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[http://ped.state.nm.us/SED/2012/Due\\_Process\\_Hearing\\_Form\\_02\\_10\\_12.doc](http://ped.state.nm.us/SED/2012/Due_Process_Hearing_Form_02_10_12.doc)

- The district may also request a due process hearing to resolve a disagreement over the appropriateness of its evaluation, to request authorization to conduct an evaluation or a reevaluation when a parent refuses consent, or to ask a hearing officer to move a child to an interim alternative educational setting because his or her presence in the current placement poses a substantial likelihood of risk of injury to the child or others.
- As part of the due process procedure, the district will offer to hold a resolution session with you and other relevant members of the IEP team to address the issues raised in your request, unless you and the district agree jointly not to do so. You will also have the option of having a mediation at state expense to see if the issue can be resolved without a due process hearing. Often a dispute can be settled simply by bringing in an impartial person trained to help the parties find a plan that is mutually agreeable to both sides. Mediation sessions are voluntary.
- You can also participate in a Facilitated Individualized Education Program to try and resolve the misunderstanding. This is not a resolution session and will not be considered part of the resolution session and does not end your right to participate in a resolution session or mediation.

### **The Due Process Hearing**

If you are involved in a due process hearing, whether it was initiated by you or by the district, here are some basics you should know:

1. You have the right to a fair and impartial hearing before a state-appointed hearing officer who is knowledgeable about the laws governing special education and administrative hearing procedures.
2. Within 15 calendar days of receiving notice of the due process complaint and before the hearing begins, the school district must convene a meeting with you and the relevant members of the IEP team who have specific knowledge of the facts. The meeting must include a school district representative who has decision-making authority **and** may not include a school district attorney unless you are accompanied by an attorney. The resolution meeting is not deemed necessary if you and the school district agree in writing to waive the meeting **or** if both parties have agreed to use the mediation process. If the school district has not resolved the due process complaint to your satisfaction within 30 days of the receipt of the due process complaint through mediation, the due process hearing procedures may occur. Except where the parties have jointly waived the resolution process or agreed to mediate, failure to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held. Either party may void any written agreement that resulted from the

resolution meeting within 3 business days of the date the agreement was signed by both parties.

3. The hearing will be scheduled at a time and place that is reasonably convenient for you and your child.
4. You have the right to represent yourself or to be represented by an attorney. Representation from advocacy groups does not equate to being represented by an attorney. Advocacy groups can assist the parent in completing pertinent forms.
5. Upon request, the SED will inform you of any known free or low-cost legal services and such services are listed on the final page of this guide.
6. During the hearing, you or your attorney may present evidence and written and oral arguments. You may require witnesses to attend and you may also confront and cross-examine the district's witnesses. No more than five (5) business days before a hearing, you must share with the district all evaluations completed by that date, and any recommendations based on those evaluations, which you intend to use at the hearing. The district must share the same information with you. If you or the district fail to do this, the hearing officer may prohibit you or the district from using that information at the hearing.
7. The school district or the parent may make changes to the due process complaint if the other party approves in writing and is given the chance to resolve the issue through a resolution meeting or if the hearing officer grants permission if the written request is done no later than 5 days before the due process begins. If changes to the due process request are made the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.
8. Either party also has the right to present evidence and confront, cross-examine, and require the attendance of witnesses as well as prohibit any evidence that has not been disclosed to the other party at least 5 business days before the hearing;
9. You may choose to have the hearing open to the public and to have your child present at the hearing.
10. At any point during the proceedings you may have a mediation conference and/or the party requesting the hearing may withdraw its request.
11. You should expect a written decision within 45 days of when the timeline for the hearing process began, unless the hearing officer grants an extension.
12. You should expect to receive, at no cost to you, your choice of a written or electronic word-for-word record of the hearing and the hearing officer's findings and decision. The findings and decisions will also be mailed to the district.
13. The decision of the hearing officer is final unless either party files a civil action in a state or federal district court through the appeals process in which an impartial review will be conducted.
14. A civil action must be filed no later than 30 days from receipt of the hearing decision in order to appeal the issues raised in the hearing as well as for any request for attorney fees.
15. The findings and decisions of a hearing will be made public.
16. The district pays the costs of a hearing, with the exception of attorney's fees, which are the individual parties' responsibility. In some cases, a court may award part or all of the attorney's fees to you (if you are the prevailing party) or to the district (if

the district is the prevailing party and your claims are frivolous, unreasonable or without foundation or filed for improper purposes). However, hearing officers are not authorized to award attorney's fees.

17. Except for disputes over disciplinary placements and manifestation determinations, the child remains in his or her current placement during due process proceedings until a final decision is reached, unless you and the district agree otherwise or the hearing officer directs other interim placement. Except in the case of short-term suspension (up to 10 days in a district year), the child will continue to receive special education services as directed by his or her IEP. In the case of a dispute over initial placement the district will continue to provide the services that are not in dispute (those which you and the school district both agree upon). If the manifestation determination reveals the behavior was due to the disability, a functional behavioral assessment will need to be completed if not already done so as well as behavioral intervention plan which will be implemented. Once the plan is completed the child will return to the original placement unless you and the school district agree to change of placement as part of the modification or behavioral plan.
18. At the conclusion of the hearing, either party has the right to bring a civil action in a court of law with respect to the due process hearing issues by filing a civil action within 30 days of the receipt of the hearing officer's decision. The laws governing jurisdiction and procedures will apply to any action brought before the court. If the parent prevails in the court's decision, the court may, at its' discretion, award reasonable attorney's fees. This means that if the parents decide to take the matter to court, they must pay for the attorney's services, and that they may or may not get full or partial reimbursement of these expenses if they win the case. However, in order to recover attorney fees, a civil action requesting fees must be filed within 30 days of the receipt of the hearing officer's decision.

### **Private Schools/Home Schools and Special Education**

In most cases, a FAPE can be offered to a child in the public school setting. However, if it is determined by the public agency through the IEP process that a child's right to a FAPE is best served in a specialized private school, then the public agency will fund the child's special education needs in the private setting. Parents who choose to enroll their children with disabilities in private schools, without the participation of the local district in the decision regarding special education services, are responsible for paying the private school tuition and costs. Though each district is obligated to spend a portion of its federal IDEA funds to assist children with disabilities enrolled by their parents in private schools, these children are not entitled to receive all the special education services the child would receive if enrolled in a public school. It is up to the district to decide, on an individual basis, the types of services, if any, to offer a child. Local districts will consult with appropriate representatives of private school children to determine what services will be provided and where the services will be delivered. Children with disabilities that are parentally-placed in private schools receive services under a service plan, which is different from an IEP. If you choose to home school your child, under the IDEA and New Mexico law, the local district is not required to provide a FAPE for your child. Parent(s) who home school their child(ren) must register as a home school parent with the Public Education Department.

## **Gifted Students**

The procedures that relate to gifted students are the same as school-aged children with disabilities, with four exceptions. The four exceptions include:

- 1) child find requirements;
- 2) disciplinary changes of placement;
- 3) transition planning; and
- 4) Free Appropriate Public Education (FAPE) as authorized by State Statute.

## **Parent Resources**

### **NEW MEXICO PARENT ADVOCACY AND SUPPORT GROUPS**

- Arc of New Mexico: (505) 883-4630
- Citizens for the Developmentally Disabled Inc. : (575) 445-5674
- Developmental Disabilities Planning Council: (505) 476-7330
- Governor's Commission on Disability: (505) 827-6465
- New Mexico Family Network: (505) 265-0430 or (800) 273-7232
- Parents Reaching Out: (505) 247-0192 or (800) 524-5176
- Education for Parents of Indian Children with Special Needs (EPICS)  
Toll Free (888) 499-2070 or (505) 404-2070 website: [www.epicsproject.org](http://www.epicsproject.org)

### **FREE OR LOW-COST LEGAL SERVICES**

- Albuquerque Bar Association Volunteer Lawyers: (505) 243-2615
- New Mexico Legal Aid: (505) 243-7871
- Native American Protection and Advocacy Project: (505) 566-5880 or (800) 862-7271
- Disability Rights New Mexico: (800) 432-4682

### **NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

Special Education Division (505) 827-1457  
120 South Federal Place, Room 206, Santa Fe, New Mexico 87501

The Special Education Division can provide forms and assistance with filing an Alternative Dispute Resolution (ADR), complaint or due process hearing and answer questions about the law. Ask to speak to a Parent Liaison.

The Special Education Division web site also has many resources and all necessary forms online: <http://ped.state.nm.us/SED/index.html>.

## **ONLINE AND OTHER RESOURCES IN SPECIAL EDUCATION**

For more information about the topics in this guide or other issues regarding special education, extensive help and guidance is available online:

- The website of National Dissemination Center for Children with Disabilities is a comprehensive source for administrators, educators, and parents at: <http://nichcy.org/>. NOTE: This organization is no longer being supported by funding, however, the website will be operational until September 30, 2014.
- Built on the concept of “parents helping parents,” the Pacer Center, Inc., (Parent Advocacy Coalition for Educational Rights) offers a wide range of materials, information and assistance to families, at: <http://www.pacer.org/>.
- The information presented by the Center on Positive Behavioral Interventions and Support is available in both English and Spanish at: <http://www.pbis.org/>.
- View the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) or further explore federal regulations and issues at the *United States Office of Special Education Programs* (OSEP), at: <http://idea.ed.gov>.
- Obtain the New Mexico state special education rules online through the Public Education Department as well as links to other topics related to special education in New Mexico, at: [www.ped.state.nm.us/SED/index.html](http://www.ped.state.nm.us/SED/index.html).
- Parents Reaching Out (PRO), at: <http://www.parentsreachingout.org/>.
- Education for Parents of Indian Children with Special Needs (EPICS), at: [www.epicsproject.org](http://www.epicsproject.org).
- National Center on Educational Outcomes, at: <http://www.cehd.umn.edu/nceo/>.
- Disability Rights New Mexico, at: <http://www.drnw.org/>.
- University of New Mexico, Center for Development and Disability, at: <http://www.cdd.unm.edu>.
- University of New Mexico, Center for Development and Disability, Resources, at: <http://www.cdd.unm.edu/Resources.html>.
- New Mexico Family Network: <http://www.newmexicofamilynetwork.org>.
- Nation Center for Dispute Resolution (CADRE), Resources for Family Members: <http://www.directionservice.org/cadre/forfamilymembers.cfm>.