

ADVOCACYDENVER

providing active voice and supporting civil rights
for people with disabilities

NAVIGATING DUE PROCESS COMPLAINTS

Empowering Families to Advocate Effectively

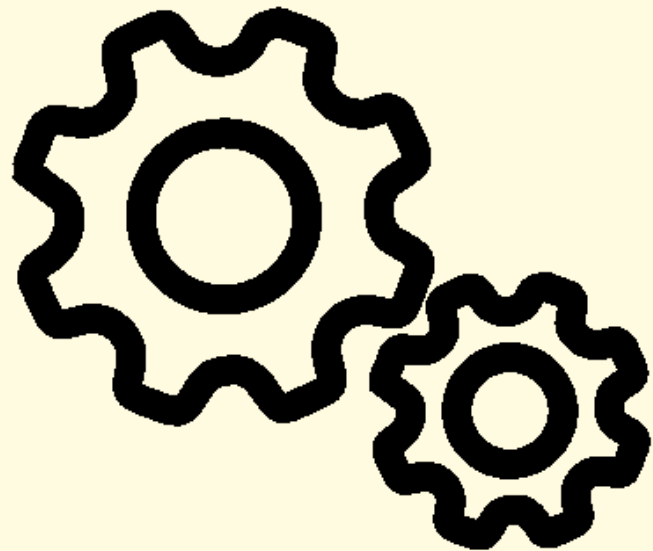
the center for
SPECIAL
EDUCATION
LAW

APPLICABLE LAWS

The Individuals with Disabilities Education Act (**IDEA**)



What's the Individuals with Disabilities Education Act (IDEA)?



A federal law that supports special education by...

- 1 Ensuring students aged 3-21 have the right to a free, appropriate public education (**FAPE**) AND
- 2 Ensuring students learn in the typical classroom or least restrictive environment (**LRE**) as much as possible

WHAT IS DUE PROCESS UNDER THE IDEA?

- Legal mechanism to resolve disputes between parents and schools
- Related to identification, evaluation, placement, and FAPE
- Based on procedural and substantive rights under the IDEA



LEGAL FRAMEWORK

1. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415
2. 34 C.F.R. §§ 300.507–300.518
3. Colorado-specific procedural rules

34 C.F.R. §§ 300.507–300.518

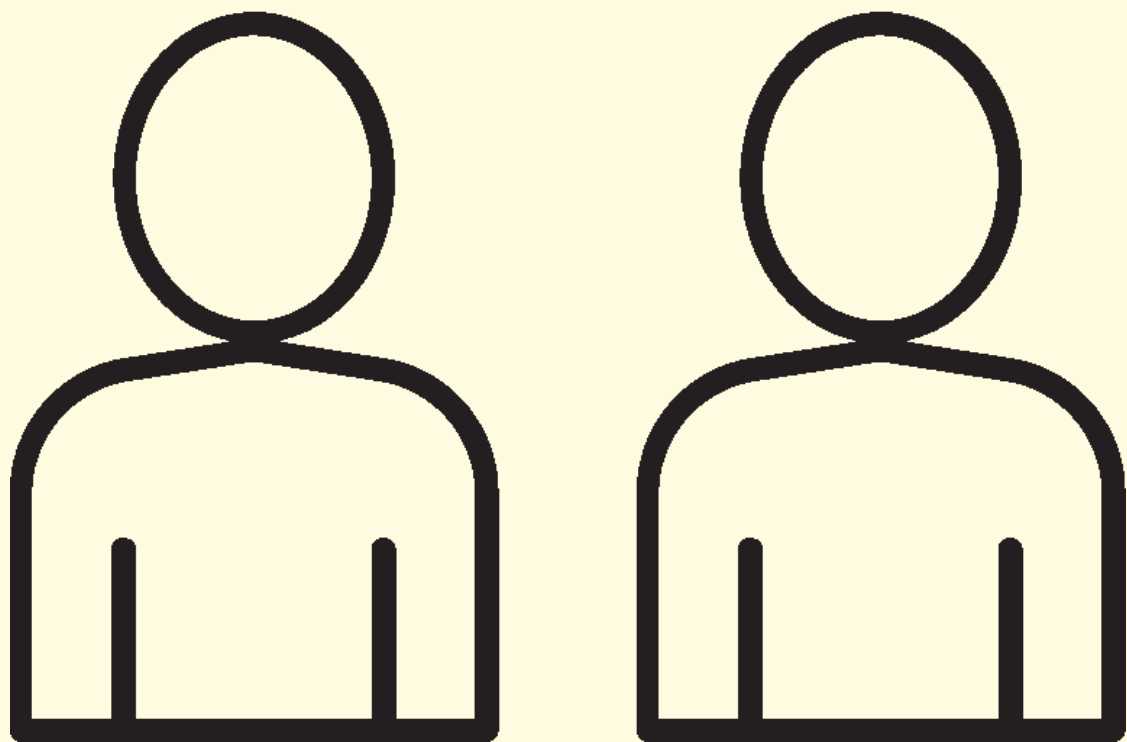
- Parents can file a due process complaint if they disagree with how the school identifies, evaluates, places, or provides services to their child with a disability.
 - must do so within two years of knowing about the issue
- The school must offer information on free or low-cost legal help if a complaint is filed or requested.

Colorado Specific Procedural Rules

- Parents can file a complaint if you disagree with how the school identifies, evaluates, places, or supports your child with a disability **within 2 years** of the issue.
- The complaint goes to the Colorado Department of Education (CDE) and must include details like your child's name, address of the residence the child, name of the school the child is attending, a description of the nature of the problem, and a proposed resolution of the problem.
- A meeting to try and solve the issue is required within **15 days**
 - if it's not resolved, a formal hearing is scheduled where both sides share evidence, and a decision is made within 45 days.
- Parents can also ask for mediation anytime and can appeal decisions in court within 90 days if needed.

GROUNDS FOR FILING A DUE PROCESS COMPLAINT

- Disagreement over evaluation results
- Disputes about eligibility
- Placement decisions, denial of a FAPE, or procedural violations
- The methodology (eg. evaluation, instruction, ASL vs. whole language, Gillingham vs. Lindamood Bell)
- Special education and related services (eg. speech or transportation)
- Changes to a child's IEP program
- Suspension/expulsion of a child



FILING A DUE PROCESS COMPLAINT

- Who can file: parent or school district
- Where to file: Colorado Department of Education
- Required content under 34 C.F.R. § 300.508(b):
 - Child's name and address
 - Description of the problem
 - Proposed resolution



DUE PROCESS HEARING

If you're unable to reach a solution through mediation/prefer not to mediate, you can request a due process hearing.

- parents and school district present evidence about the issue (**typically about parts of the IEP that couldn't be agreed upon**) and witnesses testify in front of a hearing officer
- if you're unsatisfied with the outcome of the hearing, you can appeal the decision in state or federal court.

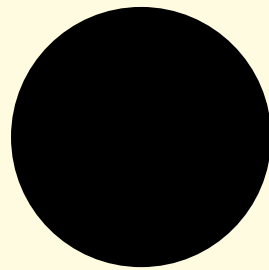


OPTIONS BEFORE FILING DUE PROCESS

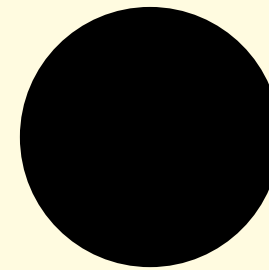


- Attempt to problem solve with the teacher
- Attempt to problem solve with the principal
- Special Education Instructional Specialist
- Special Education Director
- Mediation
- Formal Complaint

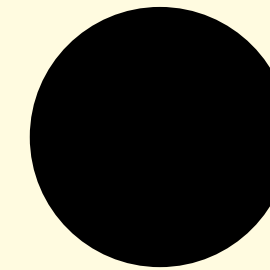
RESPONSE AND SUFFICIENCY CHALLENGE



School District
must respond
within 10 days



Complaint can
be challenged as
“insufficient.”



Administrative Law
Judge (ALJ) decides
sufficiency within 5
days

THE RESOLUTION SESSION

- Mandatory within 15 days of complaint
- Includes parents and relevant IEP team members
- Opportunity to try and resolve without a hearing
- Mediation can be used in lieu of Resolution Session
- Waiver possible by mutual agreement

PRE-HEARING PROCEDURES

- Conducted by an Administrative Law Judge
- Party filing the complaint (typically the parent) has the burden of proof
- Parties present evidence, call witnesses, admit exhibits
- Similar to a trial but less formal
- Parent has right to an attorney, expert witnesses, etc

HEARING DECISION

- Timeline: 45 days after resolution period ends
- Based on evidence and legal arguments
- Written decision with findings of fact and conclusions of law



WHAT ARE YOUR RIGHTS?

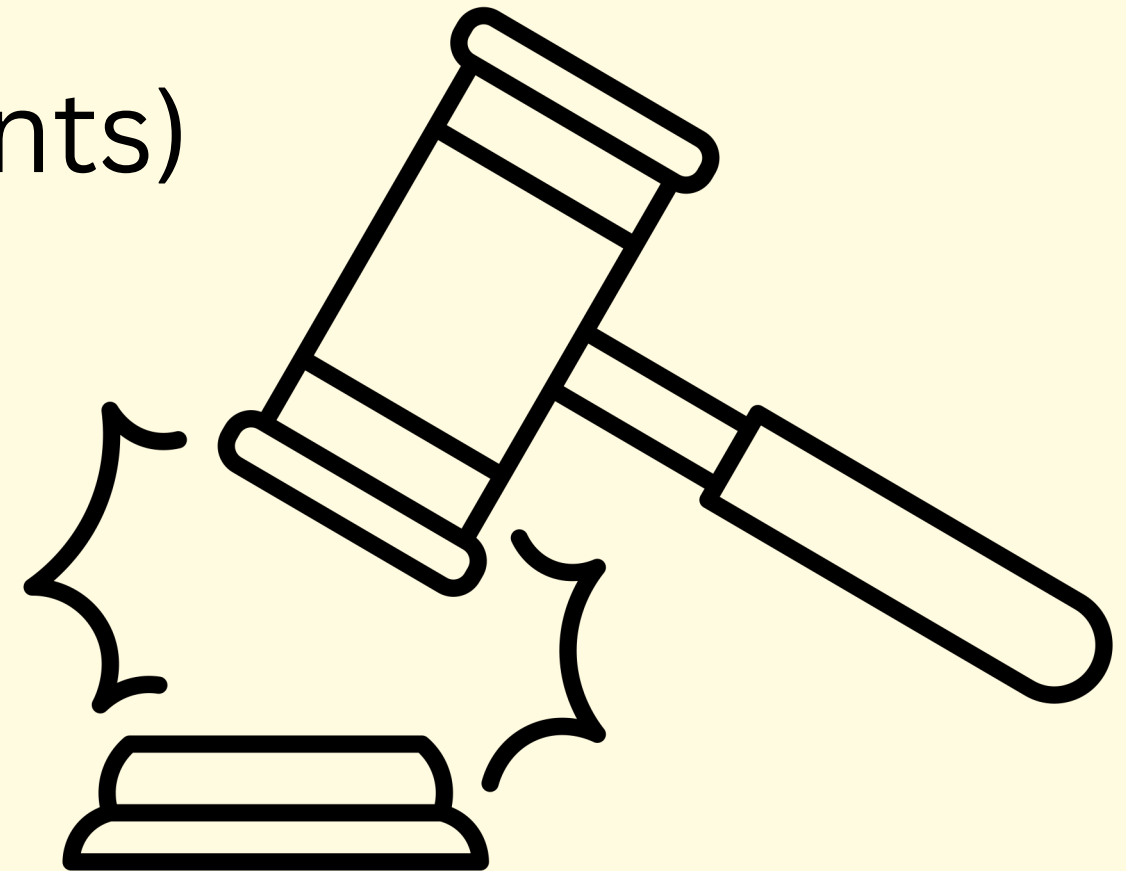
- Using a lawyer or [special education advocate](#) (may increase your chances of success, but can be accompanied by hefty legal fees).
- If you win your case, you have the opportunity to file a motion to recover legal fees in federal court (but there is no guarantee you will win).

HOWEVER, if you **lose** the hearing you are responsible for your own attorney fees BUT you will not have to pay the school district's attorney fees. It's rare, but possible, for the school to sue the parent for attorneys fees.



POST HEARING OPTIONS

- [Appeal rights](#)
- Enforcement of orders
- Attorneys' fees (for prevailing parents)





TIPS...

- 
- Keep detailed records and communication
 - Request evaluations in writing
 - Understand your procedural rights
 - Consider mediation before due process



Learn more at

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THANK YOU!

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