort is put into trying to resolve a dispute through mediation or other means. The school district and state share most of the costs. But you, as a parent, also are responsible for certain expenses.

Specifically, the school district is responsible for the expenses of any school personnel, it requests to attend, including special education staff or related service providers. The school is also responsible for attorney's fees incurred on the school's behalf.

And the state Department of Education pays for the contracted services of the hearing officer, and other costs such as the hearing room, the court reporter, and transcript preparation.

Parents are responsible for any costs associated with people they, exclusively, ask to attend the hearing, including advocates, lawyers, or subpoenaed witnesses.

If a hearing officer finds in favor of the parent, a court may order that the school district pay reasonable attorney's fees incurred by the parent. A school cannot be ordered to pay fees that exceed reasonable rates, or are associated with mediation or an IEP team meeting (unless the meeting was ordered by the court process or the hearing officer).

If the parent pursues a due process hearing for frivolous, unreasonable, harassing, or delaying purposes, a court may order the parent, and possibly the parent's attorney, to pay reasonable legal fees incurred by the school.

***What worked for me as a parent...***

*“I have three children who had IEPs when they were in school. I worked with my children’s IEP teams over 18 years and even when we disagreed we mostly worked in partnership for the benefit of my child. In all these years I have only needed to be willing to challenge an IEP team decision twice when I knew if I didn’t my kids wouldn’t get the education they needed.”*

# Timelines

Deadlines matter. Your case can be dismissed if one is missed. So, having some understanding of what should, or must, happen, and when, can help. Here are some of the most important deadlines and timeframes.

*(Calendar days, unless otherwise noted. All timeframes begin and end with respondent's receipt of written request, response, notice, determination, etc.)*

## COMPLAINT TIME LIMITS

**1 year** to file a complaint with the state, unless the complaint involves compensatory services; in those cases, you have **3 years**.

## DUE PROCESS HEARING

**4 years** to file a request for a due process hearing, unless information you had a right to know has been withheld or misrepresented.

## COMPLAINT INVESTIGATION COMPLETED

**60 days** for a complaint investigation to be completed and a decision issued (without extensions for mediation or extenuating circumstances).

## HEARING REQUEST REACH A DECISION

**75 days** counting full 30-day resolution period, for due process hearing request to reach a decision (without extensions for extenuating circumstances).

## **RESPOND TO WRITTEN NOTICE**

**10 days** for you to respond in writing to notice that your child's school or CDS site has filed a request for a due process hearing.

## **CHALLENGE THE SUFFICIENCY**

**15 days** to challenge the sufficiency of a hearing request.

## **DISPUTE RESOLUTION**

**15 days** from the date the SAU receives a due process hearing request, for a resolution session to be held; unless the parties waive the meeting or agree to use a mediation process.

## **RESPOND TO SUFFICIENCY CHALLENGE**

**5 days** for hearing officer to respond to a sufficiency challenge

## **ATTEMPT TO RESOLVE ISSUE**

**30 days** for school to attempt to resolve issue without a hearing.

## **REVOKE RESOLUTION MEETING AGREEMENT**

**3 business days** after signing a resolution meeting agreement for either you or the school to revoke it

## EXHIBITS SUBMITTED

**5 business days** before a due process hearing to have all exhibits submitted.

## ISSUE A DECISION

**15 days** after a due process hearing for officer to issue a decision (unless there is an extension).

## EXPEDITED HEARING

**20 days** for an expedited hearing to take place.

## EXPEDITED HEARING DECISION

**10 days** for a hearing officer decision to be issued after an expedited hearing.

## SCHOOL TO DOCUMENT

**45 days** after a hearing decision is issued for the school to document how it is meeting the ruling (or note if it is appealing), unless the compliance timeframe determined by the DOE is different.

## APPEAL DUE PROCESS HEARING DETERMINATION

**90 days** from the date of the hearing decision for any party to appeal a due process hearing determination.

# Resources

## Process Sequences

### *Parent Request for a Complaint Investigation*

1. The administrative assistant opens the request and assigns it to the next consultant in line.
2. The consultant checks the request for completeness. If it is not complete, the parent is contacted and asked to resubmit.
3. If the filing party has indicated on the Dispute Resolution Request form that a copy of the form has been given or sent to the SAU, the consultant contacts the SAU to ask if they have received their copy. The official date of receipt of the request is the date that the Due Process Office (DPO) is in possession of the request and has also confirmed that the SAU has their copy.
4. All information is entered into the docket and the case is assigned a name and number.
5. If the parent has requested mediation, the SAU is asked if they wish to participate. If yes, the consultant will arrange for mediation. If the SAU does not agree to mediation, mediation will not be held. An agreement to mediate results in an automatic extension of complaint investigation timeframes.
6. The consultant determines the following dates:
  - Range of dates for the mediation to be held, when appropriate.
  - Range of dates for the complaint investigation meeting.
  - Range of dates for the documents to be due to the complaint investigator.
  - Date the draft complaint investigation report is due to the Commissioner for review.

7. If mediation is to be held, the consultant contacts the next mediator in line for a case. The mediator selects a mediation date from the range specified.
8. The DPO complaint investigator selects dates from the specified ranges. If the DPO complaint investigator is not available to take the case, arrangements are made with a contracted complaint investigator.
9. The administrative assistant arranges meeting locations and prepares appointment letters for the mediator (when needed) and complaint investigator. These letters are copied to all parties and include the dates and locations of all meetings as well as additional information that is helpful in the facilitation of the complaint investigation and mediation processes.
10. IDEA and MUSER require that the complaint investigation report, reviewed and signed by the commissioner, be issued no later than 60 days from the date of the request, unless there are extenuating circumstances which result in extension of the dates in the process.

August, 2009

## *Parent Request for a Due Process Hearing*

1. The administrative assistant opens the request and assigns it to the consultant next in line.
2. The consultant checks the request for completeness. If it is not complete, the parent is contacted and asked to resubmit.
3. If it is complete, the consultant contacts the SAU and asks them to fax a copy of the date-stamped page of their copy of the hearing request. The date the request is received by the SAU is the official date of receipt for the request. If the SAU has not received their copy, the Due Process Office (DPO) contacts the family and lets the family know the DPO will **take no further action** until the date-stamped copy is received by DPO.
4. All information is entered into the docket and a case name and number assigned.
5. If the parent has requested mediation, the SAU is asked if they wish to participate. If yes, the consultant will arrange for mediation. If no, mediation will not be held.
6. The consultant determines the following dates:
  - Date ranges for mediation, when appropriate. Mediation must be held between the 21<sup>st</sup> day and 30<sup>th</sup> day from SAU's receipt of the request.
  - Date by which the SAU must hold a resolution session (within 15 days of date of the SAU's receipt of the request), and the date for the expiration of the resolution period (30 days).
  - Date ranges for pre-hearing and hearing. These meetings are held after the 30 day resolution period has expired, at which time the 45 day hearing process begins.

7. If mediation is to be held, the consultant contacts the next mediator in line for a case. The mediator selects a date for mediation within the range specified.
8. The consultant contacts the next hearing officer in line for a case. The hearing officer selects pre-hearing and hearing dates within the ranges specified.
9. The administrative assistant arranges meeting locations and prepares appointment letters for the mediator (when appropriate) and hearing officer. These letters are copied to all parties and include pertinent meeting dates and locations, as well as additional information that is helpful in the facilitation of the hearing and mediation processes.
10. IDEA and MUSER require that the hearing officer's order be issued no later than 75 days from the date of the request, unless extensions have been granted to the parties by the hearing officer.

August, 2009

## *Parent Request for a Stand-Alone Mediation*

1. The administrative assistant opens the request and assigns it to the next consultant in line for a case assignment.
2. The consultant checks the request for completeness. If it is not complete, the parent is contacted and asked to provide the missing information.
3. If complete, the consultant contacts the SAU to ask if they have received their copy. The official date of the request is the date the Due Process Office (DPO) is in possession of the request.
4. All information is entered into the docket and the case is assigned a name and number.
5. The SAU is asked if they wish to participate in mediation. If they choose not to, the case is closed.
6. If the SAU chooses to participate, the consultant determines a range of dates for the mediation meeting, which is typically held within two or three weeks of the date of the receipt of the request.
7. The consultant contacts the next mediator in line for a case. The mediator selects a date for the mediation meeting from the within the specified range.
8. The administrative assistant arranges a meeting location and prepares an appointment letter for the mediator. This letter is copied to all parties and includes the meeting date and location, as well as additional information helpful in facilitation of the mediation process.

There are no regulatory timeline requirements for stand-alone mediations.

August, 2009

# Sample: Due Process Hearing Summary

*(Note: This sample case is simply to give you an idea of what a hearing summary looks like. Its conclusions may not be in keeping with current regulations.)*

## STATE OF MAINE SPECIAL EDUCATION DUE PROCESS HEARING

July 14, 1997

### **Case # 97.109, School Administrative District # 57 v. Parent**

Both parties represented themselves.

Hearing Officer: Katherine A. Neale, M.Ed., J.D.

**THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO TITLE 20-A, M.R.S.A., §7207 et. seq.; TITLE 20 USC, § 1415 et. seq.; AND IMPLEMENTING REGULATIONS.**

On May 19, 1997 the Department of Education received a request for a Due Process Hearing from SAD # 57 following the district's denial of a parental request for reimbursement of an independent educational evaluation for student.

The pre-hearing was initially scheduled for June 16, 1997. Due to the illness and eventual death of a family member, the pre-hearing and hearing dates were postponed until the family returned to Maine. The pre-hearing conference was held on July 9, 1997 at the York County Probate Court in Alfred, ME. Exhibits submitted by the Parent are numbered P1- through P-5 and exhibits submitted by the School are numbered S-1 through S-12. As there is no dispute as to salient facts and only a question of law is involved, the hearing was not held and a summary judgment is entered based on the record.

### **I. PRELIMINARY STATEMENT**

Student is a xx year old with a history of significant developmental deficits in language (both a receptive and expressive type), motor apraxia problems and an attention deficit/hyperactivity disorder. He is identified as language disabled and received special education services, as well as, speech and occupational therapy while attending his local school. He currently attends a private school for students with language-based learning disabilities.

## **II. ISSUES**

1. Is the district obligated to reimburse the parents for expenses incurred by obtaining an independent educational evaluation?

**97.109 p.2**

## **III. FINDINGS OF FACT**

1. During the spring of 1996, a series of evaluations were conducted. A speech/language evaluation and achievement testing were provided by district personnel. Additionally, an independent neuropsychological evaluation conducted by Dr. Richard Doiron and an independent psycholinguistic evaluation conducted by Dr. Robert Kemper were obtained and funded by the district.

2. On June 10, 1996, the PET met to review these evaluations and recommended that student be enrolled at the Learning Skills Academy in Portsmouth, NH. for an extended school year (summer of 1996). On August 16, 1996, the PET met again and recommended continued placement at the Learning Skills Academy for the 1996-97 academic year, as well as, speech/language therapy and occupational therapy. The Learning Skills Academy is a private school for students with language-based learning disabilities.

3. On April 17, 1997, the parent lettered the district requesting that SAD #57 fund a Psycholinguistic reevaluation, as it had been a year since the last one and the evaluator recommended that a new evaluation be done in a year. On May 12, 1997, the district denied the parents request for an independent educational evaluation and requested a due process hearing.

4. The parents proceeded with the evaluation and on May 13, 1997, Dr. Kemper conducted another psycholinguistic evaluation on student which was presented to the school on June 10, 1997. The parties concurred that the second psycholinguistic evaluation was very similar to one conducted a year ago and provided no new information for the team to consider in developing an appropriate educational program.

5. On May 29, 1997 the PET met for an annual review. School personnel presented standardized test results, observations of demonstrated skills and examples of student's work product. A progress report completed during May, 1997 demonstrated that student had met most of the objectives on his IEP and surpassed several of them. The team recommended an extended school year program for student and continued placement at the Learning Skills Academy for the 1997-98 academic year.

#### **IV. CONCLUSIONS**

Maine Special Education Regulations, Sections 8.23 and 10.5.C provide, in part, the following regarding independent educational evaluations:

If the parent of a student disagrees with the results of an evaluation conducted or obtained by the administrative unit, they have the right to obtain an independent educational evaluation of their child at public expense. However, the school administrative unit may initiate a hearing to show that its evaluation is appropriate.

In the present case, the parent is not contesting the evaluations conducted or obtained by the school. Rather, they are wishing to follow the recommendation of the evaluator, Dr. Kemper, in his psycholinguistic evaluation of a year ago to reevaluate again this year. The parent's primary concern is that student is making progress and they view this evaluation as an avenue for proving progress.

In a case with a similar fact pattern as this case, the hearing officer denied reimbursement to the parent because did not identify any evaluations performed or obtained by the district with which they disagreed, and the test results of the independent education evaluation concurred with the results of the test already conducted by the district. *Brandywine School District*, 22 IDELR 517. In another case, reimbursement was denied because the independent educational evaluation was duplicative to the one obtained by the school district. *In Re Child with Disabilities*, 21 IDELR 594. In a number of cases reimbursement has been granted when the district's evaluation has been found to be inadequate or when the child was denied a free appropriate public education (FAPE) due to a deficient IEP, *Etowah County Board of Education*, 20 IDELR 843. In the present case, there is no allegation that student is being denied FAPE. In fact, the parties, including evaluators and consultants, are in agreement that the Learning Skills Academy is the appropriate placement and that student is benefiting from his education under his current IEP.

#### **V. DECISION**

SAD #57 is not responsible for paying for the independent educational evaluation obtained by the parents for their son.

---

Katherine A. Neale, M.Ed., J.D.  
Hearing Officer

# Dispute Resolution Request Form

To: Due Process Office  
Special Services Team, Maine Department of Education  
23 State House Station  
Augusta, ME 04333-0023

Date of Receipt by DOE:

I. Type of dispute resolution requested: (Select only one)

\_\_\_\_\_ Stand-alone Mediation or \_\_\_\_\_ Complaint Investigation

If requesting a complaint, are you willing to participate in mediation? \_\_\_ Yes \_\_\_ No

II. Name of Person(s) Requesting Dispute Resolution (please print): \_\_\_\_\_

III. Contact Information:

Parent #1: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

Parent #2: (Required Information): \_\_\_\_\_

If information for Parent #2 not provided, please explain: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

**\*\*If you are filing as an Adult Student or Interested Party, please see signature box on Page 2 \*\***

Your address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

IV. Child's Name: \_\_\_\_\_

Date of Birth: \_\_\_/\_\_\_/\_\_\_ Age: \_\_\_\_\_ Disability: \_\_\_\_\_

Child's Residence (if different from parent): \_\_\_\_\_

School District/CDS Site in which the child lives: \_\_\_\_\_

School/Program child attends: \_\_\_\_\_ Grade/Level \_\_\_\_\_

Address of the School/Program: \_\_\_\_\_

(If the child is homeless, please provide contact information for the child.) \_\_\_\_\_

Is the child tuitioned to the school/program listed above? \_\_\_\_\_ Yes \_\_\_\_\_ No

If Yes, from which town/district/or CDS site? \_\_\_\_\_

Is the Parent(s)/Adult Student represented by an attorney or advocate in this matter? \_\_\_\_\_ No

\_\_\_\_\_ Yes. Name of Attorney/Advocate: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ E-mail: \_\_\_\_\_

V. Describe the nature of the problem and any facts relating to the problem. (Attach additional pages if necessary.): \_\_\_\_\_

VI. How could this problem be resolved? (Attach additional pages if necessary.): \_\_\_\_\_

VII. What actions has the school/CDS taken to address the problem? \_\_\_\_\_

VIII. Notifications:

FOR PARENT, ADULT STUDENT OR INTERESTED PARTY:

Did you notify the District/CDS of this problem? \_\_\_ Yes \_\_\_ No

Person notified \_\_\_\_\_ Date Notified \_\_\_/\_\_\_/\_\_\_

How you notified District/CDS: \_\_\_\_\_

1  
\_\_\_\_\_  
Date you sent a copy of this form (this is a requirement) to your school superintendent CDS board chair  
\_\_\_\_\_  
\_\_\_\_\_

For additional information or assistance, you may wish to contact:

- The superintendent or special education director of the school district, or CDS site board chair or regional CDS site director
- The Maine Department of Education, Due Process Office – Voice (207) 624-6644; TTY: 888-577-6690; Fax: (207) 624-6641 e-mail: patricia.neumeyer@maine.gov.
- The Maine Parent Federation (MPF) 1-800-870-7746
- Southern Maine Parent Awareness 1-800-564-9696

The Maine Department of Education provides equal opportunity in its programs and services. If you need accommodations, please contact the Due Process Office Associate, Pat Neumeyer, at (207) 624-6644, TTY: (888) 577-6690, or e-mail patricia.neumeyer@maine.gov.

5/19/09

# SYSTEMIC COMPLAINT INVESTIGATION REQUEST

**To: Due Process Office  
Special Services Team, Maine Department of Education  
23 State House Station  
Augusta, ME 04333-0023**

**Date of Receipt by DOE:**

I. Contact Information for Individual Requesting Systemic Complaint Investigation:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_  
Zip: \_\_\_\_\_ E-mail \_\_\_\_\_ address: \_\_\_\_\_  
Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_  
Fax: \_\_\_\_\_

II. School District or CDS Site where alleged systemic violation has occurred or is occurring:

III. Please describe the policy, practice, or procedure that you believe: a) is, or has resulted in, a violation of Part B or Part C of IDEA or Chapter 101, MUSER; and b) is, or has the potential to be, applicable to a group of students, named or unnamed. Attach additional pages as needed.

IV. Please specify the facts upon which the above statement is based. If you choose to provide the names of children, please also provide the full names, addresses, and contact information for their parents. Attach additional pages as needed.

V. How would you like this situation to be resolved? Attach additional pages as needed.

VI. To your knowledge, has the school district or CDS site taken any action to correct the alleged violation? Attach additional pages as needed.

---

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VII. Notifications:

Did you notify the District/CDS of this problem? \_\_\_\_\_ Yes \_\_\_\_\_ No

Person notified: \_\_\_\_\_ Date Notified: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

How you notified the District/CDS: \_\_\_\_\_

\* Date you sent a copy of this completed form to your school superintendent/CDS board chair or

regional site director: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (\* This is required information)

---

VIII. Signature of individual submitting request:

\_\_\_\_\_ Date: \_\_/\_\_/\_\_\_\_/

For additional information or assistance, you may wish to contact:

- The superintendent or special education director of the school district, or CDS site board chair or regional CDS site director
- The Maine Department of Education, Due Process Office – Voice (207) 624-6644; TTY: 888-577-6690; Fax: (207) 624-6641 e-mail: patricia.neumeyer@maine.gov.
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The Guide is available on-line: [www.somepa.org](http://www.somepa.org). It also is available in alternative format upon request: Maine Department of Education, Special Services, 207-624-6650.

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