

A Guide to Parent Rights in Special Education

Special Education Procedural Safeguards Notice

COLORADO
Department of Education

April 2024

Colorado Department of Education
Exceptional Student Services Unit
201 E. Colfax, Room 402
Denver, CO 80203

Email: Parents_ESSUquestions@cde.state.co.us.us

Website: Visit the CDE Dispute Resolution Website

You can find additional parent resources and contact information on the back page of this guide.



About Special Education

Students with disabilities aged 3-21 may be entitled to special education and related services to help them learn, access, and make progress in the general education curriculum. Special education is guided by federal requirements described in the Individuals with Disabilities Education Act (IDEA) and by state requirements described in the Exceptional Children's Educational Act (ECEA).

Parents have the right to meaningfully participate in the development of their child's special education program. The right to meaningful participation is protected by a group of IDEA requirements called the "Procedural Safeguards." Together, these safeguards ensure that parents have the right to make informed decisions about their child's educational programming and services and to challenge certain decisions with which they do not agree.

This guide is written for parents to explain these rights. The definition of parent includes, but is not limited to, the child's biological or adoptive parent, legal guardian, foster parent, or educational surrogate parent.

In Colorado, the local education agency responsible for meeting IDEA and ECEA requirements and providing special education services is called an Administrative Unit (AU). An AU may be a school district, a Board of Cooperative Services (BOCES), or a State Operated Program (SOP). For easy reading, this guide will use the term "school district" to refer to the AU.

A public agency is defined as a school district, board of cooperative services (BOCES), state operated program, or state education agency (in this case, the Colorado Department of Education).

Your local school district can also help you understand your rights under this law. If you have questions about the information in this guide, please contact the special education director for your school district.

Your School Contacts for Special Education:

School District: Please add the following information to this section:

Special Education Director:

Phone number:

E-mail address:

Section 504 is a different law that protects individuals from discrimination based on disability. Students who have an Individualized Education Program (IEP) are also protected under Section 504.

Your local school district can help you understand your rights under this law. If you have questions about Section 504, please contact the 504 Coordinator for your school district.

School District: Please add the following information to this section:

504 Coordinator:

Phone number:

Email address:

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A. Introduction



The Individuals with Disabilities Education Act (IDEA) protects the rights of students with disabilities and the rights of their parents. One of the most important ways that IDEA protects students with disabilities is by providing parents the right to meaningfully participate in the development of their child's special education program.

Your right to participate in your child's education is protected by a group of IDEA requirements called the "Procedural Safeguards." Together, these safeguards ensure that you have the right to make informed decisions about your child's educational programming and services and that you are told in advance about any proposed changes to your child's program. If you do not agree with proposed changes or have concerns about your child's special education program, you have the right to challenge these decisions.

This guide tells you about those rights.

Your school district must give you a copy of this guide or its own Procedural Safeguards Notice at least once every year if your child receives special education services. Your school district must provide this notice to you in your native language or other form of communication used by you.

You must also receive a copy:

- If you ask for your child to be evaluated because you think your child may have a disability;
- If your school district wants to have your child evaluated because it thinks your child may have a disability;
- If you file a state complaint with the Exceptional Student Services Unit (ESSU) at the Colorado Department of Education (CDE), and it is your first complaint of the school year;
- If you file a due process complaint with the ESSU, and it is the first time in the school year you have requested a hearing;
- If your child has been removed from school for disciplinary reasons for 10 days or more during the current school year; or
- Any time you ask for a copy.

B. Your Right to be Informed about your Child's Educational Needs and Special Education Program

Informed Parental Consent

The school district must ask you for written permission before it takes certain steps to serve your child's educational needs. For example, the school district must get your written permission ***before*** it:

- evaluates your child for the first time to find out if your child needs special education and related services;
- starts giving your child the special education services listed in his or her first individualized education program, also called an IEP;
- reevaluates your child to find out if your child's needs have changed;
- conducts certain assessments with your child (an example would be a Functional Behavior Assessment (FBA));
- changes your child's educational placement (such as a change to educational program and services); and
- gives information about your child to someone other than those authorized by state or federal law.

Please note:

In Colorado, educational rights under IDEA transfer from you to your child at age 21.

The school district does not need your consent for a reevaluation if it can show that: (1) it made reasonable efforts to try to get your consent, and (2) you did not respond.

Informed Parental Consent is Not Required When Either of the Following Occur:

- The school district is reviewing existing student information as part of the evaluation/ reevaluation process; or
- The school district conducts assessments with your child that are administered to all students.

Informed Parental Consent means that the School District Must:

- Give you the information you need to make an informed decision;
- Describe the activities it proposes to conduct and list records (if any) that will be shared with others;
- Give you this information in your native language or another form of communication that you understand;
- Make sure you understand and agree in writing to the proposed activities;
- Make sure you understand that you are giving your consent by your own choice and you can change your mind and withdraw (revoke) your consent at any time; and
- Make sure you understand that if you withdraw your consent, the school district does not have to undo any action it took between the time you gave permission and the time you withdrew it.

What if I change my mind?



Withdrawing Consent for Special Education

Withdrawing consent means that you take away your permission. You may withdraw your consent at any time if you decide you no longer want your child to receive special education services as offered in your child's IEP. **You must do this in writing**.

If you withdraw your consent in writing, the school district must:

- Give you notice in writing that special education services will stop. The notice is called Prior Written Notice (PWN), and it must meet the requirements described on page 7 of this guide.

- Stop providing your child the special education services in the IEP.

Once the school district has given you this prior written notice and stops providing special education services, your child is no longer considered entitled to special education services and will be considered a general education student only. In this situation, your child may still be considered a child with a disability who is protected by other laws, such as Section 504 and the Americans with Disabilities Act (ADA).

Withdrawing Consent for Evaluation

Withdrawing consent means that you take away your permission for the school district to evaluate your child for special education. You may withdraw your consent at any time if you no longer want your child to be evaluated for special education services. **You must do this in writing.**

If you withdraw your consent in writing, the school district must:

- Give you notice in writing that the evaluation will stop. The notice is called PWN, and it must meet the requirements described on page 7 of this guide.
- Stop with any evaluation or assessments that have not yet been completed.



If you refuse or withdraw (revoke) consent for evaluation, the school district:

- Will not be in violation of its obligations to evaluate your child, which may limit your ability to take legal action against the school district; and
- May not deny you or your child any other service or benefit available to other children.

Native Language or Other Mode of Communication

The school district must ensure that you are able to understand information about your child and can participate in the special education process. This means that the meetings you attend, your child's special education evaluation, and all notices you receive must be written or spoken in your native language or other mode of communication you use.

For example, the school district must arrange for an interpreter to attend the IEP meeting if you are Deaf or your native language is not English. The school district must also translate the final IEP or provide an oral recording of the IEP in your native language or other mode of communication so that you understand what services and programming the school district is offering to provide your child and can keep track of these services throughout the school year. If your child has been identified as a multilingual learner, Colorado law requires that the school district offer to translate the final IEP or provide an oral recording of the IEP in your dominant language. The school must also verbally inform you of your right to request an oral or written translation of the IEP.

The school district must also ensure that your child is evaluated in their native language or mode of communication to give the school district accurate information on what your child knows and can do academically, developmentally and functionally. This means that tests and other materials used to evaluate your child must be in your child's native language or other mode of communication, unless clearly not feasible to provide or administer for the test.



Is Your Child Eligible for Special Education?

To be eligible simply means that your child has been found to need certain educational services because their ability to learn is impacted by disability in such a way that they cannot reasonably benefit from general education classes without these additional services. To be considered a student with a disability under IDEA, your child must require special education due to their disability in one or more of the following disability categories. You can click on the links below to see the model eligibility checklist that is used for each specific category. You can find additional information about each category in Appendix A.

- **Autism Spectrum Disorder** View the eligibility checklist for Autism Spectrum Disorder;
- **Hearing impairment, including Deafness** View the eligibility checklist for Hearing Impairment, including Deafness;
- **Serious Emotional Disability** View the eligibility checklist for Serious Emotional Disability;
- **Intellectual Disability** View the eligibility checklist for Intellectual Disability;
- **Multiple Disabilities** View the eligibility checklist for Multiple Disabilities;
- **Orthopedic Impairment** View the eligibility checklist for Orthopedic Impairment;
- **Other Health Impairment** View the eligibility checklist for Other Health Impaired;
- **Specific Learning Disability** View the eligibility checklist for Specific Learning Disability;
- **Speech or Language Impairment** View the eligibility checklist for Speech or Language Impairment;
- **Traumatic Brain Injury** View the eligibility checklist for Traumatic Brain Injury;
- **Visual Impairment, including Blindness** View the eligibility checklist for Visual Impairment, including Blindness;
- **Deaf-Blindness** View the eligibility checklist for Deaf-Blindness; or
- **Developmental Delay** View the eligibility checklist for Developmental Delay.

Ask the District to Evaluate Your Child

If you think your child may have a disability that is affecting their education, you can ask the school district to evaluate your child to determine if they may be eligible for special education. If you request an evaluation, the school district must either request your permission to conduct the evaluation or inform you that it will not conduct an evaluation. In both situations, the school district must inform you of its decision by providing you with prior written notice within a reasonable time after your request. You can learn more about prior written notice on page 7.



The school district may also ask you at any time for permission to evaluate your child if staff members think your child may need special education. After the school district has received your written permission (informed consent), it must finish the initial (first) evaluation within 60 calendar days

unless you refuse or repeatedly fail to make your child available for testing or change school districts.



Initial Evaluations for a Child who is a Ward of the State

A Ward of the State, as defined by IDEA, is a child who is:

- Considered a ward of the state under state law, or
- In the custody of a public child welfare agency.

Ward of the State does not include a foster child who has a foster parent who meets the ECEA definition of parent.

If the rights of the parents have not been terminated and the Court has not appointed an educational surrogate, the school district must make reasonable efforts to reach the parent before relying on a foster parent to provide consent or appointing an ESP.

If a child is a Ward of the State and is not living with the child's parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability in the following situations:

- The school district cannot locate the child's parent after reasonable efforts;
- The rights of the parents have been terminated; or
- The rights of the parents to make educational decisions have been assigned to another individual selected by a judge to represent the child and this individual gives permission (informed consent) for the initial evaluation.

What is an Educational Surrogate Parent?

An educational surrogate parent (ESP) is an individual who may represent a child with a disability in all matters related to qualifying for and receiving special education services. A judge or the school district may appoint an ESP whenever any of the following occur:

- The parent cannot be identified;
- The school district cannot locate the parent after reasonable efforts;
- The child is an unaccompanied homeless youth; or
- The child is a ward of the state.

Additionally, a court may appoint someone else as a student's ESP to make educational decisions for a student. For example, a court may appoint a Guardian Ad Litem, Counsel for Youth, foster parent, or other kin.



What if I don't agree with the evaluation done by the school district?

Independent Educational Evaluations (IEE)

As a parent, you have the right to request that the school district pay for an independent educational evaluation (IEE) for your child, which may include

reimbursing you for a private evaluation for which you have already paid. You also have the right to schedule and pay for an IEE for your child at any time. The IEP team must consider information you provide about your child, including an IEE, regardless of who pays.

The purpose of an IEE is to obtain information from an independent private evaluator about your child's educational needs that the IEP team must then consider when developing your child's educational program. The person who conducts the IEE cannot work for your child's school district.

The school district will pay for an IEE only if it has already done its own evaluation of your child, and you disagree with the results of the evaluation. You have the right to one (1) IEE paid for by the school district for each time the district evaluates your child and you disagree with the district's evaluation results.

Once you disagree with the school district's evaluation of your child and ask for an IEE, your school district must — without unnecessary delay — do one of the following:



- Tell you where you can obtain an IEE of your child on your own and inform you of the criteria necessary for the school district to pay for it; or
- File a due process complaint with the CDE to request a hearing (see page 19) because the school district thinks its own evaluation of your child was appropriate and it disagrees with your request for an IEE.

If you request an IEE the school district must provide you with information on how to obtain an IEE or file a due process complaint. It cannot simply ignore the request or refuse to pay for an IEE without filing a due process complaint.

If you request an IEE for your child, the school district may ask you *why* you disagree with the district's evaluation of your child (that is, the reasons you want an IEE), but you do not have to explain this unless you wish to do so. The school district cannot require you to explain why you disagree as a condition for providing the IEE. Although you do not have to request the IEE in writing, it is helpful to have a record of your request.

Criteria for Independent Educational Evaluations (IEE)

The same criteria that apply to evaluations that the school district conducts also apply to independent educational evaluations (IEE). This means that the school district cannot use different criteria for an IEE than it uses for its own special education evaluations, such as the experience and qualifications of professionals who conduct the evaluation.

The school district must pay the full cost of an IEE that meets the school district's criteria. A school district may place a cost limit or cap on the IEE, but the limit cannot be used in a way that prevents your ability to get an IEE. In this situation, the school district must give you an opportunity to explain the circumstances that justify going above the cap.

Possible Outcomes of IEE Request

Once your child has had an IEE that meets the school district's criteria, regardless of who pays for it, the IEP team must consider the results of that evaluation to determine your child's educational needs, including eligibility and how it will provide your child a free appropriate public education (FAPE).

After disagreeing with the district's evaluation, you request that the district pay for an Independent Educational Evaluation (IEE). Below are different outcomes that may occur when you request an IEE:

A. The district agrees to your request and tells you how to arrange for the IEE.
   - The district pays for the IEE.

B. You already got an IEE. You want the district to pay for the cost. The district accepts the criteria of the evaluation, including the credentials of the evaluator.
   - The district pays you back for what you spent on an IEE.

C. The district thinks an IEE is not needed. The district asks for a due process hearing to explain why its own evaluation of your child was appropriate.
   - If the administrative law judge (ALJ) decides the district's evaluation is appropriate, you can still arrange for your child to have an IEE and pay for it yourself.
   - If the ALJ decides that the district's evaluation is not appropriate, the ALJ may order the district to pay for the cost of your child's IEE.

D. You already got an IEE. The district asks for a due process hearing to show that its evaluation was appropriate or that the IEE did not meet district criteria.

   The district cannot refuse to pay for the IEE without filing a due process complaint.
   - If the ALJ decides that the IEE you arranged was appropriate, the ALJ will order the district to pay for your cost of the IEE.
   - If the ALJ decides that the evaluation you arranged is not appropriate, the ALJ will not order the district to pay for your cost of the IEE. However, the district must still consider the information you, as a parent, are providing.

Prior Written Notice



A school district is required to give you notice in writing (called prior written notice or PWN) within a reasonable amount of time before it proposes or refuses to take certain actions. These actions include initiating or changing the identification, evaluation or educational placement of your child (services your child is receiving) or the provision of a free appropriate public education (FAPE) to your child.

Prior Written Notice Contents

A PWN must provide enough detail to allow you to participate in decisions about your child's educational services in an informed way. This means that the PWN must give you enough information that you understand what the school district wants (or refuses) to do and why.

Prior written notice must include:

- A description of the action proposed or refused;
- An explanation of why the school district proposes or refuses to take the action;

- A description of each evaluation procedure, assessment, record or report the school used to make its decision;
- A description of the other options the IEP team considered and the reasons why those options were rejected;
- A description of other factors relevant to the district's proposal or refusal;



- A statement that parents have protection under the IDEA's procedural safeguards and the means by which a parent can get a copy of the procedural safeguards notice, if it is not an initial referral for evaluation; and
- Sources for parents to contact for assistance in understanding IDEA's requirements.

Prior Written Notice in an Understandable Language

Prior written notice must be written in a language understandable to the general public and written in your native language or other mode of communication unless it is clearly not feasible to do so. Sign language, braille, oral, and augmentative and alternative communication (AAC) are examples of other modes of communication. If your native language or other mode of communication is ***not*** a written language, then the school district must take steps to provide the notice orally in your native language or other mode of communication and make sure that you understand the information. In this situation, the school district must document that it has met these requirements.

Districts sometimes include or embed prior written notice in your child's annual IEP. Under federal law, the school district must translate the IEP in your native language or other mode of communication unless it is clearly not feasible to do so. Under Colorado law, if your child is identified as a multilingual language learner, the school district must ask you if you would like a written or verbal translation.

Right to Receive Regular Progress Monitoring Reports

You have the right to be informed about your child's progress on IEP goals. Your child's IEP must describe how progress on IEP goals will be measured and tell you when you will receive regular reports on the progress your child is making towards their goals. Your child's IEP must be reviewed and revised at least once a year to determine if your child has achieved their goals. Your child's IEP may need to be reviewed earlier if they are not making the expected progress towards their IEP goals. If you do not think that your child is making expected progress or your child meets their goals before the annual review, you may request an IEP meeting to review and revise your child's IEP.

Education Records

Access to Records

You have the right to review your child's education records. The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives parents certain rights to inspect and review their child's education records. Rights under FERPA transfer from you, the parent, to your child when they turn 18 or begin attending postsecondary school (e.g., a college or university), whichever occurs first. In Colorado, educational rights under IDEA transfer from you to your child at age 21.

What Are Education Records?



To be protected by FERPA, the information must be considered an education record. FERPA defines education records as:

1. Records that are directly related to one specific student. Sometimes school districts call this personally identifiable information (PII); and
2. Records that are kept by an education agency or institution (for example, your school district) or by a party acting for that agency.

A record means any information recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, or microfiche.

Student education records are confidential, meaning they are **private**. The school district must protect the privacy of your child's records when it collects, stores, releases, or destroys them. Schools must keep a record of anyone who has had access to your child's record (except access by the parent and authorized employees of the school) including the name of the person, the date access was given, and the purpose for which that person was authorized to view the record.

Education records do not include records related to other students (not your child) or personnel records for school employees.

Personally Identifiable Information (PII) Includes:

- The student's name;
- The name of the student's parents or other family members;
- The address of the student or student's family;
- The student's social security number, student number or biometric record;
- The student's date of birth, place of birth, mother's maiden name, or race or ethnicity;
- Other information that, alone or combined, would allow a reasonable person in the school community to identify the student with reasonable certainty;
- Information requested by a person who the school district reasonably believes knows of the identity of the student to whom the record relates; or
- Other examples defined by FERPA.

Your Right to Review Your Child's Records

The school district must allow you to inspect and review your child's education records that are collected, maintained, or used by the district. You also have a right to have someone acting on your behalf (such as a friend, advocate, or lawyer) inspect and review your child's records.

The school district must comply with your request to review your child's records without unnecessary delay and before any IEP team meeting or any due process hearing or resolution meeting in which you are involved. This includes any IEP meeting or hearing related to a manifestation determination review or hearing involving discipline. The school district must allow you to view your child's records no later than 45 calendar days from the date of your request, or sooner if required to prepare for an IEP meeting or hearing.

The school district may provide you with a copy of your child's records; however, it *must* provide you with a copy if failure to do so would prevent you from exercising your right to review the records. The school

district may charge a fee for a copy unless it would prevent you from exercising your right to review your child's records. **If your child qualifies for free or reduced lunch, you should not be charged a fee to access your child's records.**



The school district may presume that you have the authority to inspect and review your child's records unless it has been advised that you would not have such authority under State law due to guardianship, separation, or divorce.

Your Right to Request a Change to Your Child's Education Record

You have the right to ask the school district to change your child's education record if you believe something in the record is wrong, misleading, or violates your child's privacy or other rights. The school district must decide whether to make the changes you have requested within a reasonable time. If the school district refuses to change your child's education record as you asked, it must offer you the right to a hearing to talk about the matter.

After the hearing, the following two outcomes are possible:

- The school district agrees that the information is wrong, misleading or violates the privacy or other rights of the student and makes changes to your child's education record. It must inform you of these changes in writing.
- The school district does not agree that the information is wrong, misleading, or violates the privacy or other rights of the student and decides not to change an education record. In this situation, the school district must inform you of your right to include a statement in your child's record commenting on the information or your reasons for disagreeing with the district's decision. This statement must remain a part of your child's record for as long as the school district keeps the part of your child's education record that contains the information with which you disagree. Your statement must also be included anytime the school district shares this information with another party.

Sharing of Education Records

Usually, the school district must get your written permission if it wants to share education records that identify your child with someone other than you. However, there are some instances when your permission is not required. To find out more about when a district does ***not*** have to get your written permission to share records, visit the U.S. Department of Education's website (www.ed.gov), enter FERPA in the search box and look for Guidance for Parents or visit the U.S. Department of Education's Frequently Asked Questions (https://studentprivacy.ed.gov/frequently-asked-questions) on Protecting Student Privacy .

C. Your Right to Challenge Decisions Made About Your Child's Special Education Program Through Dispute Resolution

If you have concerns with your child's special education services, you may first want to contact your child's special education teacher or the director of special education to explain your concerns. Tell the school staff why you are concerned and what you think might help solve the problem. Talking



about your concerns with someone who knows your child, such as the special education teacher or special education director, is often the quickest and easiest way to solve the problem. If you are unsure who the director of special education is for your child's school district, please contact the CDE for assistance.

Also, there are three IDEA options that can help you resolve disagreements about your child's special education services: mediation, state complaint, and due process complaint. For a brief overview of these processes see Appendix C. The CDE can answer questions about each of these options, but the CDE cannot provide legal advice. This means that CDE staff cannot tell you whether a school district is or is not following the IDEA or tell you which of these three options you should choose. If you need information, advocacy or legal advice, you may contact:

Federally-funded Parent Training and Information Centers

The IDEA requires that each state have at least one Parent Training and Information Center. Parent Centers provide parents, individuals with disabilities and family members with information about their rights under IDEA and other resources. In Colorado, Parent Centers include:

PEAK Parent Center: PEAK Parent Center is a nonprofit that works every day to ensure that all people with disabilities are fully included in their neighborhood schools, communities, employment, and all walks of life. PEAK offers an array of free and low-cost services to families of children with disabilities and self-advocates across Colorado and beyond. You can visit PEAK's website (https://www.peakparent.org/) for more information or contact them at 719-531-9400.

Show and Tell Corporation: Show and Tell is a 501(c)(3) parent-driven organization founded in 2019 and is the sister organization of THRIVE Center, formerly known as the Denver Metro Community Parent Resource Center. Show and Tell advocates for families of children with disabilities from birth to twenty-six years old and youth with disabilities and special healthcare needs to achieve and perform to their full potential while striving to be contributing members of their school and communities. Show and Tell's focus is crafting relationships with underserved BIPOC (Black, Indigenous, and People of Color) families and connecting them with the tools they need to help their children develop essential life skills. You can visit the Show and Tell website (https://weshowandtell.org) for more information or contact them at 303-632-6840.

The CDE also provides information about parent resources, including the federally designated Parent Training and Information Centers on its website. View a list of current parent resources from the CDE's website (https://www.cde.state.co.us/cdesped/spedparents).

Disability Law Colorado: Disability Law Colorado is the state's designated protection and advocacy system. Disability Law Colorado is a nonprofit that provides services to promote the independence, empowerment, and community participation of people with disabilities, including direct legal representation, investigation, training and education, information and referrals, and legislative analysis and advocacy. Disability Law Colorado also helps individuals obtain state and federally funded services, such as special education. View Disability Law Colorado's website (https://disabilitylawco.org/) for more information or contact them at 1-800– 288-1376 or 303-722-0300.

Mediation



Mediation provides an opportunity for parents and school staff to meet and talk through their special education concerns/disagreement with the help of a professional mediator. The mediator does not take sides and does not work for or act on behalf of the parent or the school district. The mediator cannot tell you how to resolve the disagreement over your child's special education services. Rather, the mediator helps you and the school district discuss your concerns and work together to find a solution.

Mediation is Free and May Be Requested Any Time

Mediation may be requested at any time and there is no cost to you or the school district for mediation services. Mediation is voluntary, so both you and the school district must agree to participate in the process. If one party does not agree to mediate, then mediation cannot be held.

If you both agree to participate, the CDE will assign a mediator who will contact you within 1-2 business days to schedule the mediation. Mediation must be scheduled in a timely manner and held in a location that is convenient to both the parent and the district. Mediation is typically scheduled within 30 days from the day that both sides agree to mediate.



The Mediator:

- Is a qualified, trained, experienced mediator with knowledge of special education;
- Is assigned on a rotating basis;
- Does not take sides or work for you or the school district;
- Is not allowed to make decisions. Instead, the mediator helps you and the school district work toward finding a solution to the disagreement;
- Works with you and the school district to develop a written settlement agreement;
- Keeps the mediation meeting on track and helps to keep everyone respectful of the process and each other;
- Keeps everyone focused on the student and the student's needs; and
- Cannot be called to testify in a state complaint or due process hearing.

How do You Request Mediation?

Mediation may be requested by:

- ☐ Contacting the Colorado Department of Education (CDE), Alternative Dispute Resolution Coordinator by phone or email. For contact information visit the CDE Mediation webpage (https://www.cde.state.co.us/spedlaw/mediation), or
- ☐ Faxing or mailing a completed Request for Mediation form (http://www.cde.state.co.us/spedlaw/modelmediationrequestform) found on the CDE Dispute Resolution website.

Signed, Written Agreement and Confidentiality

The mediator will help you and the school district put your agreement in writing. To be enforceable, this written agreement must be signed by both you and the authorized representative for the school district. If you share educational decision making through a court order, both parents should be available to sign the agreement. This written agreement is a binding contract. This means that both you and the school district must follow through with the terms of the agreement. A written, signed mediation agreement is enforceable in State or Federal Court. Your written agreement may contain additional language about how to enforce the agreement. Discussions in mediation are private and may not be used as evidence if a due process complaint is filed.

Participation of Attorneys in Mediation

If you are represented by an attorney, you may invite your attorney to attend mediation. While mediation itself is free, you are responsible for the cost of your attorney to attend. The school district may also invite its attorney to attend mediation. Unlike a resolution meeting, the school district may invite its attorney to attend mediation even if you do not have an attorney. Because mediation is voluntary, you may choose not to mediate if the school district includes its attorney in the mediation. You should discuss any concerns you have with participants in mediation with the assigned mediator.

Overview of the Mediation Process

Request for Mediation

You or the school district can ask the CDE for mediation at any time. Mediation may also be requested at any time during the state complaint process or after requesting a due process hearing. Both you and the district must agree to mediation.

Scheduling Mediation

The mediator is a neutral third-party. The mediator will contact the parties within 1-2 business days, after being assigned, to begin the process of scheduling a meeting. The CDE pays for the cost of the mediator.

Mediation Meeting

You and the school district share your concerns. The mediator helps the parties work toward agreeable solutions and helps the parties put the agreement in writing (settlement agreement). Generally, nothing that is said during the mediation can be shared outside of the meeting or used in future legal proceedings, unless an exception applies.

Written Agreement Reached

The written agreement is binding and must be signed by both parent and school district. A binding agreement means that both parties must follow the agreement and a court can enforce it.

Agreement Not Reached

If an agreement is not reached in mediation, then the services remain the same for the student. If you are involved in a state complaint, the State Complaints Officer (SCO) will continue with their investigation. If you are involved in a due process hearing, the parties will proceed with a hearing before an ALJ .

Filing a State Complaint



You may also request an investigation into your concerns by filing a written state complaint with CDE. A state complaint is a written, signed statement alleging that a public agency (i.e., school district, board of cooperative educational services (BOCES), state operated program or the Colorado Department of Education (CDE)) is not following the Individuals with Disabilities Education Act (IDEA), the Exceptional Children's Educational Act (ECEA), or the Protection of Individuals from Restraint and Seclusion Act (PPRA). Any organization or individual, including one from another state, may file a written state complaint. The state complaint process is less adversarial (or confrontational) than a due process hearing.

A state complaint may be filed with the CDE any time within *one (1) year* of the alleged special education violation. Alleged violations that occurred more than one year from the date the complaint was filed will not be investigated/resolved.

What can CDE investigate through the State Complaint Process?

The CDE may investigate alleged violations of any requirement under Part B of the IDEA, such as concerns related to special education eligibility and services. CDE may also investigate concerns about restraints or seclusion under the Protection of Persons from Restraint Act (PPRA).

CDE may also investigate concerns that a school district has not completed activities ordered through a state or due process complaint decision. In addition, an individual who is concerned that the CDE has violated any requirement under Part B of the IDEA may file a state complaint against the CDE. For more information, visit the State Complaint webpage (http://www.cde.state.co.us/spedlaw/statecomplaint).

The CDE cannot investigate alleged violations of Section 504 of the Rehabilitation Act of 1973, or allegations concerning harassment, retaliation, different treatment, or a hostile environment based on a disability. For these concerns, please contact the Office for Civil Rights (https://www.hhs.gov/ocr/index.html).



What information must you include in a State Complaint?

Your complaint must include a description of the school district's actions or inactions that you believe violated federal or state special education requirements under the IDEA or ECEA. The complaint does not need to include the name or citation of a specific law, but it must describe the specific problem and include facts to support why/how you think the school district is not following the special education requirement. The CDE's Model State Complaint Form (http://www.cde.state.co.us/spedlaw/modelstatecomplaintform) provides examples to help you to provide this and other required information. You are not required to use this form, but you still need to provide all of the required information. You should keep a copy of the complaint you submit for your own records.

Checklist of Items/Information You Must Include in a State Complaint

- ☐ Name and contact information of the person filing the complaint;
- ☐ Name and address of the child involved and the name of the school the child attends, if the violations are related to a specific student;

- ☐ If the child is homeless, the available contact information for the child and the name of the school the child is attending;
- ☐ One or more allegations (problems/concerns) that the school is not following the IDEA, ECEA, and/or PPRA. The problems/concerns must have occurred not more than one year prior to the date that the complaint is received by the CDE;
- ☐ Facts and/or a description of the events that support each problem/concern;
- ☐ Proposed resolution of the problem or the remedy you are requesting to resolve your concerns (to the extent known and available to the person filing the complaint); and
- ☐ Signature of the person filing the complaint.

You may provide additional documentation (such as IEPs, prior written notices or e-mails) along with your state complaint; however, this documentation is not required and it will not be considered by the CDE in determining whether to accept the complaint for investigation. IEPs, prior written notices, e-mails, etc. will only be reviewed by the CDE after a state complaint is accepted for investigation.

How Do You File a State Complaint?

If you would like to file a state complaint regarding special education services for your child, you must:

- ☐ Ensure that your complaint contains all of the information described in the checklist above.
- ☐ Send your complaint to:

  State Complaints Officer
  Colorado Department of Education, Exceptional Student Services Unit
  201 E. Colfax Ave., Room 402
  Denver, CO 80203
- ☐ If you are filing a Complaint against a public agency, you must also send a copy of your complaint to the Special Education Director.

You may print and complete the state complaint form (https://www.cde.state.co.us/spedlaw/statecomplaint) found on the CDE website, but you are not required to use the form.

There is no charge or fees for filing a state complaint.

State Complaint Process

When the CDE receives a properly filed state complaint, a State Complaints Officer (SCO) will be assigned to investigate the alleged violation(s) of special education requirements. The SCO must complete the investigation and provide a written decision to resolve the complaint within 60 calendar days. As part of the state complaint process, the SCO will:

- Inform both you and the school district in writing of the allegations that will be investigated;
- Offer mediation to both you and the school district as an alternative way to resolve the complaint;
- Ask you for more information, if needed, to learn about the allegations and resolve them;
- Review additional documents and information provided by you and the school district, conduct interviews, and visit your child's school, if necessary;
- Offer the school district the chance to respond to your complaint and offer a resolution; and

- Offer you the opportunity to respond to the school district and provide additional information.

The SCO will ask for information from both you and the school district because the CDE is responsible for determining whether the school district violated the law. This is different from a due process complaint, where the party who filed the complaint has the burden of proof.

After concluding an investigation, the SCO will provide a written decision addressing each allegation accepted for investigation to determine whether a violation has occurred. This decision must be sent to you no more than 60 calendar days from the date the state complaint was filed. The decision will include findings of fact, conclusions of law, and the reasons for the final decision.



Timeline Extensions

The CDE may have more than 60 days to resolve the complaint and issue a decision if there is an extension. An extension of the 60-day timeline may only be made when:

- You and the school district agree to it so you both can try to resolve the problem through mediation or some other means of alternative dispute resolution; or
- There are exceptional circumstances (determined by the SCO on a case-by-case basis).

Improper Filing

If the SCO determines that you have not properly filed a state complaint because you did not include all of the necessary information, or if the CDE does not have authority to investigate the complaint, the SCO will send you a letter that explains: why the SCO is not moving forward with investigating your complaint, the reason for this decision, and any information that you would need to include in a new complaint, if applicable. If you have included issues in your complaint that the CDE does not have authority to resolve, it will refer you to resources to address these issues, as appropriate.

Resubmitting the Complaint

If you resubmit the complaint with new information, make sure the CDE and the school district receive it within one year of when the situation you are concerned about occurred.

If you have additional information or concerns that you did not include in your initial complaint, you may also submit an amended complaint. You may submit an amended complaint even if the CDE has already opened an investigation into your initial complaint. If you submit the amended complaint soon after the investigation has opened, the SCO may be able to include your additional concerns in the same investigation. If too much time has passed, the SCO may open a new investigation to address your additional concerns.

Abeyance

Abeyance means putting issues in a state complaint on hold. If you and the school district are involved in a due process hearing, and either you or the district also file a state complaint on the same issues, the SCO will put the state complaint on hold (in abeyance). This means that the CDE will wait until the due process is over before resolving your state complaint. This will also occur if you are involved in a state complaint and you or the district files a due process complaint on the same issues. If you withdraw your due process hearing request, the CDE will take the state complaint out

of abeyance and proceed with the investigation of your complaint. If the due process complaint includes issues/concerns that the administrative law judge (ALJ) would not have the authority to decide, the state complaint investigation will proceed as to those issues.

If a due process hearing occurs and a decision by the administrative law judge (ALJ) is made, then the CDE will take the state complaint out of abeyance to resolve it only if issues remain in your complaint that were not decided through the hearing process.

If an issue raised in a state complaint has previously been decided in a due process hearing involving the same parties (you and the school district), the due process hearing decision is binding (final) on that issue and the CDE must inform you that the decision is binding.

Corrective Action

If the SCO finds that the school district violated special education requirements, the state complaint decision must include activities required for the school district to correct the violations (corrective action). This may include training and professional development, changes to policy, procedure, and practice, or other activities to achieve compliance with special education requirements. In cases where there is a finding that a school district failed to provide appropriate services, the SCO must address not only the individual child or group of children but also the future provision of services for all IDEA eligible students in the district. This may include compensatory services, additional evaluation, and/or an IEP meeting concerning your child, as well as appropriate remedies for other children, such as a file review.

State Complaint Process: Key Steps

Filing a Complaint

- Complaint filed within one (1) year of the alleged violation (problem/concern).
- Parent provides original to the Colorado Department of Education and a copy to the school district.
- Complaint alleges violations of special education requirements with supporting facts.

CDE State Complaints Officer (SCO) Reviews Complaint

- The SCO sends an acknowledgement letter to the individual who filed the complaint and the school district.

OR

- The SCO sends an insufficiency letter if the complaint is not properly filed, or if the CDE does not have the authority to resolve it.

Investigation and Resolution

- The SCO reviews all documents and requests additional documentation/information as needed.
- The SCO interviews the appropriate individuals, as needed.

The SCO Issues a Decision to the Parent and the School District

- The SCO makes determinations about each allegation and whether there is a special education violation.
- If the SCO finds one or more violations, the SCO issues corrective actions for each special education requirement the district violated.

Appeal of a State Complaint Decision

The decision of the State Complaints Officer is final and may not be appealed. However, a party may still file a due process decision about the same concerns that were investigated in the state complaint if the party has the right to file a due process complaint about their concerns. For example, a due process complaint may only be filed by a parent or school district concerning the identification, evaluation, provision of FAPE, placement or discipline of a student. A party cannot file a due process complaint concerning personnel qualifications, use of restraint, or access to records.



If a school district files a due process complaint concerning the same issues on which a parent had received a state complaint decision in their favor, the parent may contact the Transformative Justice Project (https://tjpcolorado.org/our-programs) to have an attorney appointed to represent them in the due process hearing. The Transformative Justice Project shall maintain a list of qualified attorneys and assign them on a rotational basis. Representation will be provided at no cost to a qualifying parent.

Due Process Complaint



You may also resolve concerns/problems about your child's special education services by filing a due process complaint to request a hearing. A due process complaint is filed with the CDE against a public agency (i.e., school district, board of cooperative services (BOCES), state operated program, or state education agency (in this case, the Colorado Department of Education)). A due process complaint may also be filed by a school district against a parent in limited situations.

Reasons to File

A due process complaint may be filed for concerns/problems involving the following areas of your child's special education :

- Identification;
- Evaluation;
- Educational placement; or
- The provision of a free appropriate public education (FAPE).

The due process complaint must allege that federal (IDEA) or state (ECEA) special education requirements have been violated and must be filed within *two years* of the date the complainant (parent or public education agency filing the complaint) knew or should have known about the alleged special education violation at issue. The due process hearing is a formal proceeding in which an administrative law judge (ALJ) is assigned by the Office of Administrative Courts (OAC) to conduct a hearing to resolve the due process complaint.

What Information Must be Included in a Due Process Complaint?

The CDE provides a form that can be used to request a due process hearing (http://www.cde.state.co.us/spedlaw/modelprocesscomplaintform). The form is not required, but you

(or the public agency filing the complaint) must still include this required information when filing a due process complaint:



- ☐ Student's name and address of residence;
- ☐ The name of the school your child is attending;
- ☐ If your child is homeless, the available contact information for your child and the name of the school your child is attending;
- ☐ A description of the specific problem concerning your child, as well as facts about the problem; and
- ☐ Proposed ideas or suggestions to resolve the problem (to the extent known to you).

The due process complaint must contain the same detailed information as a state complaint (see page 15); however an original signature is not required. A due process complaint must be sent to both the CDE and the school district. You should also keep a copy of the complaint you submit for your own records.

The school district must inform you of any free or low-cost legal resources when you (or the school district) file a due process complaint.

How Do You File a Due Process Complaint?

- ☐ Ensure that your complaint contains all of the information described in the checklist above.
- ☐ Send your complaint to the Director of Special Education for the public agency you are filing against. It can be delivered to the school district in-person, by mail, fax, or email.
- ☐ Send a copy of your complaint to the CDE by mail, fax, or deliver in-person (the CDE does not currently accept complaints by email).

  Dispute Resolution Office
  Colorado Department of Education, Exceptional Student Services Unit
  201 E. Colfax Ave., Room 402
  Denver, CO 80203
  Fax: 303-866-6767

You may print and complete the due process complaint form (http://www.cde.state.co.us/spedlaw/dueprocess) found on the CDE website, but you are not required to use the form.

Due Process Timelines and Process

Response to the Complaint

If you file a due process complaint, the school district must respond to your complaint within 10 calendar days of receiving it. The school district must send you this response unless it has already sent you a prior written notice regarding the subject matter in your complaint.

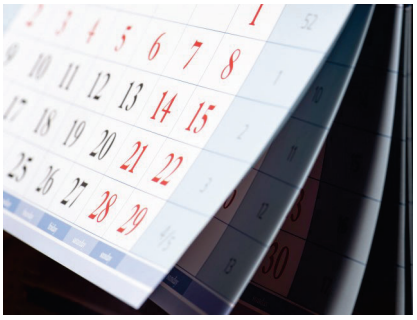
The district's response must include :

- An explanation of why the district took the action or refused to take the action that you have raised in your complaint;

- A description of other options the IEP team considered for your child and the reason(s) why it rejected those options;
- A description of each evaluation, record, assessment, or report the district used to make its decision to take or refuse an action; and
- A description of other factors that were relevant to the district's decision to take or refuse an action.

The school district must give you information about free or low-cost legal help and other relevant services you could get.

In limited circumstances, a school district may file a complaint against you as the parent. For example, a school district may choose to file a due process complaint in response to your request for an independent educational evaluation.



If a due process complaint is filed against you as the parent, you must respond to the complaint within 10 calendar days. Your response must specifically address the issues raised in the due process complaint. In this situation, the school district is not required to conduct a resolution meeting.

If a school district files a due process complaint concerning the same issues on which you had received a state complaint decision in your favor, you may contact the Transformative Justice Project (https://tjpcolorado.org/our-programs) to have an attorney appointed to represent you in the due process hearing. The TJP maintains a list of qualified attorneys and will assign them on a rotational basis. Representation will be provided at no cost to a qualifying parent.

You can find contact information for the Transformative Justice Project (https://tjpcolorado.org/our-programs) on the Dispute Resolution website and Appendix B.

Sufficiency of a Due Process Complaint

The due process complaint will be considered sufficient (meaning that it was properly filed and included all of the required information) *unless* the other party notifies both the ALJ and the party who filed the complaint that it does not meet filing requirements. A party challenging the sufficiency of a due process complaint must do so in writing within 15 calendar days of when it was received.

The ALJ has 5 calendar days from when the notice of insufficiency was received to decide if your due process complaint meets the due process complaint requirements. The ALJ also must immediately notify you and the school district of their decision about sufficiency in writing.

Amended Complaint



If the ALJ decides that your due process complaint is insufficient, you have the option to either:

- Re-file a new due process complaint that includes the required information, or
- Amend (update or make changes to) the original due process complaint.

An amended complaint may only be filed under one of these circumstances:

- If the other party agrees to the amended due process complaint, in writing, and is given the opportunity to resolve the complaint through a resolution meeting (resolution meeting is described below); or
- If you request to file an amended complaint with the ALJ. The ALJ may grant such permission up to 5 days before a due process hearing begins, but no later.

If you properly amend your due process complaint, a new 30-day resolution period begins.

Amending your complaint does not change the date it was originally filed, so the complaint can include any problems that you knew or should have known about in the two years before you filed your complaint. If you re-file a new due process complaint, that changes the date your complaint was filed. A re-filed complaint can only include problems or concerns that you knew or should have known about in the two years before you re-filed.

Due Process Resolution Meeting

Resolution Period

The resolution period provides both time and opportunity to resolve your concerns before a hearing will be scheduled. The resolution period occurs during the initial 30 days following the date the due process complaint was filed (or from the date the complaint was properly amended). If you file a due process complaint but then fail to participate in the resolution process, this will delay the hearing.

If the school district has not resolved the due process complaint to your satisfaction by the time the 30-day resolution period has passed, the due process hearing may proceed, unless you and the district have agreed to mediation that goes past the 30 days. The resolution period could end early if you and the district agree in writing that no agreement is possible. Once the resolution period ends, the ALJ has 45 calendar days to conduct a hearing and issue a written decision.

Resolution Meeting



The school district must schedule and hold a resolution meeting within the first 15 calendar days of receiving the due process complaint. If the school district does not hold the resolution meeting within 15 calendar days or does not participate in the resolution meeting, you may ask the ALJ to begin the 45-day due process hearing timeline. The school district is not required to schedule a resolution meeting if it is the party that filed the due process complaint.

The purpose of the resolution meeting is to give you an opportunity to discuss the problems you described in your complaint and for the school district to have the chance to work with you toward a resolution. The school district is responsible for scheduling the resolution meeting, but you are required to participate. If you refuse to participate in the resolution meeting, the school district can ask the ALJ to dismiss your due process complaint at the end of the 30-day period as long as it has reasonably tried to get you to participate and has documented its attempts to do so.

This meeting is a required step in the resolution process unless you and the school district agree in writing to waive the resolution meeting, or you and the school district agree to use mediation in place

of the resolution meeting. You and the school district are permitted to mediate past the 30-day resolution period if you both agree to do so. Page 12 provides information about mediation.

Resolution Meeting Participants

You and the school district decide which members of the IEP team should attend the resolution meeting. The participants selected should have specific knowledge about the concerns described in the complaint. This meeting must include a school district representative who has authority to make decisions for the district, such as the Director of Special Education. The school district may not bring an attorney to the resolution meeting unless you choose to bring an attorney.

Written Settlement Agreement

If the issues in the complaint are resolved at the resolution meeting, you and the school district must write down your agreement (settlement agreement). This written agreement must be signed by both you and the representative for the school district. A written agreement signed in a resolution meeting is legally binding and enforceable in State or U.S. District Court. Legally binding means that if you or the school district do not follow the agreement, a court can require either you or the district to do so.

You have 3 business days from the date you sign the settlement agreement to change your mind (void the agreement). If you change your mind, you should inform the school district in writing that you are voiding the settlement agreement.

If you and the school district reach an agreement about the due process complaint before the hearing, the complaint will be closed, and no due process hearing will be conducted.

The Hearing Process



A due process hearing must be scheduled and conducted at a location and time that are reasonably convenient for you and the school district. The ALJ will contact you and the school district at the same time whenever communication is needed during the hearing process. In other words, all contact between the ALJ, you and the school district must happen together and not separately. The ALJ cannot talk to the school district without you, but you also cannot speak to the ALJ without the school district.

The 45-day due process hearing timeline begins after the 30-day resolution period ends or after one of these events:

- You and the school district agree in writing to waive (not to hold) the resolution meeting; or
- You and the school district agree in writing that no agreement is possible once you begin discussing the issues in a resolution meeting or mediation meeting; or
- You and the school district agree in writing to go beyond the 30-day resolution period so you can continue to mediate, and then either you or the school district withdraw from the mediation process.

The ALJ may agree to grant an extension (give more time) at the request of one of the parties within the 45-day hearing timeline. If a hearing is held, a decision must be issued by the ALJ and a copy will be sent by certified mail to you, the school district, and the CDE.

Administrative Law Judge (ALJ)

When a due process complaint cannot be resolved by the parties, a formal hearing will be conducted by an ALJ with the Office of Administrative Courts.

The ALJ is not employed by the CDE or the school district involved in the education of the student and may not have a personal or professional interest that would favor one party over the other. The ALJ is knowledgeable in special education requirements, including IDEA, federal and state laws and regulations, and how courts interpret (determine the meaning of) special education cases. The ALJ will conduct a hearing and write a decision according to standard legal practice. If you file a due process complaint, you will be responsible for providing and sharing evidence to prove that the school district violated the IDEA.

The CDE maintains a list of current ALJs and their qualifications.

Hearing Rights

In a due process hearing, you have the right to:

- Have your child who is the subject of the hearing be present;
- Request that the hearing be open to the public;
- Have your lawyer or people with special knowledge of children with disabilities be with you and advise you;
- Present evidence (proof), confront and cross-examine (question) witnesses and require the attendance of witnesses (note: the hearing will address only the issues you raised in your due process complaint, unless the school district agrees to let you raise new issues);
- Keep any evidence from being introduced that has not been shown to you at least five business days before the hearing; and
- Receive a transcript (word-for-word written record) of the hearing and decision of the ALJ at no cost.

If You Are Accompanied by Advocates Who Are Not Lawyers

If you are accompanied by any advocates who are not lawyers, these individuals are not entitled to receive attorney's fees (or any fees for their services) from the school district. The advocate cannot practice law at the hearing and the advocate's involvement may be limited during the proceeding.

Expedited Due Process Complaints and Timeline



An expedited due process hearing is a hearing with faster timelines and a faster resolution for certain and limited special education disputes. A due process hearing will always be expedited in these situations:

- You disagree with a school district's decision about your child's educational placement (program or services), and this was the result of the school disciplining (removing/suspending/expelling) your child; or
- You disagree with the results of a manifestation determination; or
- The school district believes your child's current educational placement (program or services) is substantially likely to result in injury to your child or others.

The expedited due process complaint timeline includes a resolution period of 15 calendar days and a hearing timeline of 20 school days. The school district must schedule a resolution meeting within seven calendar days of receiving a due process complaint. After an expedited due process hearing ends, the ALJ has 10 school days to write a final decision and provide it to you and the school district. No extensions to the timelines will be allowed during an expedited due process complaint. See the Discipline section (page 29) for more information on these proceedings.

Child's Status During Due Process

Your child must remain (referred to as "stay put") in the current educational placement while a due process complaint is in progress. Your child's current educational placement is the one described in the most recently implemented IEP. For example, if you disagree and file for due process after the school district proposes reducing your child's time in general education from 85% of the time to 50% of the time, your child must remain in their prior placement (general education 85% of the time) until the complaint is resolved.

However, you and the school district can agree that your child's educational placement should change while the due process complaint is in progress. In the above example, you could agree to change some of your child's services, if there are areas where you are in agreement.

You do not need to request "stay-put" because this happens automatically when you file a due process complaint. The purpose of the stay-put provision is to ensure that your child's educational program is not disrupted while the dispute is resolved. The stay-put provision only applies if you file a due process complaint. Stay-put is not available for mediation or state complaints.

Here are examples describing current placement in a variety of circumstances:

- If your child has been placed in an interim alternative educational setting (IAES – a temporary learning setting outside of the school) because of discipline by the school district, your child stays in that alternative setting until the ALJ makes a decision or until the school district's discipline of your child ends, whichever happens first.
- If the due process complaint involves admission to the district, your child, with your permission, must be placed in the school district until due process is completed.
- If your complaint involves the start of services under Part B (ages 3-21) and your child has turned 3 years old, the school district is not required to provide the early intervention services that your child was receiving under Part C (ages birth through 2).
- If your child is found eligible for special education services and you consent to the initial provision of services, but you and the school district do not agree on the content of an initial IEP, then the school district must provide those services that are not in dispute — meaning any services you all agree your child needs.



If the ALJ in a due process hearing agrees with you, the child's parents, that a change of placement is appropriate, the placement must be treated as an agreement between the State and the parents for purposes of determining the child's current educational placement during any subsequent appeals of the due process decision.

Appealing a Decision

Appealing to Federal or State Court

The decision of the ALJ is final unless it is appealed to a federal or state court. The party aggrieved (that does not prevail or win) in the ALJ decision has the right to file a lawsuit in a federal district court within 90 days from the date of the ALJ's decision. The court will review the records, hear more evidence at the request of the parties and then make a final decision based on the records and the evidence presented. You must pay the court costs for an appeal you file in court, but you may be entitled to court fees and attorney fees at the discretion of the court if you prevail (win).

Attorney's Fees

You may choose to hire an attorney at any time to represent you in due process (or proceedings on appeal of a due process decision), but you must pay your own legal costs. If you choose to hire an attorney and you prevail (receive a decision in your favor) in any action or proceeding related to your due process hearing (making you the prevailing party), the court may order the school district to pay you reasonable attorney's fees.

If the District Prevails

If the school district prevails (wins), in limited circumstances the court can order you to pay the reasonable attorney's fees of the school district. The court may order you or your attorney to pay the attorney's fees of your school district if it prevails and the court decides any of the following:

- The action was frivolous (intended to harass, delay, or embarrass the school district), unreasonable or without foundation;
- You continued to bring legal action after the action clearly became frivolous, unreasonable or without foundation; or
- The legal action was brought for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of legal fees.

If the Court Orders Legal Fees to be Paid to You or the District

If the court orders legal fees to be paid to you or to the district, the court will decide the amount that is reasonable. Attorney's fees must be based on typical rates in the community where the action or proceeding was brought, and on the type and quality of services provided. There are certain limits on the court's ability to award attorney's fees. A court **cannot** award attorney's fees in these instances:

- Where the district makes a written offer to settle the dispute within 10 days of the proceeding, you do not accept the offer, and the ruling in the case is less favorable to you than what the school district offered as a proposed settlement;
    - ◊ However, a court may award fees to you if you prevail in the action and the court decides that you were substantially justified (had a good reason) not to accept the district's settlement offer;
- For your lawyer's participation in an IEP meeting unless that meeting is called as a result of an administrative hearing or court action; or
- For your lawyer's participation in a resolution meeting.

Reducing Attorney's Fees

The court may also reduce an award of attorney's fees if any of the following occur:

- During the course of the proceeding, you or your lawyer unreasonably delayed the final resolution of the dispute;
- The amount of your attorney's fees is unreasonably higher than the hourly rate that is the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- The time spent and legal services you received were excessive (more than necessary) given the nature of the action or proceeding; or
- Your lawyer did not provide appropriate information to the school district in your complaint notice.



None of the above apply if the court finds that the state or school district unreasonably delayed the final resolution of the action or proceeding or otherwise violated the IDEA's procedural safeguards.

Unilateral Placement of Children with Disabilities by Parents in a Private School at Public Expense

Reimbursement Determination Process

If you choose to place your child in a private school, your school district does not have to pay for the cost of education or special education and related services at the private school as long as it has offered your child a free appropriate public education (FAPE). If you believe that the school district failed to provide your child with FAPE, you have the option to file a due process complaint to request a hearing before an ALJ who will issue a decision as to whether the school district offered FAPE to your child (see due process information on pages 18-24). If the ALJ determines that the school district did not provide FAPE, the ALJ can decide you have a right to be reimbursed (paid back) for your cost of enrolling your child at a private school.

Reduction or Forfeiture of Reimbursement

How much the school district may be required to reimburse you may be reduced, or you may forfeit reimbursement altogether, if any of the following occur:

- At the IEP meeting that occurred before you removed your child from the school, you did not tell the school that you were not going to accept the educational placement proposed by the IEP team and tell them about your concerns, and that you planned to enroll your child in a private school; or
- You did not tell the school in writing at least 10 business days before withdrawing your child from the school district that you are not accepting the IEP and you plan to enroll your child in a private school. These 10 business days include holidays that fall on weekdays; or
- Before removing your child from the school, the school district gave you prior written notice that it planned to evaluate your child, and you did not make your child available for the evaluation; or
- A court determines that you acted unreasonably.

Protection of Reimbursement



The reimbursement (amount you are to be paid back) cannot be reduced, or repayment cannot be denied to you if:

- The school district prevented you from providing notice;
- The school district did not tell you that you were required to provide notice; or
- Providing the notice could result in physical harm to your child.

Also, a court or ALJ may find that the cost of reimbursement may not be reduced or denied to you for failure to provide this notice if :

- You cannot read or write in English; or
- Providing the notice could result in serious emotional harm to your child.

D. Your Right to Challenge Decisions Related to Discipline

Disciplinary Procedures for Children with Disabilities

In some cases, your school district may have to continue providing special education services to your child with a disability, even after the district has suspended, expelled or otherwise removed your child from their current educational placement. Your child's IEP describes their current educational placement.

Please Note: Your child is subject to the same rules and discipline as any student at the school and will continue to receive services described in the IEP, but maybe not in the same placement.

Educational Placement and Alternatives

If your child is removed from their current educational placement for violating school district rules for fewer than 10 consecutive school days, the school district does not have to provide special education services to your child during that removal unless it provides services to all students in this situation. If your child is removed from school *for more than 10 school days*, the school must continue to provide your child with special education services, even if it is in another educational setting (for example, another classroom, building, or at home).

If the school district removes your child from their current placement for more than 10 consecutive school days in the same school year, it is considered a change of your child's educational placement.

If the school district has removed your child from his or her current educational placement on separate occasions (a series of removals) that add up to more than 10 days in a school year, the school district must determine if those removals together constitute a change of your child's educational placement. In making this determination, the district must consider the following factors:

- Length of time for each occasion your child was removed;

- Total amount of time your child was removed;
- How close together the removals were; and
- Similarity of your child's behavior to behavior in prior incidents for which your child was removed.



When a child's educational placement is changed because the child did not follow school rules, the school district, parent and appropriate members of the IEP team must participate in a manifestation determination review meeting. The purpose of the manifestation determination review is to determine if the child's behavior was caused by the child's disability or a failure to implement the IEP.

Manifestation Determination

Before changing your child's educational placement for disciplinary reasons, the school district must take certain steps to make sure that your child is not being penalized for actions that were caused by their disability and determine if your child needs additional behavioral evaluation and supports to participate in school.

One step is to hold a manifestation determination review (MDR) meeting. This is a meeting to determine if your child's behavior was caused by or had a direct and substantial relationship to your child's disability or was caused by a failure to implement your child's IEP. The IEP team must hold this meeting within 10 school days of any decision to change their educational placement through the student code of conduct.

Please Note: Your child is subject to the same rules and discipline as any student at the school and will continue to receive services described in the IEP, but maybe not in the same placement.

The Manifestation Determination Review (MDR) Meeting

At the manifestation determination review meeting, you and the other members of the IEP team review relevant information including your child's IEP, teacher observations and any related information provided. The school district must tell you who it has invited to participate in the manifestation determination review meeting because you also have the right to decide who should participate in this meeting and to invite others.

School officials, through the discipline process, determine what your child did to violate student code of conduct. The manifestation determination review determines if that behavior was a manifestation of their disability, not whether it occurred or if your child knows it was wrong. The team must also determine if that behavior was caused by a failure to implement the IEP.

If the behavior is a manifestation of your child's disability, your child will be returned to the placement from which they were removed, unless you and the school district agree to a change of placement as part of the modification of a behavioral intervention plan (BIP).

If your child's behavior is found to be a manifestation of the disability, the IEP team must:

1. Conduct a functional behavioral assessment (FBA) as soon as possible, unless one has already recently been done. An FBA is a way of understanding why your child may behave in a certain way by looking at a variety of factors, such as social-emotional functioning and triggers in their environment. An FBA will provide information about your child that will be directly helpful in developing a behavioral intervention plan and/or other positive behavioral supports;

2. Develop a behavioral intervention plan based on the functional behavioral assessment. A behavioral intervention plan addresses the behaviors that are not appropriate for school and specific ways the school will try to reduce those behaviors by teaching your child more appropriate ways to get their needs met; or
3. If a behavioral intervention plan already exists, review the plan and make any needed changes.

If your child's behavior is not found to be a manifestation, the school district may impose the same disciplinary consequences that it would for a child without a disability. If this results in a removal from their setting for more than 10 days, the IEP team must decide what educational services are appropriate to allow your child to participate in the general education curriculum and make progress towards their IEP goals. The school district must then provide those services in an interim alternative educational setting (see below). If your child will be removed from their setting for less than 10 days, this is not considered a disciplinary change of placement and the school district can decide what services are appropriate to provide during that time. The school district must also provide appropriate behavioral intervention services and modifications that are designed to address the challenging behavior so that it does not continue to happen.

Interim Alternative (Temporary and Different) Educational Setting

The decision to place your child in an interim alternative educational setting (IAES) is made by your child's IEP team. An IAES is a temporary, different placement for your child to receive special education. On the date the IEP team makes the decision to change your child's placement to an IAES because your child has violated a school rule, the school district must notify you of the decision and give you this guide or its Procedural Safeguards Notice.

Even if your child's behavior was caused by your child's disability, the school district may remove your child to an IAES for up to 45 school days if your child has:

- Carried a weapon to school or has a weapon on school grounds or at a school function;
- Knowingly possessed or used illegal drugs, or sold or tried to buy or sell a controlled substance (for example, narcotics) while at school, on school grounds or at a school function; or
- Inflicted serious bodily injury (severe enough to cause extreme physical pain, disfigurement, impairment, or risk of death) on another person while at school, on school grounds or at a school function.

In addition, if your child's behavior ***was not directly caused by your child's disability or a failure to implement the IEP***, your child can be placed in an IAES for the same amount of time that a child without a disability would be disciplined.

If your child's behavior ***was directly related to or caused by your child's disability or a failure to implement the IEP,*** and your child violated school rules, your child must be returned to the education setting from which he or she was removed, unless you and the school district agree to a change of placement as part of the change in the behavioral intervention plan or IEP.

However, if the school district believes that keeping your child in his or her current educational placement (according to your child's IEP) is very likely to result in injury to your child or others, the school district may call an IEP meeting to discuss this concern. If you and the district disagree about the change of placement, the district may ask for an expedited due process hearing – in other words, it may ask for a due process hearing that will be fast-tracked for a quicker resolution. (See expedited due process section, page 23).



What If You Do Not Agree with a Change of Educational Placement or Manifestation Determination Review Finding?

You can request an expedited due process hearing to challenge a decision to change your child's current educational setting due to discipline or to challenge the findings of a manifestation determination review. (See expedited due process information, page 23). The ALJ will decide during the expedited due process hearing if the school district followed requirements when it changed your child's placement or if the district has shown that your child's behavior was or was not a manifestation of your child's disability.

As noted above, the school district may request an expedited due process hearing if it determines that continuing your child's placement is very likely to result in injury to your child or others. (See expedited due process, page 23).

You may also file a state complaint to address concerns with the manifestation determination process. (See state complaint process, page 14).

When Your Child's Behavior is Due to a Suspected Disability

If your child does not have an IEP, you may ask the school district to treat your child as a child with a disability if any of these things happened before your child violated a school rule:

- You told school leaders or your child's teacher, in writing, that you think your child may need special education services; or
- You requested an evaluation for your child; or
- Your child's teacher or other school district staff member told the director of special education or other management staff that they had specific concerns about your child's pattern of behavior.

If you suspect your child's behavior is due to a disability but none of the above conditions apply, you can still request an evaluation. The evaluation must be completed in an expedited manner, even if your child is not currently receiving services. If they are found eligible for special education services, the school district is still permitted to discipline your student, but they must also provide special education and related services to your child.

Your school district would not be expected to treat your child as a child with a disability if you have refused to give the district permission to evaluate your child for special education. This is also true if you refused special education and related services for your child or if your child was evaluated and the multidisciplinary team decided your child did not have a disability. The school district can discipline your child in the same manner it would discipline students without disabilities who behave in the same ways.

Referral to Law Enforcement

Law enforcement and judicial authorities are not prohibited from taking action involving a child with a disability. If a school district reports a crime committed by a child with a disability, it must provide the child's special education and disciplinary records to authorities of the law enforcement agency for consideration. The school district may only provide records allowed by FERPA.

COLORADO

Department of Education

Exceptional Student Services Unit

201 E. Colfax, Room 402

Denver, CO 80203

E-mail: Parents_ESSUquestions@cde.state.co.us

Website: Visit the CDE Dispute Resolution Website



Appendix A Eligibility Categories Web Links

Autism Spectrum Disorder View the eligibility checklist for Autism Spectrum Disorder (https://www.cde.state.co.us/cdesped/iep_detautism)

Deaf-Blindness View the eligibility checklist for Deaf-Blindness (https://www.cde.state.co.us/IEP_Det_DB)

Developmental Delay View the eligibility checklist for Developmental Delay (https://www.cde.state.co.us/IEP_Det_DD)

Hearing impairment, including Deafness View the eligibility checklist for Hearing Impairment, including Deafness (https://www.cde.state.co.us/IEP_Det_HI)

Intellectual Disability View the eligibility checklist for Intellectual Disability (https://www.cde.state.co.us/cdesped/iep_detintellectual)

Multiple Disabilities View the eligibility checklist for Multiple Disabilities (https://www.cde.state.co.us/IEP_Det_MD)

Orthopedic Impairment View the eligibility checklist for Orthopedic Impairment (https://www.cde.state.co.us/cdesped/iep_det_oi)

Other Health Impaired View the eligibility checklist for Other Health Impaired (https://www.cde.state.co.us/cdesped/iep_det_ohi)

Serious Emotional Disability View the eligibility checklist for Serious Emotional Disability (https://www.cde.state.co.us/cdesped/iep_detseriousemotional)

Specific Learning Disability View the eligibility checklist for Specific Learning Disability (https://www.cde.state.co.us/IEP_Det_SLD)

Speech or Language Impairment View the eligibility checklist for Speech or Language Impairment (https://www.cde.state.co.us/cdesped/iep_detsli)

Traumatic Brain Injury View the eligibility checklist for Traumatic Brain Injury (https://www.cde.state.co.us/cdesped/iep_det_tbi)

Visual Impairment, including Blindness View the eligibility checklist for Visual Impairment, including Blindness (https://www.cde.state.co.us/cdesped/iep_formvisionimpairmentincludingblindness_2023)

Appendix B Agency Contact Information

The ARC of Colorado

There are 15 chapters of The Arc in Colorado including the state chapter and 14 local chapters serving designated geographic areas. Local chapters provide individual advocacy services for children and adults with intellectual developmental disabilities who live in their service areas. They also provide information and referral services, public policy support, community education and more. Visit The ARC Colorado website (https://thearcofco.org/about/the-arc-chapters) to find your local chapter.

Transformative Justice Project

Provides legal representation and advocacy for youth facing school-related legal issues and disciplinary actions. Visit the Transformative Justice Project website (https://tjpcolorado.org/our-programs) for more information.

Disability Law Colorado

Disability Law Colorado is the state's designated protection and advocacy system. Disability Law Colorado is a nonprofit that provides services to promote the independence, empowerment, and community participation of people with disabilities, including direct legal representation, investigation, training and education, information and referrals, and legislative analysis and advocacy. Disability Law Colorado also helps individuals obtain state and federally funded services, such as special education. Visit Disability Law Colorado website (https://disabilitylawco.org/) for more information or contact them at 1-800- 531-2105.

Office for Civil Rights (OCR)

The OCR serves student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems. An important responsibility is resolving complaints of discrimination. OCR also provides technical assistance to help institutions achieve voluntary compliance with the civil rights laws that OCR enforces. The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. OCR's mission is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools. You can visit the Office for Civil Rights website (https://www2.ed.gov/about/offices/list/ocr/index.html) for more information or contact them at 303-844-5695.

Parent Training and Information Centers:

PEAK Parent Center

PEAK Parent Center is a nonprofit that works every day to ensure that all people with disabilities are fully included in their neighborhood schools, communities, employment, and all walks of life. PEAK offers an array of free and low-cost services to families of children with disabilities and self-advocates across Colorado and beyond. You can visit PEAK's website (https://www.peakparent.org/) for more information or contact them at 719-531-9400.

Show and Tell Corporation

Show and Tell is a 501(c)(3) parent-driven organization founded in 2019 and is the sister organization of THRIVE Center, formerly known as the Denver Metro Community Parent Resource Center. Show and Tell advocates for families of children with disabilities from birth to twenty-six

years old and youth with disabilities and special healthcare needs to achieve and perform to their full potential while striving to be contributing members of their school and communities. Show and Tell's focus is crafting relationships with underserved BIPOC (Black, Indigenous, and People of Color) families and connecting them with the tools they need to help their children develop essential life skills. You can visit the Show and Tell website (https://weshowandtell.org) for more information or contact them at 303-632-6840.

Appendix C Brief Overview of the Dispute Resolution Options

	Mediation	State Complaints	Due Process (NonExpedited) Complaints
Who can file?	A parent or the Administrative Unit (AU) may request it, but both parties must voluntarily agree to mediation before it can go forward.	Any individual or organization.	Parents or the AU.
For what issues?	Disputes concerning matters protected under the Individuals with Disabilities Education Act (IDEA) or the Exceptional Children's Educational Act (ECEA).	Any alleged IDEA or ECEA violation that occurred not more than one year prior to the date of a properly filed complaint.	Any alleged IDEA or ECEA violation that occurred within the past two years concerning the identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE).
Cost?	Free to the parties. The Department pays for the Mediator's services.	No filing fees. Each party must pay for any attorney fees and costs that they incur.	No filing fees. Each party must pay for any attorney fees and costs that they incur.
Who decides?	The parties control the outcome.	The State Complaints Officer (SCO).	The Administrative Law Judge (ALJ).
What happens?	An impartial Mediator is assigned to assist the parties in resolving their dispute. The Mediator helps the parties to express their views and positions but remains neutral and does not take the side of either party.	A party files a state complaint and documentation. The other party then files a response. The complaining party can then file a reply to the response. The assigned SCO conducts an investigation, including interviews and review of the relevant documentation.	A party files a due process complaint and documentation. An ALJ is assigned. The AU must conduct a resolution meeting. Any unresolved issues are heard by the ALJ. At the hearing, each party presents evidence, gives testimony and cross examines witnesses.
Timeline	Mediations must be scheduled in a timely manner. Typically, mediations are completed within 30 calendar days of a mediation request.	A written decision is issued within 60 calendar days after a properly filed complaint was received by the SCO and the AU.	The AU must convene a resolution meeting within 15 days of a properly filed complaint. The resolution period may continue for up to 30 days. If no resolution is reached, a hearing must be conducted and a decision issued within 45 days.

	Mediation	State Complaints	Due Process (NonExpedited) Complaints
Outcomes & Remedies	To be enforceable, any agreements reached must be reduced to a written settlement agreement and signed by both parties during the mediation. As to unresolved disputes, a party may file a state and/or due process complaint.	The SCO issues a written decision. If the SCO determines that IDEA violations require remedies, the SCO enters orders that the AU must follow to correct the violations, including, but not limited to, a corrective action plan, compensatory services, reconvening of the IEP meeting, etc. If the SCO determines that no IDEA violations occurred, no remedies are ordered.	The ALJ issues a written decision. If the ALJ determines that IDEA violations require remedies, the ALJ enters orders that must be taken to correct the violations, including, but not limited to, compensatory services, reconvening of the IEP meeting, etc. If the ALJ determines that no IDEA violations occurred, no remedies are ordered.
Appeal?	If a party alleges that a settlement agreement has been breached, that party may seek enforcement of the agreement in state or federal court.	The SCO's decision cannot be appealed but either party may file a due process complaint on the same issue(s).	The ALJ's decision may be appealed in state or federal district court within 90 days of the date of the decision.

Glossary

504
Section 504 is a Federal law that prohibits disability discrimination and guarantees that students with disabilities have equal access to educational opportunities, including a free appropriate public education (FAPE) in public elementary and secondary schools. U.S. Department of Education, Office for Civil Rights. (April 27, 2022) Fact Sheet: Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504 (https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html).

Administrative Unit (AU)
Administrative Unit (AU) means a school district, board of cooperative services, multi-district administrative unit, a charter school network, a charter school collaborative, or the State Charter School Institute, that is providing educational services to exceptional children and that is responsible for the local administration of these Rules. CCR 301-8 §2.02. See also Colorado Department of Education (Aug. 5, 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Americans with Disabilities Act (ADA)
The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against people with disabilities in everyday activities. The ADA prohibits discrimination on the basis of disability just as other civil rights laws prohibit discrimination on the basis of race, color, sex, national origin, age, and religion. The ADA guarantees that people with disabilities have the same opportunities as everyone else to enjoy employment opportunities, purchase goods and services, and participate in state and local government programs. U.S. Department of Justice, Civil Rights Division. Introduction to the Americans with Disabilities Act (https://www.ada.gov/topics/intro-to-ada/).

Board of Cooperative Education Services (BOCES)
Board of Cooperative Services means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S. and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members. 1 CCR 301.8 §2.05. See also Colorado Department of Education (Aug. 5, 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Consent
Consent means that (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) the parent understands and agrees in writing to the carrying out of the activity for which their consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime, and if a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (Authority: 20 U.S.C. 1414(a)(1)(D)) 34 CFR §300.9. See

Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Day, business day, school day

Day means calendar day unless otherwise indicated as business day or school day.
Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).
School day means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.
(Authority: 20 U.S.C. 1221e–3) 34 CFR §300.11. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Educational surrogate parent

Educational Surrogate Parent shall mean a person who meets the qualifications established in Section 6.02(8)(e)(iii) of the ECEA Rules and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the State. The assignment of an educational surrogate parent shall be in accordance with Section 6.02 (8) of the ECEA Rules. 1 CCR 301-8 §2.14. See also Colorado Department of Education (Aug. 5, 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Evaluation

Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a) (c)) 34 CFR 300.15. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Exceptional Children's Educational Act (ECEA)

Each state must follow the IDEA, but may also create additional laws and rules for implementing IDEA. In Colorado, the *Rules for the Administration of the ECEA* outline specific requirements regarding how the IDEA and special education is to be implemented across the state. See Colorado Department of Education (Dec. 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's education records, the right to ask to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student"). The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA

regulations are found at 34 CFR Part 99. U.S. Department of Education, Student Privacy Policy Office. (n.d.) What is FERPA (https://studentprivacy.ed.gov/faq/what-ferpa).

Free Appropriate Public Education (FAPE)
Free appropriate public education or FAPE means special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324. (Authority: 20 U.S.C. 1401(9)) 34 CFR §300.17. See See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Individualized Education Program (IEP)

Individualized education program or IEP means a written statement (program) for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324. (Authority: 20 U.S.C. 1401(14)) 34 CFR §300.22. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

IEP Facilitation

See Special Education Facilitation, p. G6 of these Procedural Safeguards.

Individualized Education Program Team (IEP Team)
Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (Authority: 20 U.S.C. 1414(d)(1)(B)) 34 CFR §300.23. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Individuals with Disabilities Education Act (IDEA)

IDEA means the federal “Individuals with Disabilities Education Improvement Act of 2004”, 20 U.S.C. §1400 et seq., as amended, and its implementing regulations, 34 CFR Part 300 and also 34 CFR Part 303, as those regulations pertain to child find. 1 CCR 301-8 §2.22. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Least Restrictive Environment (LRE)

Least Restrictive Environment means that: (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (2) Special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general educational classes with the use of supplementary aids and services cannot be achieved satisfactorily. Colorado Department of Education (Dec. 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Local Education Agency (LEA)

Local educational agency means (a) a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools; (b) Educational service agencies and other public institutions or agencies. The term includes (1) An educational service agency, as defined in § 300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law; and (c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population. (Authority: 20 U.S.C. 1401 (19)) 34 CFR §300.28. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Native Language

Native Language, when used with respect to an individual who is limited English proficient, means the following: (1)(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (1)(b) of this Section. (1)(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. (2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). 1 CCR 301-8 §2.32. See also Colorado Department of Education (Dec. 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Parent

Parent means: (a)(1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act. (b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the ''parent'' of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ''parent'' for purposes of this section. (Authority: 20 U.S.C. 1401(23)) 34 CFR §300.30. See

Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Personally Identifiable

Personally identifiable means information that contains (a) The name of the child, the child's parent, or other family member; (b) The address of the child; (c) A personal identifier, such as the child's social security number or student number; or (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. (Authority: 20 U.S.C. 1415(a)) 34 CFR §300.32. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Public Agency

Public agency includes the CDE, LEAs, ESAs (Educational Service Agencies), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (Authority: 20 U.S.C. 1412(a)(11)) 34 CFR §300.33. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Related Services

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. (Authority: 20 U.S.C. 1401(26)) 34 CFR §300.34. For exceptions and terms related to this definition see Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Special Education

Special education means: (a)(1) specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education. (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education. (Authority: 20 U.S.C. 1401(29)) 34 CFR §300.39. For further defined terms related to special education see Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

Special Education Services
Special Education Services or Special Education Programs means the services or programs provided to a child with a disability in conformity with the child's IEP. 1 CCR 301-8 §2.45. See also Colorado Department of Education (Dec. 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Special Education Facilitation
A facilitated Special Education meeting is a meeting that includes an impartial facilitator who promotes effective communication and assists an IEP team in developing an IEP based on the student's needs. The facilitator keeps the team focused on the appropriate development of the IEP while working through conflicts that arise and ensuring the participation of each IEP team member. The facilitated Special Education meeting includes all of the required team members. While most often it is an IEP that the team is developing, facilitation also supports Special Education meetings outside of the IEP development process. For more information on facilitation and the benefits, visit the IEP Facilitation webpage (https://www.cde.state.co.us/spedlaw/fiep).

State Educational Agency (SEA)
State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. In Colorado, the CDE is the SEA. (Authority: 20 U.S.C. 1401(32)) 34 CFR §300.41. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

State Operated Program (SOP)
State-Operated Program means an approved school program supervised by the Department and operated by: (1) The Colorado School for the Deaf and the Blind, including any schools authorized under Section 22-80-102(4)(b), C.R.S.; (2) The Department of Corrections; or (3) The Department of Human Services, including but not limited to the Division of Youth Corrections and the Mental Health Institutes at Fort Logan and Pueblo. 1 CCR 301-8 §2.49. See also Colorado Department of Education (Dec. 2023) Rules for the Administration of the ECEA (https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11218).

Ward of the State
(a) Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is (1) A foster child; (2) A ward of the State; or (3) In the custody of a public child welfare agency. (b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 300.30. (Authority: 20 U.S.C. 1401(36)) 34 CFR §300.45. See Part 300 (Part B) — Assistance To States For The Education Of Children With Disabilities - Individuals with Disabilities Education Act (https://sites.ed.gov/idea/regs/b).

CDE Dispute Resolution Resources

Questions regarding State Complaints?

Contact: Senior State Complaints Officer

Email: Schubert_A@cde.state.co.us Ph: 720-788-0576

Or

Email: Dore_R@cde.state.co.us Ph: 720-951-8457

Questions regarding Due Process?

Contact: Dispute Resolution Coordinator

Email: Alaniz_G@cde.state.co.us

Ph: 720-584-4673

Questions regarding Mediation?

Contact: Dispute Prevention and Assisted Resolution Supervisor

Email: rains_k@cde.state.co.us

Ph: 720-990-1464

Questions regarding IEP Facilitation?

Contact: Dispute Prevention and Assisted Resolution Supervisor

Email: rains_k@cde.state.co.us

Ph: 720-990-1464

What is IEP Facilitation?

A facilitated Special Education meeting is a meeting that includes an impartial facilitator who promotes effective communication and assists an IEP team in developing an IEP based on the student's needs. The facilitator keeps the team focused on the appropriate development of the IEP while working through conflicts that arise and ensuring the participation of each IEP team member. The facilitated Special Education meeting includes all of the required team members. While most often it is an IEP that the team is developing, facilitation also supports Special Education meetings outside of the IEP development process.