

## Ask the Advocate... by Desiree Vandelac

**Question:** I would like to know if the school district has a certain amount of time to request a mediation hearing from CDE after a parent requests it.



**Answer:** This is a really good question and while this appears to be very straightforward and in need of a simple answer, there are several misconceptions in the question that need to be addressed. Primarily is the phrase "mediation hearing." Mediations and due process hearings are two separate and unrelated dispute resolution procedures. There are three typical avenues available to parents when problems arise in the IEP process that are unable to be resolved within IEP meetings or by informal dispute resolution procedures such as writing letters to school or district personnel: requesting mediation, filing a federal complaint, and demanding a due process hearing. I strongly recommend that all parents seek legal advice and representation prior to moving forward with any of these formal dispute resolution options. In my experience the issues that bring parents to seek mediation, file a federal complaint, or demand a due process hearing typically require much more legal knowledge and expertise than a parent or even an advocate typically holds. I will attempt to provide a brief overview of each of these procedures. However, due to space limitations I will not be able to provide a comprehensive description of each procedure. I highly recommend the book The Everyday Guide to Special Education Law by Randy Chapman of The Legal Center for more detailed information. You may purchase the book from The Legal Center's website [www.thelegalcenter.org](http://www.thelegalcenter.org) or by calling The Legal Center at (303) 722-0300.

**Requesting Mediation:** A critical part of requesting mediation that you must remember is that both parties (the parents and the school district) must agree to mediation. The mediation must be mutually agreed upon or the CDE will not assign a mediator. Mediation is not a hearing. It is a very informal conflict resolution process where the CDE appoints a mediator who facilitates the discussion and helps both parties come to an agreement. If an agreement cannot be reached then you will need to seek other avenues of dispute resolution. If you choose to attempt to mediate with the school district without an attorney, I recommend that you write a letter to the IEP team documenting the issue(s) that you have been unsuccessful in resolving within an IEP meeting and state that as such you are requesting that the district enter into mediation with you in hopes of resolving the problem(s). Request the school district's response in writing. If the school district agrees to mediation the CDE will then assign a mediator. The mediator will then contact both parties to set up a time that is mutually agreeable to conduct the mediation. Remember, the mediator simply helps facilitate the discussion. Mediation is not a hearing and the school district has the right to refuse mediation just as you do. There is no time requirement in which mediation happens. Typically if the school district agrees to mediation the CDE will assign a mediator within a week or two and then the date of the mediation will be based on the date and time that is mutually agreeable to all parties involved.

**Filing a Federal Complaint:** A parent can file a federal complaint with the Colorado Department of Education (CDE) if they believe the school or district has violated IDEA. A federal complaint is not the appropriate recourse for issues such as inappropriate IEP's or lack of necessary services. It is simply for violations of IDEA such as the school refusing to implement services listed in the IEP. The CDE's website provides detailed information on the steps that must be taken in filing a federal complaint. Filing a federal complaint is

not an avenue I typically recommend to parents. In most situations the parents have serious issues that the federal complaints officer cannot and will not remedy. There are four steps in the federal complaints process. First, a parent files the federal complaint detailing the IDEA violation. After the federal complaints officer receives the complaint (s)he "opens" the file and will mail a copy of the complaint to the school district. Once the school district has received a copy of the complaint from the complaints officer the school district has fifteen calendar days to respond to the complaint. After the federal complaints officer receives the school district's response the federal complaints officer will mail a copy of it to the parent. Upon receipt of the school district's response the parent has 10 calendar days to respond to the district's response. Upon the completion of the parent's final response the federal complaints officer will "close" the file. The federal complaints officer will then issue a written decision to the school district and the parent that addresses each allegation in the complaint. What many parents do not understand is that the federal complaints officer simply determines if a violation of IDEA has occurred (or not) and provides very basic remedies such as ordering the school district to hold an IEP meeting, come up with a written plan to insure the violation does not reoccur, etc. The federal complaints officer typically will not order the school district to provide services, change the IEP, provide reimbursement for private placement or a number of other solutions parents are seeking or are in need of.

**Due Process Hearing:** A due process hearing is a legal procedure very much like a trial. While parents are allowed to enter into a due process hearing "pro se" (representing themselves on their child's behalf), this is something I strongly discourage. Remember the saying "the attorney who represents himself has a fool for a client?" There are multiple steps that need to be taken in demanding a due process hearing. Parents as well as school districts may demand a due process hearing. IDEA 2004 requires a dispute resolution session after the due process hearing complaint has been filed, but before the due process hearing occurs. This is a final "can we work it out" meeting that may or may not involve attorneys. The school district is prohibited from having their attorney present at the meeting unless the parents are also represented by legal counsel at the meeting. Due process is regulated by a very specific time line. The Everyday Guide to Special Education Law contains an easy to read chart on page 59 that details the due process time line.

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Email your questions to "Ask the Advocate" at [advocate@autismboulder.org](mailto:advocate@autismboulder.org). While I cannot respond directly to you, I will try to answer all of your questions in this column.

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