

Dispute Resolution Under the IDEA

August 2020



Norms

Please...

- be an engaged participant
- be an active and respectful listener
- use electronics respectfully
- take care of your needs
- observe social distancing at all times

Say: "Please take a look at these norms. Are there any additional norms that you would like to add?"

Agenda/Training Outcomes

- Discussion of ways to prevent conflict
- Discussion around resolving conflict
- Become familiar with resources from The Center for Appropriate Dispute Resolution in Special Education (CADRE) along with the resources from the DESE webpage to help you navigate conflict and dispute resolution
- Understand the stages and timelines for Missouri's Dispute Resolution Process as outlined by the IDEA along with the Procedural Safeguards
 - This will include Facilitated IEPs, Mediation, Child Complaints, and Due Process

Read the slide to participants

How Do I Avoid Dispute Resolution Processes?



- Prevention is the best way to avoid being involved in dispute resolution
- Sometimes, you just can't avoid conflict
- When you have unresolved conflict with a family, you may well find yourself in a phase of dispute resolution – or in every phase of dispute resolution at one time or another
- What is conflict:

conflict in British English

noun (ˈkɒnflɪkt) 1. a struggle or clash between opposing forces; battle. 2. a state of opposition between ideas, interests, etc; disagreement or controversy.

Read or paraphrase the slide. Feel free to add an example from your own experience....

Reflection:



- Think about a time when you had a professional conflict with someone.
- What was the source of why the conflict originated?

(Click for each line to show up)

Give them a couple of minutes to think about a time they had conflict.

Give them a couple of minutes to think about question and ask for some volunteers to share.

How do we get in a position of conflict with families?

- Poor/unclear communication or LACK of communication (also miscommunication)
- Language (body language, how you say what you say, are you a “NO” person or do you listen and try to meet requests in a way both can live with?)
- Lack of planning
- Lack of follow-through (when you say you are going to do something, do it)
- Rushing through meetings or rushing through compliance steps
- Lack of meaningful parent participation
 - Using terms or acronyms that prevent parent participation
- Personal baggage or history with family
- Preconceived beliefs
- Are there other things you can think of?

Read the slide – feel free to provide an example from your experience or let the audience talk

A National Resource for Dispute Resolution

- CADRE = Center for Appropriate Dispute Resolution in Special Education
- CADRE is funded by the Office of Special Education Programs at the US Department of Education and they serve as the National Center on Dispute Resolution in Special Education.
- CADRE's major emphasis is on encouraging the use of mediation, facilitation, and other collaborative processes as strategies for resolving disagreements between parents and schools.
- CADRE houses data on dispute resolution for all 50 states

We are going to talk about CADRE's Continuum of Dispute Resolution

The Continuum of Dispute Resolution

CADRE's continuum:

- **Stage 1: Prevention**
- **Stage 2: Disagreement**
- **Stage 3: Conflict**
- **Stage 4: Procedural Safeguards**
- **Stage 5: Legal Review**

• Reference: <https://www.cadeworks.org/cadre-continuum>

Stage 1: **Prevention** – the easiest way to manage conflict is to prevent it from occurring

How can you prevent conflict?

- **Building Capacity** – provide your team with PD on learning how to collaborate, resolving conflict, negotiating to reach consensus, etc.
 - You must build the capacity of your team to have knowledge of process and procedures but they also have to learn how to facilitate meetings and get teams “unstuck” to reach consensus
- **Family Engagement** – research shows families who participate meaningfully and are engaged in their child’s education, increase outcomes for the student; “joint agenda setting and decision-making and is evidenced by higher levels of trust.”
- <https://www.cadeworks.org/cadre-continuum/stage-i-prevention>

CADRE recommends preventing conflict using these two strategies as well as the two on the next page. Feel free to give real life examples from your experience in how you maybe used, or know of someone, who has done one of these four things....

Stage 1: **Prevention** – the easiest way to manage conflict is to prevent it from occurring

- “**Stakeholder training** is aimed at equipping stakeholders - **parents**, educators, service providers, advocates and others - with skills that enhance their capacity to communicate, negotiate and prevent conflict from escalating.”
 - Educating your parents is key – think about ways to share information with them so you are educating them on the process and compliance requirements; the more you meet with families outside of the IEP process, the more you can try to build relationships and mutual respect when you aren’t in the middle of how things specifically impact their child; think about training families in methods to communicate effectively and strategies to negotiate conflict outside of real conflict;
- **Advisory Councils** to help guide policies, decisions, etc. when applicable; Parent advisory councils, or even a parent special education PTA group, anytime you can be working collaboratively with a group that has parents in it, you are helping to build a relationship and allowing them to see who you are as a leader and thinker – don’t waste those opportunities

<https://www.cadreworks.org/cadre-continuum/stage-1-prevention>

Stage 2: Disagreement

- Disagreements will occur when we are talking about the serious business of educating someone's child
- Perhaps the best way to navigate disagreements so they don't turn into conflict is to have processes in place for communication to occur – active listening, brainstorming, problem-solving, use of a trusted person
- CADRE discusses options such as parent-to-parent assistance (in MO those would be MPACT and MOP&A), case managers (the special ed staff member managing the paperwork is really the liaison for families, teachers, administrators, service providers – the person who helps facilitate tough conversations)
- <https://www.cadeworks.org/cadre-continuum/stage-ii-disagreement>

Paraphrase slide – if you have a positive experience to share about MPACT or MOP&A, you can share that as well

(Case managers is meant to be the special ed staff member handling the paperwork – they are generally the person who has the most contact with parents of the student so hopefully the parent trusts them more and that can help them negotiate)

Stage 3: Conflict

- Conflict may be effectively managed through a neutral third party; CADRE lists some options such as Facilitation, Mediation, or Third Party Opinion or Consultation
 - **Facilitation** can be used during IEP meetings to help the IEP team communicate effectively and the facilitation process focuses on problem-solving the issue to reach consensus
 - **Mediation**, in Missouri, mediation can occur outside of a due process complaint and is part of the due process steps
 - **Third Party** – this could be another service provider, a contracted person, etc. Use anyone you can to help work through the conflict and come to consensus
 - <https://www.cadeworks.org/cadre-continuum/stage-iii-conflict>

Paraphrase slide

Note: Need to make clear that from a Cadre perspective, facilitation is a process which can be done by any IEP team, without third party involvement. We need to make that clear.

Stage 4: Procedural Safeguards

- In Missouri, parents and school districts have several legal procedural processes which may be used to resolve conflicts. These are outlined in the Procedural Safeguards as well as on the DESE website.

Read slide

Say We are going to spend some time looking at the Procedural Safeguards today as well as discussing, in detail, mediation, child complaints, and due process specific to Missouri today.

What are the Procedural Safeguards?

- The safeguards are designed to protect the rights of parents and their child with a disability and, at the same time, give families and school systems several mechanisms by which to resolve disputes.
- They ensure parent participation in the Special Ed process and ensure the student's right to a free appropriate public education (FAPE)

We are required by federal law to provide parents with Procedural Safeguards at key times in the process

One time per year

Upon initial referral or parent request for evaluation (within 5 school days of referral)

Upon receipt of first due process or child complaint in a year (DESE does this one)

Upon disciplinary change of placement

Upon parent request

Obligation to Explain the Procedural Safeguards

- Must be written in language understandable to general public
- Provided in the native language of the parent or in another mode of communication that's used by the parent, unless it is clearly not feasible to do so. [§300.503(c)] (Many languages available through DESE)
- Can be provided via email if parent agrees to that
- We need to be able to generally explain them or have information available to provide them regarding who else they could contact

Many special education teachers – and even directors – have never actually looked inside or read the Procedural Safeguards. Everyone should be familiar with the content and be able to summarize or explain their rights to them – not just slide it across the table. Today we are going to spend a little time delving into the Procedural Safeguards as they relate to dispute resolution. This activity will provide some background for you as we then discuss dispute resolution processes in more detail.

Procedural Safeguards

- **Access the Safeguards on your device using one of the following:**
- <https://dese.mo.gov/sites/default/files/se-compliance-procedural-safeguards-english-august-2009.pdf>
- **Go to the MO DESE website, Departments, Office of Special Education, Compliance, Parent Information, Procedural Safeguards, then choose language**
- **Google Search: MO DESE IDEA Procedural Safeguards**
- **Complete table activity and share out**

Get your device out and use the link provided or you can also go to DESE, Departments, Office of Special Education, Compliance, Parent Information, Procedural Safeguards, then choose language or you can Google MO DESE IDEA Procedural Safeguards

Each table will be provided with a topic or question and you will search through the Procedural Safeguards to find the answer and then some will share with the group. (provide each table with a question from your packet)

Stage 5: Legal Review

- Parents and school districts also have the right to pursue additional legal avenues, such as hearing appeals, litigation through various courts, etc. if they are not satisfied with the results from the previous processes.

Read slide

Dispute Resolution in Missouri



- **Facilitated IEP (FIEP)**
- **Mediation**
- **Child Complaint**
- **Due Process**

Make sure you verbally transition some how from the previous CADRE steps to MO specific dispute resolution per Procedural Safeguards

What is a Facilitated IEP (known as FIEP)?

- Parents or school district staff may agree to conduct a facilitated IEP team meeting when both parties agree that it would be beneficial to have a neutral person assist the IEP team to efficiently and effectively address IEP team concerns.
- The FIEP process may also be used prior to the IEP team becoming “stuck” or having a failed IEP meeting attempt. If a district, or parent, realizes their relationship is strained, they can request for a FIEP to be held to help prevent conflict and further strained relationships.

Read the slide – if you have experience with FIEP, or knowledge of an example, feel free to share

The Facilitator

- “The role of the facilitator is to facilitate communication among the IEP team members and assist them to develop an effective IEP for the student. The facilitator models effective communication skills and offers ways to address and resolve conflicts in the development of the IEP. Facilitators are trained in effective communication and ways to address and resolve conflicts. The members of the IEP team are the decision-makers. The facilitator does not function as a decision-making member of the IEP team.” <https://files.eric.ed.gov/fulltext/ED483194.pdf>.
- The role of the facilitator is to help guide the IEP team to consensus; the facilitator is not the “tie breaker”
- Facilitators are appointed by DESE and are provided at no cost to districts

Read the slide

If you have things to share about the FIEP training, facilitated IEPs by staff, etc, feel free to share.

Let's Look at the DESE **FIEP** Resources

- [DESE FIEP Resources and Request Form](#)

Click on link to show the new directors what is on this page for future reference. Purpose is to expose them to content and resources on DESE's website to gain knowledge when they have a question. You don't have to go through everything on webpage it is meant to be a general overview for them to go to later

FIEP in Summary

FIEP System

Format?	Who decides?	How long does it take?	How is information gathered?	How is decision made?	Agreement?	Timeline to complete process?	Legal representation?	Format of process?
Informal Confidential	IEP Team Consensus	FIEP usually less than a day	Facilitator supports open communication	IEP Team Consensus	If no agreement reached, can pursue child complaint or due process	Must follow IEP meeting requirements	Attorneys neither required nor prohibited	Parties meet face to face for an informal discussion

Presenters: Go through each section to cover the information regarding the FIEP process

Meditation

- Mediation is a structured, yet informal, voluntary process in which an impartial third party mediator helps parents or adult students and responsible public agencies who are experiencing conflict, to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and schools focus on their common interest – the student. The proceedings are confidential and mediation will be provided at no cost to either party.
 - <https://dese.mo.gov/sites/default/files/se-dp-mediation-booklet-finalized-2009-updated-august-2019.pdf>

Read the slide

Missouri Mediation

- DESE makes mediation available to allow parents or adult students and responsible public agencies to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint.
- Mediation is provided at no cost to either party.
- DESE funded mediation is not available to resolve disputes between parents or between public agencies and persons other than the parent (or adult student).
- Can be requested before a child complaint or due process is filed or it is also an embedded resolution process once a complaint or due process has been filed

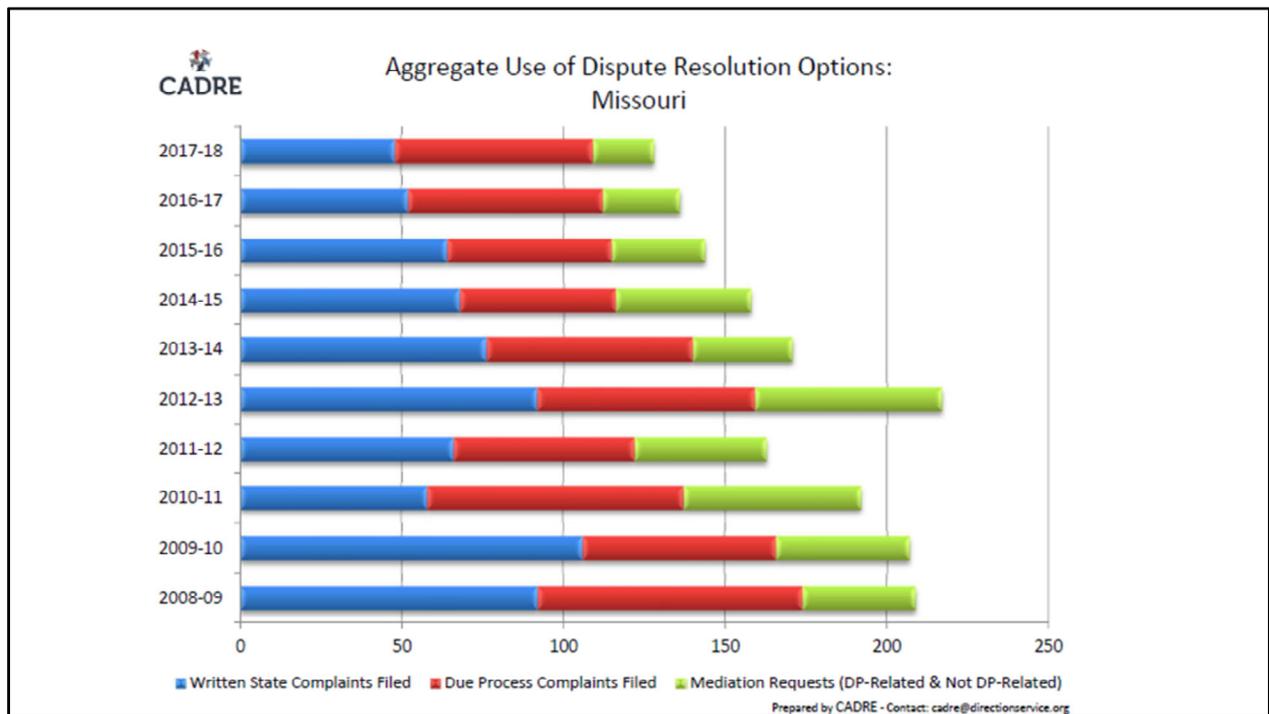
Read the slide – if you have experience with mediation, feel free to share

Mediation in Summary

Comparison of the IDEA Complaint System Options

Comparing the systems	Format?	Who decides?	How long does it take?	How is information gathered?	How is decision made?	Agreement?	Timeline to complete process?	Legal representation?	Format of process?
Mediation	Informal Confidential	Supports mutual problem solving by the parties	Mediation session usually less than a day	Supports open communication	Agreements made jointly between parties	If no agreement reached, can pursue child complaint or due process	Must be completed in 30 days of the agreement to mediate	No attorney shall participate or attend on behalf of any party. However, parents may be accompanied by a lay advocate	Parties meet face to face for an informal discussion

Read the slide



Activity – give some time to let them look at slide then ask questions:

Ask the following questions and let them respond.

Which dispute resolution type seems to have been used most often in the last 3 years? Why do you think that is?

Which one was used the least? Why do you think that is?

Given what you know about these three processes, which one would you prefer your district participate in if you end up in an unresolved conflict? Why?

Child Complaint

- A complaint must allege a violation by a public agency that occurred not more than one (1) year prior to the date that the complaint is received.
- DESE maintains procedures for receiving, investigating and resolving complaints filed by any person or organization alleging that statutes, regulations or any other law implementing IDEA have been violated.
- When a child complaint is filed, DESE handles the complaint, investigation, and findings themselves. You will be submitting requested documents to DESE staff. DESE staff will make the determination if the district is out of compliance or not. If there are findings of noncompliance, corrective actions will be required.

Read the slide – if you have experience with a child complaint, feel free to share

Let's Look at the DESE Resources

- [Part B Child Complaint Procedures and Process](#)
- [Child Complaint Model Form](#) (ages 3-21)
- [Part B Child Compliant Checklist](#)

Presenters: click on each link to show the new directors where this information can be found for future reference.

Again, click on each link and show them what is on the pages for their future reference

Child Complaint in Summary

Comparison of the IDEA Complaint System Options

Comparing the systems	Format?	Who decides?	How long does it take?	How is information gathered?	How is decision made?	Agreement?	Timeline to complete process?	Legal representation?	Format of process?
Child Complaint	Formal Confidential	Commissioner of Education, or a designee, makes final decision of DESE	Process may take up to sixty (60) calendar days	Documentation requests and phone interviews will be the primary methods of data collection	Resolution of a child complaint shall be through the issuance of a Decision letter	The findings of the Commissioner of Education, or a designee, related to the complaint shall constitute a final decision of DESE. No further appeal is available	Must be completed in 60 days unless an extension is granted to determine the facts	Attorneys neither required nor prohibited	Parties do not meet, investigator requests information from both sides and independently reviews it

Presenters: Read, paraphrase, each section

Due Process

- Parents, eligible student, or a public agency may file a due process complaint with DESE's Office of Special Education concerning the proposed action of the agency to initiate or refuse to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.
- The due process complaint must allege a **violation that happened not more than two years before the date the parent or the public agency knew or should have known about the alleged action** that forms the basis of the due process complaint.

Read or paraphrase – if you have experience with a due process, you can share

Due Process

- Due Process complaints are considered **expedited** for parents who are challenging any disciplinary action that results in a long-term suspension – not just those disciplinary actions in connection with dangerous weapons, illegal drugs, and controlled substances.

The issue may involve the parent's challenge to the alternative educational placement being offered as part of the long-term suspension, or the parent may be in disagreement with an IEP Team decision that the student's conduct was unrelated to the student's disability.

Read or paraphrase

Let's Look at the DESE Resources

- [Due Process Hearing Request Form](#) (age 3-21)
- [All Dispute Resolution Forms - Part C and Part B](#)

Presenters: click on the links to show new directors where this information is located for future reference

Due Process in Summary

Comparison of the IDEA Complaint System Options

Comparing the systems	Format?	Who decides?	How long does it take?	How is information gathered?	How is decision made?	Agreement?	Timeline to complete process?	Legal representation?	Format of process?
Due Process	Formal Confidential	Decision ordered by a Commissioner from the Administrative Hearing Commission	Hearing may last one or two days; however, the process may take up to several months	Witnesses testify under oath. Documentation is sent to the Administrative Hearing Commission	Law-based solution	Decision binding; however, can be appealed to state or federal court	Can be completed in 45 days but can take up to several months	Although not required, parties are often represented by attorneys	Parties meet face to face in adversarial setting

Presenters: Review each section

All Due Process Decisions are on the DESE Website for Review

- [2019-2020 MO Due Process Data - Specific to Districts](#)

Click on the link to show them where due process decisions are housed once finalized.
They will need to look up the link on their device and spend 5-10 minutes *looking at some decisions of interest*
Share out – one per table or so depending on time

Dispute Resolution – Review Time



Question 1:

- Question: Which dispute resolution process involves a Commissioner from the Administrative Hearing Commission?
- Answer: Due Process

Ask question - call on someone to answer or let them call out
Click when you want the answer to fly in

Question 2:

- Question: Which third party dispute resolution can be requested to try to avoid conflict during an IEP meeting?
- Answer: Facilitated IEP

Ask question - call on someone to answer or let them call out
Click when you want the answer to fly in

Question 3:

- Question: Which formal process can happen as part of a due process or child complaint or outside of those more formal processes?
- Answer: Mediation

Ask question - call on someone to answer or let them call out
Click when you want the answer to fly in

Question 4:

- Fill in the blank: When a due process complaint is filed, the violation that happened is not more than __ years before the date the parent or the public agency knew or should have known about the alleged action.
- Answer: Two years

Ask question - call on someone to answer or let them call out
Click when you want the answer to fly in

Question 5:

- Question: In a child complaint, who makes the final decision/ruling on the child complaint?
- Answer: Commissioner of Education, or a designee, makes final decision from DESE

Ask question - call on someone to answer or let them call out
Click when you want the answer to fly in

Contact

41 41



The RPDC Special Education Compliance Consultant in your region
OR
DESE Special Education Compliance Division at 573-751-0699

