

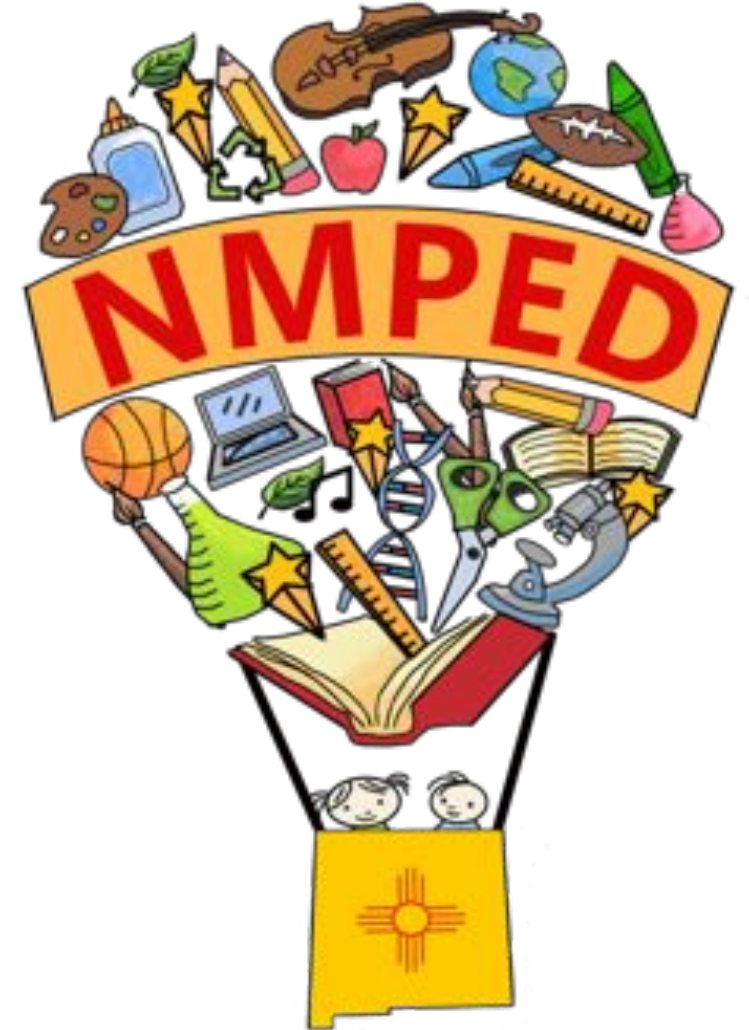
Avoiding Legal Disputes and What to do **When** you Have Them

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Disclaimer

This presentation provides general information and does not represent a complete recitation of the applicable law and policy in the topic area. The language used in these slides and during this presentation is approved for informational purposes only and should not be considered legal advice.

Avoiding Legal Disputes

1. Trust is Everything
2. Be Welcoming
3. Encourage Communication
4. Know the Law (or ask someone who does)
5. Be Creative
5. Ongoing Training and Monitoring
6. Communicate with District Special Education Personnel

TRUST IS EVERYTHING!

Lack of trust is the root cause of virtually all legal disputes that come through the Dispute Resolution Office.

- This is true whether the school or district acted appropriately (compliant with IDEA) or not

Schools must build trust of students and families on DAY ONE (really before day one).

Schools must do everything that they can to maintain the trust that is built.

Building and maintaining trust

- Communication is key
- Follow through is even more important

Be Welcoming

**Generally
enrollment is not
an option for
LEAs**

- Students are generally entitled to attend their neighborhood school even if they have chosen another school in the past.
- With that in mind, set a positive tone for the student and family on DAY ONE.

**For current
students
identified through
child find:**

- Make pre-meetings (SAT/MLSS) and the initial meetings regarding evaluation/special education as positive as possible.
 - This includes when the parents are making the request for an evaluation.
 - This includes any advocates or other individuals that the parent brings along with them to these meetings.

Encourage Communication

- Breakdowns in Communication, **second only to lack of trust**, seems to be the primary cause of legal disputes.
 - You cannot avoid disputes with parents if you do not know about them.
- Ensure that your parents and students know that they can communicate with the school and staff when needed
 - **Make sure they know how to communicate**
 - ✓ Format/Medium (Phone, SIS system, email)
 - ✓ Account for language and technology barriers
 - **Make sure they know who to contact**
 - ✓ Encourage contact with student's teacher/caseload manager first
 - ✓ Don't discourage communication with administration (Keep that door open if needed)

More on communication

- PARENTS MUST FEEL AS THOUGH THEY ARE PART OF THE TEAM
 - Keep them informed (Let them know their rights and respect their rights)
 - ✓ Summarizing and Checking for Understanding
 - Make sure they are heard
 - Accept and consider their input
- Do not avoid having meetings (IEP meetings or informal) with parents if needed.
 - Diligently use IEP meetings to address issues before they evolve into protracted (and potentially costly) legal disputes.
 - If a service or strategy is not working, proactively call for an IEP Team meeting to discuss other ways to address the disability-related learning deficit.

Know the Law (or ask someone who does)

Knowing your school's obligations under the IDEA is very important (not necessarily for the reasons you might think)

- Knowing the law should be used to empower the school and parents to serve the student.
- Understanding what the minimum requirements are will help in determining what options are available to serve the student and will provide you the support to advocate for the student.
- It will also ensure you do not deny a parent rights provided to them under the IDEA which ultimately will create a breakdown in trust and communication.

If you do not know, ASK!

- School District Personnel
- NMPED
- District's attorney

Be Creative

- **Be creative in your problem solving with parents.**
 - Knowing the law will help you understand your limits to this
 - Find ways to build trust by finding compromise with the parents' requests and student's needs
 - Collect and use data to inform your decisions and to support creative solutions

Creative examples...

- Staffing Shortages/Service Gaps
 - Compensatory Services (including summer and after school)
 - ✓ Account for missed time
 - Temporary Modified Placements (through IEP decisions)
 - ✓ Consider LRE
 - ✓ Communicate with parents
- Behavior
 - Engage challenging behaviors proactively (FBA,BIP, early behavior supports)
 - Avoid formal discipline, restraint, and seclusion to the absolute extent possible

Ongoing Training and Monitoring

Training

Training for staff and administration is crucial

- This should include special education law, district policies and practices, as well as school and LEA expectations
- Understanding the why? (hint: the why is not to avoid or protect from liability in legal disputes)

Monitoring

Monitoring compliance with law, policies and practices, and school and LEA expectations (Monitoring Trust)

- Be involved with students and staff in the decision-making (go to IEP meetings)
- Ensure follow through
- Get into classrooms
- Review IEPs with teachers
- Speak to parents

Communicate with District Personnel (sometimes attorney)

- District Special Education Personnel should be made aware of potential escalating disputes whenever possible
 - Help you understand parents' rights and the school's obligations
 - ✓ They may tell you to change course or inform you of an action you should take that you haven't already. (This is OKAY)
 - ✓ Note to District personnel – You should welcome and encourage communication from school administration, even bad news, as this will help proactively avoid escalating disputes
 - Help brainstorm solutions (they may think of something you haven't)
 - Rearrange staff for additional resources and supports when appropriate
 - Discuss possible alternative dispute resolution options
 - Communicate with attorney when necessary



Dispute Resolution

Dispute Resolution Options

IEP Meeting

OSE Parent
Liaison

Facilitated
IEP Meeting

Mediation

State
Complaint

Due
Process
Hearing

Facilitated IEP Meeting (FIEP)

To assist an IEP team in developing an IEP based on the student's needs.

The facilitator helps to keep 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 FIEP meeting includes all of the required team members.

The FIEP process is voluntary and requires both parties to agree to participate



School districts and charter schools can make FIEPs available to parents at any time.

- There should be no cost to the parent
- The LEA can use one of the Facilitators from the PED list, but is not required to do so.
- PED may fund FIEPs in certain circumstances

A FIEP is also made available by PED after the filing of a state complaint or due process hearing request.

- There is no cost to parents or LEA when a FIEP is requested from PED at one of these times.
- PED has qualified, impartial IEP Facilitators under contract and assigns Facilitators on a rotating basis.

Mediation

To assist parties resolving conflict based on the student's needs.

The mediator helps to keep the team focused on Student's needs and data driven decisions

The mediation will include requestor (likely educational decision maker, school personnel with knowledge of Student

Mediation is voluntary and requires both parties to agree to participate

- Mediation is a meeting conducted by a qualified and impartial Mediator to assist in resolving a disagreement between a parent and public agency.
 - Mediation is voluntary. Both parties must agree to participate

- Mediation can be requested at any time by a parent or a local educational agency
- Mediation is conducted at no cost to the parent or LEA.

Mediation Results

If the parties reach an agreement, the Mediator assists in preparing a written agreement that the parent and a LEA representative with authority must sign.

The written agreement is a binding, enforceable agreement. It may be enforced in state or federal court. While NMPED/OSE does not have a state mechanism for enforcement, a new dispute resolution process can address outstanding issues if such violate law.

The mediation discussions and agreement are confidential. However, parts of the agreement may need to be disclosed to members of school staff for the purposes of administration and implementation.

Steps after Mediation is requested

The PED assigns a Mediator after both parties have consented to mediation.



The Mediator contacts both parties to begin discussing a date for mediation and to have preliminary discussions about the issues and possible resolution.



The parties attend a Mediation session. They can, but are not required to, have legal representation at the Mediation.



The Mediator helps facilitate a discussion and resolution between the parties by a combination of joint and separate discussions, and if the parties are able to reach an agreement, it is memorialized in writing.

State Complaint Investigation

A process which requires that the PED investigate alleged violations of Part B of the IDEA

Parents, any individual or organization can file a state complaint.

A complaint can, but does not have to be, about a specific student. It can be about more than one student and systemic issues.

The complaint must allege violations of the IDEA which occurred within one year from the date of filing the complaint.

The State Complaint Process

The PED gathers information, identifies any violations of the law, issues a written complaint resolution report, and requires corrective action by the LEA, if appropriate.

If the PED finds a failure to provide appropriate services, the PED must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, and the appropriate future provision of services for all students with disabilities.

Steps after a state complaint is filed

The LEA should receive a copy of the complaint from the complainant.



PED will acknowledge the complaint in a letter that sets out issues that will be investigated and documents that are required to be provided by each party by certain timelines.



The parties can decide to resolve the issues through mediation or an FIEP. This is voluntary and requires the consent of both parties.



The investigator will review documents and interview those persons determined to be necessary to complete the investigation. The investigator may also conduct a site visit if necessary.

What to do when you receive a State Complaint

1. Read the Complaint (Complainant must provide to district personnel if they have not already received it)
2. Determine if you want an attorney to assist
 1. If so, forward complaint to your attorney as soon as possible.
 2. Discuss complaint issues with your attorney
3. Begin compiling relevant documents related to the complaint issues
4. Review acknowledgment Letter
 - A) Issues for investigation
 - B) Records and Response Request
6. Consider Alternative Dispute Resolution Options (ADR) (Mediation, FIEP)
7. Provide records to investigator (possibly through attorney)
8. Arrange and participate in requested interviews by investigator
9. Review Complaint Resolution Report if complaint is not resolved through ADR
10. Complete Corrective Action, if required & ask for NMPED technical assistance when needed!

Complaint Resolution Report (CRR)

Within 60 days after filing of complaint, the PED issues a Complaint Resolution Report.

The report will describe the facts, the conclusions and the corrective action required, if any.

PED may not find violations or require corrective action.

Extensions of Time: Exceptional Circumstances Only

Corrective Action Plan (CAP)

Examples of Corrective Action:

- Training
- Revision of policies
- IEP meetings addressing specified elements
- Compensatory Education Services
- Reimbursement

Timeline for Completion:

- Dates for steps outlined in plan
- Goal is to complete all corrective action within deadlines, but in no case later than one year of report

Office of Special Education Monitors Implementation of CAP



CAP Monitor will send introduction email to all parties

Attend a CAP review meeting with LEA staff and OSE staff

Clarify LEA questions about the CAP

Request documents that satisfactorily address CAP steps

Frequently check CAP step progress

Send CAP closing letter to all parties on the CRR cover letter

- An **administrative** hearing process that is conducted by a qualified, impartial Hearing Officer, who is an attorney.
- The complaint must allege violations of the IDEA which occurred within two years from the date of filing the complaint.
 - There are a few exceptions that allow for a complaint to go back farther than two years:
 - ✓ (1) specific misrepresentations by the school that it has resolved the problem forming the basis of the complaint; and
 - ✓ (2) the school's withholding of information from the parent required to be provided by the IDEA.
- A due process hearing has a cost to the District. Under current New Mexico law, the District pays for the costs of the Hearing Officer, the court reporter and transcript, and other miscellaneous hearing costs like interpreters and translation. (Some may be covered by NMPSIA)

ADR in Due Process Cases

The parties have a 30-calendar-day resolution period to try to resolve their dispute before a hearing takes place.

- Depending on what happens, the 30-day-calendar resolution period may be shortened or lengthened.

Resolution Meeting

- To be held within 15 days of receipt of complaint
- Required unless waived in writing by both parties or parties agree to Mediation or a FIEP
- Not confidential unless the parties agree to confidentiality in writing
- Attorney only permitted if both parties have an attorney attending

Option for Mediation or FIEP

- Provided at no cost to the LEA or parent

The Hearing Process

The Hearing Officer holds a prehearing conference and schedules a due process hearing.



The IDEA requires that the final decision be issued within 45 days after the end of the resolution period.



The Hearing

Witnesses testify and exhibits are entered into evidence.



The Hearing Officer issues a final written decision and may order corrective action.

What to do when you receive a Due Process Hearing Request

1. Read the Complaint
2. Determine if you want an attorney to assist
 1. If so, forward complaint to your attorney as soon as possible.
 2. Discuss complaint issues with your attorney
 3. Discuss hearing process with attorney
3. Consider Alternative Dispute Resolution (ADR) Options (Mediation, FIEP, Resolution Session)
 1. Participate in ADR if appropriate
4. Prepare for Hearing (With attorney)
 1. Witnesses
 2. Evidence
 3. Hearing timelines vary significantly (schedule accordingly)
5. Participate in Hearing
6. Complete Corrective Action, if ordered

Contacts and Weblinks

- ADR Coordinator
 - Sharyn Perea – Sharyn.Perea@ped.nm.gov
- Counsel
 - Natalie Campbell – Natalie.Campbell@ped.nm.gov
- Website
 - Dispute Resolution Information and Forms
 - ✓ <https://webnew.ped.state.nm.us/bureaus/special-education/dispute-resolution/>
 - Online Dispute Resolution System
 - ✓ https://newmexicoped.my.site.com/s/login/?language=en_US&ec=302&startURL=%2Fs%2F

Dispute Resolution Numbers 25-26

- **Stand Alone Facilitations 11**
- **Stand Alone Mediations 1**
- **State Complaints 58;**
 - 17 are pending, 41 resolved -- of those, 21 required corrective action
- **Due Process Hearing Requests 11 (1 being expedited);**
 - 6 are pending, no findings with orders yet this year – meaning 5 resolved via alternative resolution agreements/FIEPs

Questions

