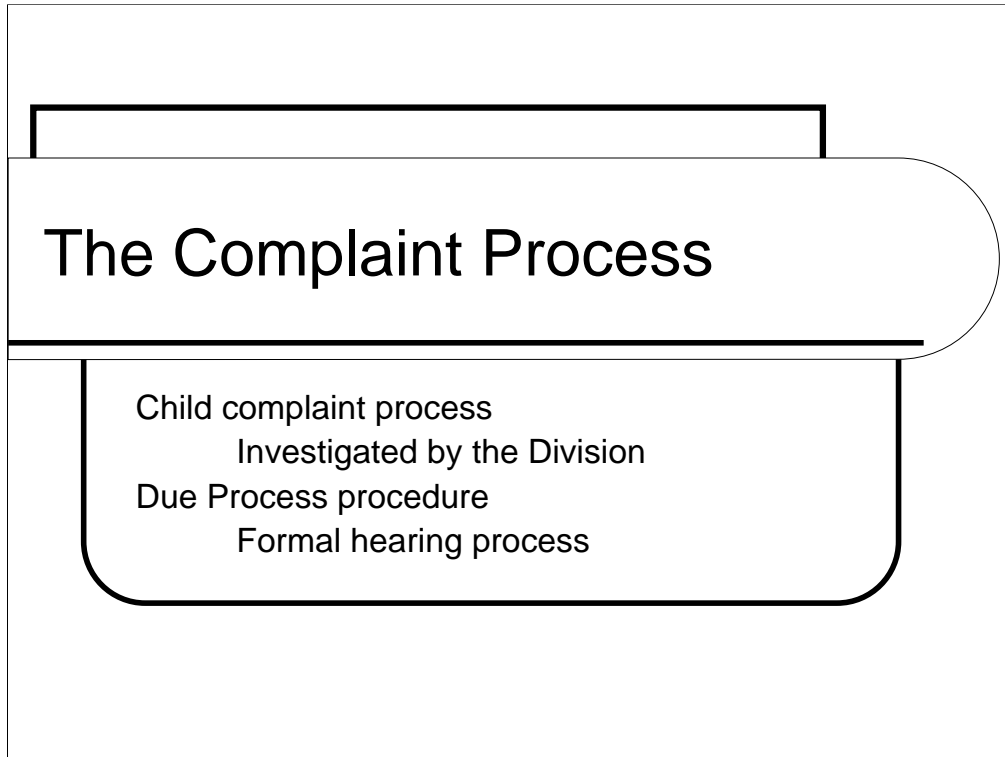


INTRODUCTION TO SPECIAL EDUCATION TRAINING VIDEOS

- 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.



Any individual or organization who believes that the Individuals with Disabilities Education Act (IDEA) has been violated can file a child complaint. The complaint is investigated by the division of special education.

Only a parent (the educational decision maker) or the school district can file a due process complaint. A due process complaint raises issues about a proposal, or the refusal to initiate or change the identification, evaluation or educational placement of a child with a disability or the provision of a free and appropriate education for a child (FAPE). A due process hearing is conducted by a three person panel who hears evidence and makes findings of fact and conclusions of law.

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

Parents obviously have a concern about their child, but can file about any child. Other individuals can file a complaint about a specific child or about a system-wide procedure.

The website for the Division of Special Education has a model complaint form. The use of the form is not required but it contains all of the information needed to begin an investigation. Generally the name of the child and the school district must be identified as well as an explanation of the issue. Only issues alleging a violation of the IDEA are investigated. The complainant must also provide a proposed resolution to the problem and the complaint must be signed. A copy must be sent to both DESE and the district.

- 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

Why would a party file a complaint? Because they have a concern that procedures have not been followed or they are dissatisfied with the actions of the school district concerning rights under the IDEA.

Common issues raised in complaints include a failure to follow procedural requirements (the provision of safeguards, the failure to provide notice for IEP meetings, not timely holding the annual IEP review) or substantive concerns (the services are inappropriate based on the evaluation information and present level of performance).

The complaint must allege something that happened within the prior year or it will be time barred

- 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

When the complaint is received by the division a staff member reviews it to determine what issues have been alleged. The staff then frames the issue in the form of “The ABC school district, in violation of state and federal regulations implementing the IDEA _____” Sometimes when attempting to frame the issue the staff has to call the complainant for clarification. The allegations are phrased in this way to set forth a violation of the IDEA. Allegations that do not concern the IDEA can not be investigated.

Once the allegations are framed a letter is sent to the complainant acknowledging receipt of the complaint, showing the allegations that will be investigated and asking for documentation or information to be considered during the investigation. The letter notifies the complainant of the opportunity to participate in mediation. Included with the letter is a copy of the procedural safeguard statement.

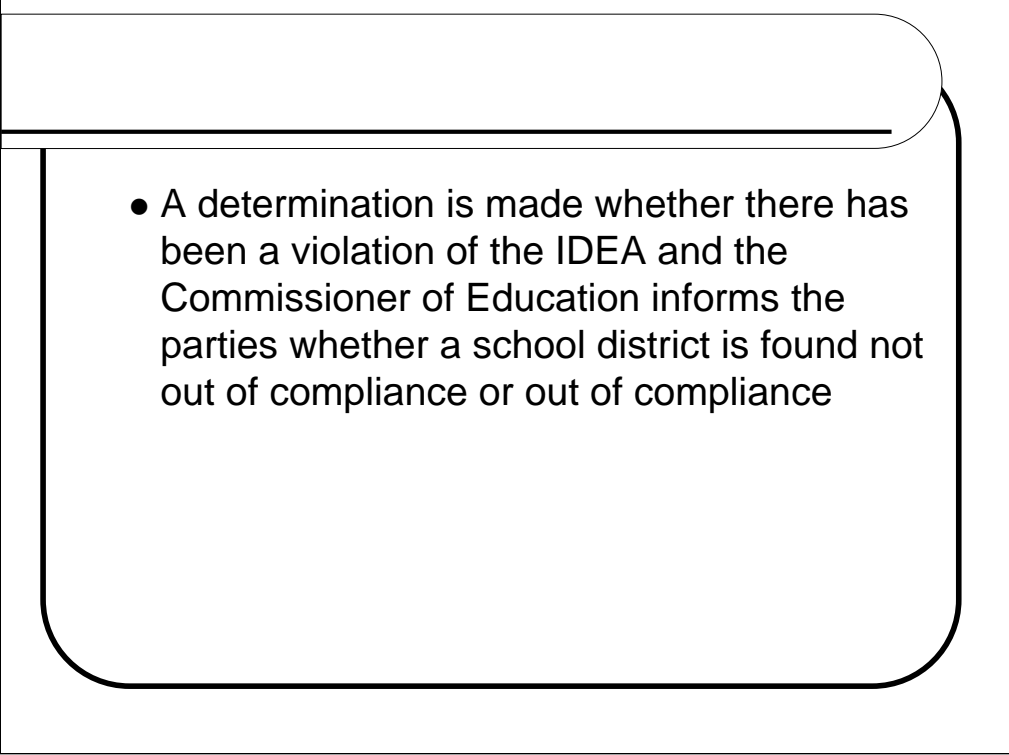
A letter is also sent to the superintendent of the district informing them of the complaint, offering the opportunity to mediate and requesting documentation and other information needed to complete the investigation.

Because the investigation must be completed within 60 days districts are given a short time to respond.

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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

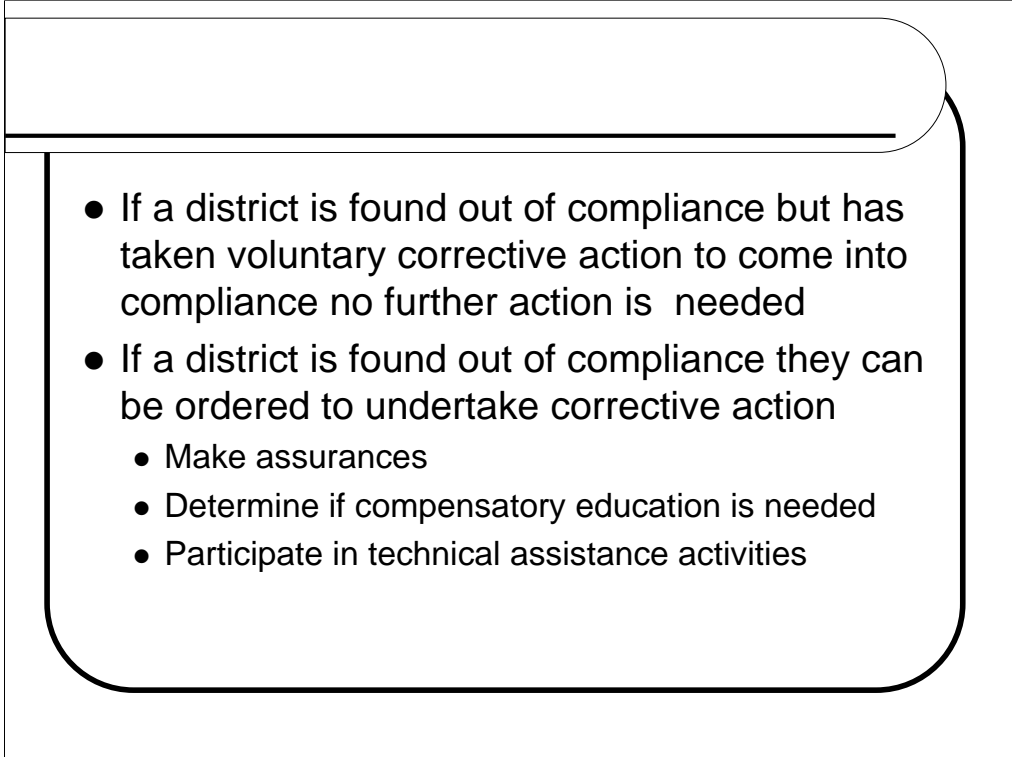
The investigator collects the documentation from the complainant and the district. Telephone interviews are conducted of the people identified as having information about the issues raised in the allegations. The same person may need to be contacted more than once as the investigation progresses. Often times someone will be called and asked to respond to statements made by others. The supervisor may request certain documents to verify or deny statements made by people interviewed. On site visits are done if needed.

After the investigator has reviewed the documents and finished the interviews s/he drafts findings of fact. They always start with what the complainant alleged and what the documents provided by the complainant show. Then the findings set forth the response of the district. The investigator then reviews those finding to determine if there has been a violation of the IDEA. The decision portion sets forth the law and then applies the law to the facts.

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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

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.

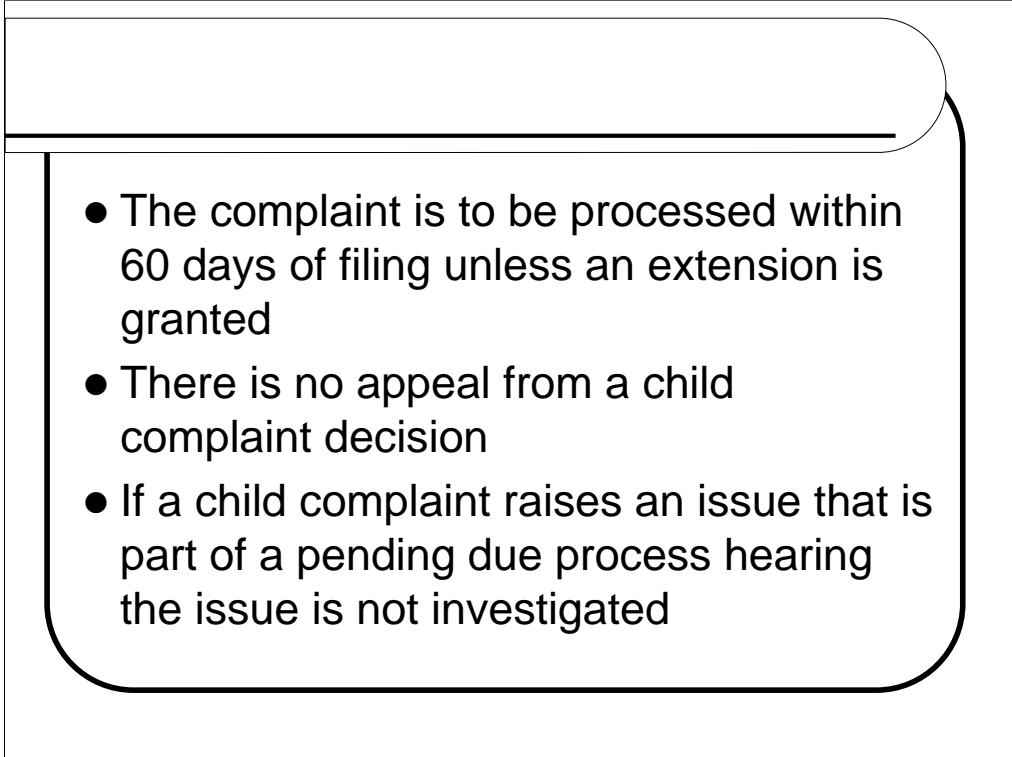
A separate determination is made for each allegation.

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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

Districts found out of compliance must take actions to remedy that violation. Sometimes districts have discovered and remedied a problem before the division investigates the matter. In that case the Commissioner recognizes that the correction has already been made and no further action is necessary.

If a district is found out of compliance they can be ordered to take corrective action. That may be providing a statement of assurances that the error will not be repeated. If the violation resulted in a denial of FAPE the district may be ordered to consider and provide, if appropriate, compensatory education. Finally a district may be told to participate in specific technical assistance activities.

The division only makes findings on the allegations alleged in the complaint. Sometimes districts have done more than the IDEA requires and that extra component has led to the complaint. In those instances the district is informed in the decision that it was not required to take that extra step. Occasionally other notes are made about the facts that were found and how a violation could have been avoided.

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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

Complaints are to be processed within 60 days of receipt unless an extension has been granted. The division generally completes the child complaint process within the 60 days. Extensions are granted only when extenuating circumstances exist such as the amount of documentation makes a thorough review difficult in 60 days or crucial witnesses are not available to be interviewed.

There is no appeal from a child complaint investigation. Parents or school districts who are dissatisfied with the decision may be able to file a due process complaint.

There is no limit on the number of child complaints a party may file. If a party has a pending due process complaint and files a child complaint the division will look at the issues. If the child complaint alleges issues that are also a part of the due process complaint those issues will not be investigated as they will be resolved as part of the due process.

Following the decision a satisfaction survey is sent to the parties for input on the process.

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

When a parent files a complaint the initial letters from the division to the complainant and the district offer the opportunity for the parties to mediate the dispute. The process is voluntary and both parties must agree to participate. A list of trained mediators is provided to the parties. The parties agree upon a mediator from the list and they contact the mediator to insure their availability. The division then formally notifies the mediator and the mediator arranges the date, time and location of the mediation. The Division pays all the expenses of the mediator.

Mediation is also available before a party files a due process complaint or after the due process complaint has been filed.

- 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

If the mediation is successful and an agreement is reached the mediator puts it in writing and sends the agreement to the parties and the division. A successful mediation resolves the child complaint and the complaint is withdrawn. If the mediation is not successful the complaint is investigated.

If the parties do not comply with the mediated agreement one of the parties can pursue an enforcement action in court.

Due Process

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

The due process complaint is a more formal process and is handled by an impartial 3 person hearing panel.

Only parents or school districts can file a due process complaint. Under the IDEA parents is not limited to biological parents but includes anyone who acts as an educational decision maker. A model form is found on the division's website but its use is not required. The complaint must be in writing, describe the problem and set forth a proposed resolution. Only alleged violations of the IDEA will proceed to a hearing.

- 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

A due process complaint can allege a substantive or procedural issue resulting in a denial of FAPE. The complaint must allege a violation that happened within the last 2 years.

Parents file due process complaints when they believe their child has been denied FAPE, they disagree with the placement or services set forth in the IEP or they want to insure that their child stays in the current placement when a change has been proposed. When a due process complaint is filed the child “stays put” in their current placement pending the outcome of the hearing or until the parents and the district agree to a placement.

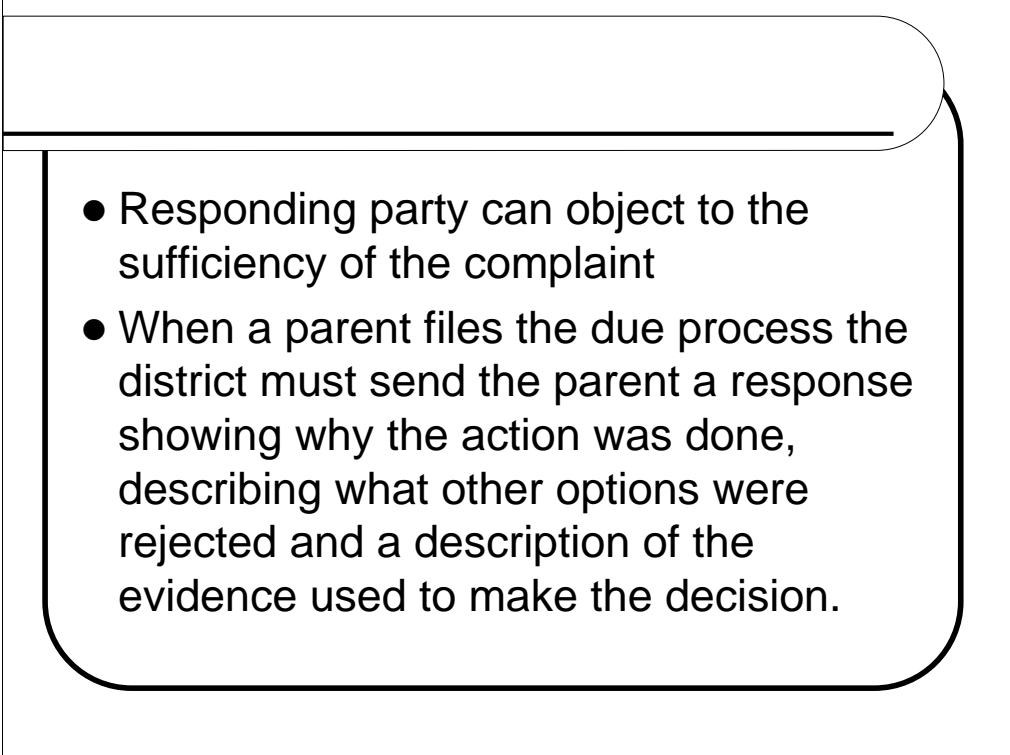
A district can file a due process complaint to require a parent to consent to an evaluation or to get confirmation that the services provided are providing FAPE.

- 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

The due process complaint is sent to the division and to the other party. The division sends the parent and the district a letter setting forth the process. Each side is asked to pick a hearing officer from a list provided by the division. The party contacts their choice and confirms their availability for the hearing, and then informs the division. The division assigns the chairperson who is an attorney on contract with the department.

Under the new regulations a party can object to the hearing panel member selected by the other side. A new member will be selected. A party only gets one substitution. Either party can object to the chairperson and a new one will be appointed.

The members of the hearing panel must be impartial. The chairperson must be an attorney under contract with the State of Missouri. The chairperson coordinates all the procedural aspects of the hearing.

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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.

The responding party can object to the sufficiency of the complaint within 15 days of receipt. The hearing chairperson then decides if the complaint meets the requirements.

When a parent files a complaint the responding party (the district or the state agency) has 10 days to send a response to the parent explaining why they took or refused to take the action which is the subject of the complaint, describing other options that were considered and the reasons they were rejected and describing the evaluation process or other information that was the basis of the action and other factors that were relevant to the decision.

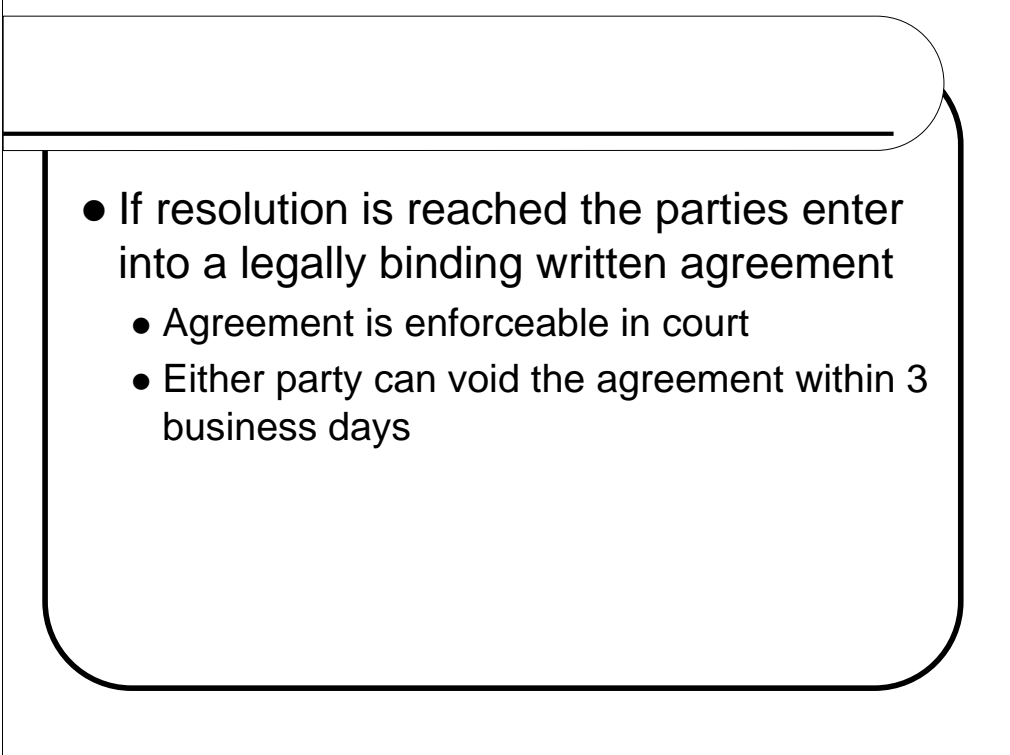
In addition the party who did not file the complaint has 10 days to respond to the complainant specifically addressing the issues in the complaint.

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

Within 15 days of receiving a parents' due process complaint the district must convene a meeting with the parent, the IEP team members with knowledge of the facts in the complaint, and a representative of the district with decision making authority to discuss the complaint and the facts underlying the complaint and to give the district an opportunity to resolve the issue.

If no resolution is reached within 30 days the hearing may occur.

- 
- 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

If resolution is achieved at the meeting the parties enter into a legally binding agreement that is signed by the parent and the representative of the district with authority to bind the district. This agreement is enforceable in a state or federal court.

Either party can void the agreement within 3 business days of the agreement.

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

Parties have the opportunity to mediate a dispute before or after filing a due process complaint. The parties agree on a mediator from a list provided by the division. Mediators are approved by the division after training and demonstrating a knowledge of special education laws and regulations. Mediators must be fair and impartial and free from any conflict of interest.

The mediation must be scheduled within 15 days of the selection of the mediator and completed within 30 days of the agreement to mediate. No attorneys may be present at a mediation, but a parent can bring a lay advocate. No more than 3 persons can accompany each party unless the parties agree on more.

- 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

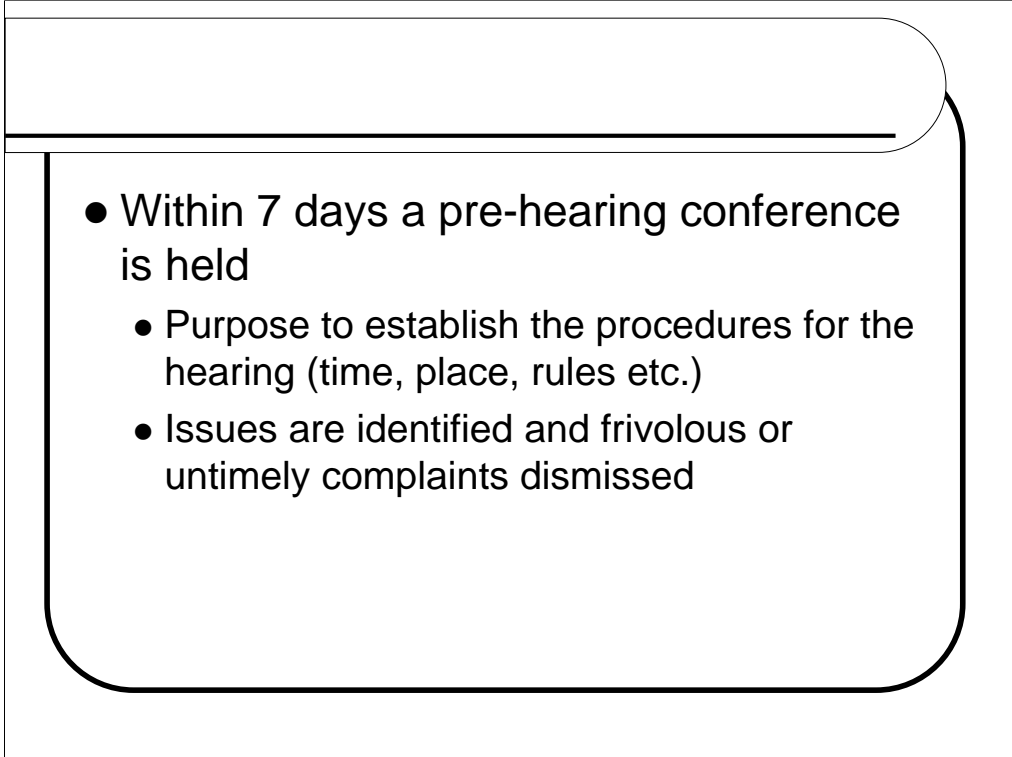
- Due process hearing must be held within 45 days of:
 - The expiration of the 30 day resolution period
 - Waiver of the resolution meeting
 - The parties agree within 30 days of starting resolution or mediation that no agreement can be reached
 - The mediation time frame was extended but a party withdrew from mediation

Due process hearing must be held and the decision mailed within 45 days of:

The day the resolution meeting was waived

The date when the parties determined during the 30 day resolution or mediation period that no agreement could be reached

When a party withdraws from mediation

- 
- 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

Within 7 days of the start of the 45 day time line a prehearing conference must be held. The chairperson handles the conference which may be in person or by phone. Within 5 days of the conference the chairperson issues a scheduling order.

The chairperson establishes the management, control and location of the hearing to ensure that the hearing will be fair and efficient. The time each party will have to present the case is determined. The hearing should generally last no more than 2 days, unless there are extraordinary circumstances. Good cause must be shown for a hearing to exceed 5 days.

At the prehearing conference the parties will agree upon written exhibits and witnesses. Issues will be identified and frivolous issues eliminated.

The parent is not required to have an attorney. When a parent files a due process complaint the division provides information on obtaining an attorney if the parent is interested.

- 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

If prior to the first witness the chairperson determines there are no issues to be addressed at a due process hearing pursuant to the IDEA the chairperson shall dismiss the hearing.

The chairperson presides over and conducts the hearing which is held before the 3 panel members. The chair may limit the issues and length of presentations. The parties present their evidence in the form of witnesses and documentation. Parties can cross examine witnesses. The panel members can question witnesses and request information. Evidence can be kept out of the hearing if it is not disclosed to the other side 5 days before the hearing.

A verbatim record is made of the hearing and is available to the parties following the hearing.

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

The attorney chairperson writes the decision for the panel reflecting the views of the majority. The decision states the issues, includes findings of fact and a decision on each issue. Final decisions are posted on the Division's website without mention of the student's name or other personally identifiable information.

A hearing panel can make a decision on the denial of FAPE based on substantive or procedural reasons. However, in order for a violation of a procedural rule to constitute a denial of FAPE the procedural defect must have impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process on the provision of FAPE or caused a deprivation of educational benefit.

Any party aggrieved by the decision may bring a civil action in state or federal court. The appeal must be filed within 45 days of the date of the decision. Parents do not need an attorney to represent their interests in court.

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

Stay out means that a child remains in the placement they were in on the day of the filing of the due process complaint unless the parties agree to a change. If the hearing officer agrees with the parents that a change of placement is appropriate the change is treated like an agreement to change placement.

If the complaint involves an initial application for admission to public school the child, with parent's consent, must be placed in public school until the completion of the proceedings.

A court can order a change of placement during the stay put period if a student is a danger to themselves or others.

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 filling 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

Here is a brief summary panel of some, but not all of the differences between a child complaint and a due process complaint.

Another good reference for an explanation of the complaint process is the Procedural Safeguards Notice which can be found online at http://www.dese.mo.gov/divspeced/Compliance/Proc_Safe/index.html

- 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>.
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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
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 - Response to Intervention/ Early Intervening Services
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Thank you for taking the time to view the session on the Complaint Process.