

## INTRODUCTION TO SPECIAL EDUCATION TRAINING VIDEOS

- The Individuals with Disabilities Education Act was reauthorized and signed into law on December 3, 2004 and final federal regulations were published on August 14, 2006. After publication of the final federal regulations, the State of Missouri promulgated revised State Regulations and revised the Compliance Program Review Standards and Indicators Manual and numerous model forms. This presentation, **The Complaint Process**, is one in a series of trainings to inform the field of the major changes in state and federal regulations and the implementing changes made in the Compliance Standards and Indicators Manual and the state model forms.

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## The Complaint Process

- Child complaint process
  - Investigated by the Division
- Due Process procedure
  - Formal hearing process

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## Child Complaint process

- Who can file?
  - Parents
  - Individuals
  - Organizations
- How do they file?
  - A written complaint sent to the Division of Special Education with detailed description of the problem
  - A copy of the complaint sent to the district

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● Why file a complaint?

- Concern that procedures have not been followed
- Dissatisfied with the actions of the school district

● When should a complaint be filed?

- Within 1 year of the occurrence of the issue complained about

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● How is the complaint processed?

- The complaint is reviewed and the allegations are phrased as "The ABC school district, in violation of state and federal regulations implementing the IDEA \_\_\_\_\_"
- Notice is sent to the district with a request for a response

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- The investigator collects documents and conduct interviews about the issues raised
  - Either side can see what the other has provided
- Based on the information collected finding of facts are developed
  - Findings state what was alleged and the response

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• A determination is made whether there has been a violation of the IDEA and the Commissioner of Education informs the parties whether a school district is found not out of compliance or out of compliance

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• If a district is found out of compliance but has taken voluntary corrective action to come into compliance no further action is needed

• If a district is found out of compliance they can be ordered to undertake corrective action

- Make assurances
- Determine if compensatory education is needed
- Participate in technical assistance activities

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• The complaint is to be processed within 60 days of filing unless an extension is granted

• There is no appeal from a child complaint decision

• If a child complaint raises an issue that is part of a pending due process hearing the issue is not investigated

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## Mediation as a way to resolve the dispute

- Mediation is offered when a parent files a complaint
- Mediation is voluntary and both sides must agree
- The parties choose a mediator from a list of trained mediators kept by the division
- The parties contact the mediator and determine availability
- The state pays all the expenses

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- The purpose is to resolve the issue in a mutually agreeable way
- If agreement is reached the child complaint is withdrawn
- If no agreement is reached the complaint is investigated
- If a party does not comply with the agreement an enforcement action can be brought in court

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## Due Process

- Who can file?
  - Parent
  - School district
- How do they file?
  - File a written complaint with DESE
  - Description of the problem
  - Proposed resolution

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Why do they file?

- Can be procedural or substantive issues but based on the provision of FAPE
  - Parent
    - Unhappy with provision or refusal of services
    - Want the child to stay in current placement when a change has been proposed
  - District
    - To require parent to consent to evaluation or services

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How is the complaint processed?

- Copy of the complaint sent to the other party
- Each party chooses a hearing panel member from a list maintained by DESE
- Parties can object to the hearing panel member chosen by the other side and a new one will be selected
- DESE assigns the case to a chairperson who is an attorney
- Parties may object to the chairperson and a new one will be appointed

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Responding party can object to the sufficiency of the complaint

When a parent files the due process the district must send the parent a response showing why the action was done, describing what other options were rejected and a description of the evidence used to make the decision.

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## Resolution Meeting

- Within 15 days of the filing of a due process complaint the district must convene a resolution meeting with the parent and the IEP team
- Purpose- to discuss the facts underlying the complaint and give the district a chance to resolve the dispute
- If no resolution within 30 days the hearing may occur

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- If resolution is reached the parties enter into a legally binding written agreement
  - Agreement is enforceable in court
  - Either party can void the agreement within 3 business days

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## Mediation

- Parties are offered the opportunity to mediate the issues in the due process complaint
- The parties agree on a mediator from a list provided by the division
- Must be completed within 30 days of the agreement to mediate
- No attorneys participate

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● If agreement is reached the parties enter into a written agreement that acknowledges that the discussion during mediation is confidential and can not be used in subsequent due process hearings

● The agreement is enforceable in state or federal court

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### Hearings

● Due process hearing must be held within 45 days of:

- The expiration of the 30 day resolution period
- Waiver of the resolution meeting
- The parties agree within 30 days of starting resolution or mediation that no agreement can be reached
- The mediation time frame was extended but a party withdrew from mediation

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● Within 7 days a pre-hearing conference is held

- Purpose to establish the procedures for the hearing (time, place, rules etc.)
- Issues are identified and frivolous or untimely complaints dismissed

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**Hearing**

- The hearing is before a panel of 3
- Evidence is submitted
- Parties can cross examine witnesses
- Parties can prohibit the introduction of evidence if it was not disclosed to the other side 5 days before the hearing
- Verbatim record is maintained of the hearing

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**Decision**

- A written decision is issued following the hearing
- Has findings of fact and a decision on each issue
- Difficult burden to show a procedural error resulted in a denial of FAPE
- Parties unhappy with the decision have 45 days to appeal to state or federal court

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**Maintenance of Placement- Stay Put**

- Child remains in the placement they were in on the day the due process complaint was filed
- Parties can agree to a change
- A court can order placement for students who are a danger to themselves or others

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## Summary

	Child Complaint	Due Process
Who can file?	Parent (educational decision maker) Individual Organization	Parent (Educational decision maker) District
Time to file	Within 1 year of the issue	Within 2 years of the issue
Time limit to make decision?	60 days from filing of complaint	45 days after resolution meeting or failure of mediation
Extensions permitted?	Yes	Yes
Who investigates?	Division staff	The parties and then the evidence is presented at the hearing.
Who makes the decision?	Commissioner of Education	Three person hearing panel
Stay Put apply?	No	Yes
Can the decision be appealed?	No	Yes

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- Resources and handouts for each of the presentations in the series can be found at the following website <http://www.dese.mo.gov/divspeced/Compliance/index.html>.
- The Division of Special Education welcomes questions that participants may have after viewing the presentations. Questions can be submitted to the following mailbox [webreplyspe@dese.mo.gov](mailto:webreplyspe@dese.mo.gov) or by calling the Division of Special Education at 573-751-0699.

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- We hope you enjoy this series of trainings and find the information useful in your role as an educator, parent, advocate or other individual interested in the education of children with disabilities.
- Other topics in this series are:
  - Discipline for Children With Disabilities
  - Data Collection and Reporting Overview
  - Finance of Special Education
  - The Special Education Process and Changes in IDEA
  - The Complaint Process
  - Administration of Special Education
  - Response to Intervention/ Early Intervening Services
  - Transition

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