

# Dispute Resolution Trends



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***Office of Superintendent of Public Instruction***

Special Education  
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[www.k12.wa.us/specialed/default.aspx](http://www.k12.wa.us/specialed/default.aspx)



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# IDEA offers three formal dispute resolution options

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- Due Process Hearings
- Citizen Complaints
- Mediation

# Indicators for Dispute Resolution

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- **Indicator 16:** Percent of complaints resolved within 60 days or an allowable extension.
- **Indicator 17:** Percent of decisions within 45 days or an allowable extension.
- **Indicator 18:** Percent of hearing requests resolved through a resolution session.
- **Indicator 19:** Percent of mediation requests resolved through a mediation agreement.

*See also: Indicator 15: Timely compliance*

# Due Process Hearing Requests

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- May be initiated by a parent or school district over matters involving:
  - *Identification, evaluation, educational placement of, or provision of FAPE to a student.*

# When Parents File the Request

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Districts must, **within 10 days**, *either*:

- File a response to the request, or,
- Send a prior written notice regarding the issues raised by the parent, if it has not already done so.

Districts must, **within 15 days (7 days for expedited)** of receipt of the request:

- Convene a resolution meeting with the parent, *unless*:
  - The parties jointly agree in writing to waive the resolution session, or,
  - Agree to participate in mediation.

If parents do not participate, districts may request that the ALJ dismiss the hearing.

If districts do not convene the resolution hearing, this is a **compliance** issue. Parents may also request that the ALJ begin the timeline for the due process hearing.

# When Districts File the Request

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- A resolution session is not required.
- The 45 day timeline begins the day after the request is filed.

*Hearing Procedures and Timelines, and Resolution Session Information* is located on our website at:

<http://www.k12.wa.us/SpecialEd/DisputeResolution/DueProcess.aspx> under quick links.

# Due Process Hearing Requests

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## **2010: 109 requests**

Decisions: 14 (Including consolidated)

For Parent: 1

For District: 10

Split: 3

# Hearing Requests (continued)

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- There may be more than one hearing request on the same student.
- Timelines for hearings may be extended at the request of either party.

# When Districts Request Hearings

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- Obtain consent for evaluations and reevaluations. (*Optional*)
- Disciplinary exclusion hearings when requesting removal for dangerous behavior.
- If a district disagrees with a parent's request for an IEE, the district must initiate a hearing within 15 calendar days to show its evaluation is appropriate; **Or,** if contesting qualifications of IEE provider.

# Representative Issues by Parent

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- Evaluations and Eligibility
- Parent participation
- Placement
- Discipline – Manifestation, Services
- IEP implementation – Services, progress reporting

# Administrative Hearing Standards

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- Party bringing hearing bears burden of proof.
- US Supreme Court set forth a two-part test for compliance with IDEA:
  1. Has district complied with procedures set forth in IDEA?
  2. Is the IEP developed through the use of procedures, reasonably calculated to enable the child to receive educational benefit?

# Administrative Hearing Standards (continued)

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The ALJ's determination of whether a student received FAPE must be based on substantive grounds and only if procedural inadequacies:

- Impeded the student's right to a FAPE;
- Significantly impeded the parent's opportunity to participate in the decision making process;  
or,
- Caused a deprivation of educational benefit.

**Note:** ALJ's may still find procedural violations.

# Review of Hearing Decisions

## LEA Application Form 265

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Districts must address actions in response to due process hearing decisions that require corrective action including:

- a) cause number;
- b) description of action;
- c) date completed; and
- d) description of the district's plan to ensure that the issue(s) does not recur.

This means that districts must address both student specific corrective actions **AND** steps taken to fix the issue at the district level.

# Relationship Between Citizen Complaints and Due Process

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- OSPI cannot investigate matters that are currently the subject of a due process hearing.
- OSPI cannot investigate any issues previously decided in a due process hearing.
- OSPI must resolve complaints alleging a public agency's failure to implement a due process decision.

# Citizen Complaints

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Any person or organization may file.

- Allege violations Part B of IDEA; or,
- Allege district is not implementing a mediation or resolution agreement.

Violations must have occurred within one year of complaint.

# Responding to Complaints

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- Conduct your own investigation.
- Assemble documents and review the documents.
- Prepare reply.
- Use neutral language in your reply.
- Admit or deny and offer corrective actions for any admitted violations .
- Provide explanation and documentation of issues.
- Consider whether you and the parent can resolve the dispute.

# OSPI's Investigation

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- May be on information provided by district and parent in response and reply.
- May include an on-site investigation, interviews and requests for additional information.
- Decision addresses issues identified in complaint, including findings of facts, conclusions of law and the reasons for the decision.
- If OSPI finds violations, it issues corrective actions, which can include student specific and district specific corrective actions.

# Citizen Complaints

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## **2010**

- 38 filed
  - 5 for district
  - 7 for parent
  - 19 split
  - 7 withdrawn / closed

## **2011** to date

- 28 filed
  - 3 for district
  - 5 for parent
  - 11 split
  - 2 withdrawn / closed
  - 7 pending

# Mediation

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Mediation is a process offered for parents and districts to try and resolve disputes and reach an agreement. Mediation:

- Is voluntary.
- Can be requested by either the parent or district.
- Can not be used to deny or delay parents rights to due process or other rights.
- Discussions are confidential.

Agreements:

- Are legally binding.
- Are enforceable in court or are reviewable in a citizen complaint.

# Mediation

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## **2010**

- 54 cases (7 from prior year)
- 18 requests refused by other party
- 4 requests were withdrawn prior to mediation
- 2 were resolved during intake
- 22 proceeded to mediation
- 15 reached full or partial settlement
- 7 pending at end of year

# Trends

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- Child find
- Discipline
- Evaluation, review of existing data and documentation of assessments
- IEP implementation: Progress reporting (data collection) and Transfer procedures
- Parent participation
- Prior written notice



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## Special Education

### Dispute Resolution

Parents are important participants in all aspects of their children's special education program. This involvement begins at the initial referral of a student for special education. The Office of Superintendent of Public Instruction (OSPI), Special Education Section always encourages parents and school districts to work together to try to resolve disagreements that affect a student's special education program. There will be occasions when a parent or an adult student disagrees with the districts program and does not think that the issues can be resolved through the Individualized Education Program (IEP) team or through communication with school district administrators. There will also be times when a district believes that it is unable to resolve disputes with a parent that involve the district's ability to provide a free appropriate public education (FAPE) to the student. When parents and districts are not able to resolve differences through direct communication, there are more formal dispute resolution options available.

The following pages (follow links below) provide an overview of the three dispute resolution processes available for students age 3 through 21 under Part B of the Individuals with Disabilities Education Act of 2004 (IDEA). More information about these dispute resolution processes and other procedural protections for special education students are described in the Notice of Procedural Safeguards given to parents by school districts and available on the OSPI, Special Education publications webpage.

#### Quick Links

[Guidance for Families about Special Education Services](#)

[Special Education Ombudsman](#)

[Legal Assistance List \(PDF\)](#)

[Notice of Procedural Safeguards](#)

#### Contact Information

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# For more information...

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