

# Special Education Legal Requirements: IDEIA



Special Education Legal Requirements: IDEIA - Revised April 2006.

In 2004, the United States Congress reauthorized the Individuals with Disabilities Education Act. The new law, now called the Individuals with Disabilities Education Improvement Act (IDEIA), made several changes that are important for parents and advocates to understand.

One of the first changes in the IDEIA was to the “purposes” section. The purpose of the Individuals with Disabilities Education Improvement Act—IDEIA—is to ensure that all children with disabilities get the “special education and related services” that they need to receive a free and appropriate public education that helps to prepare them for further education, employment and independent living. The significant change that was made to this section was the addition of the language “further education.” Presumably, special education and related services now must incorporate the goal of assisting students for educational programs after High School, not simply employment and independent living.

The IDEIA is a very complex law that covers a lot of different education situations. In this summary, we will focus on special education services for children who are enrolled in public schools

### Who has Rights Under the IDEIA?

The parent has the right to complain about any violation of the IDEIA. The IDEIA has a broad definition of who qualifies as a parent:

§ A natural, adoptive or *foster* parent;

§ A legal guardian but not the state. This means that agencies, such as the Division of Family Services (DFS) who have custody over a child are not parents and do not have any rights under this law even if the child is a ward of the state;

§ A person acting in place of a parent (such as a grandparent or stepparent) with whom the child lives, or a person who is legally responsible for the child's welfare;

§ A surrogate parent who has been appointed under IDEIA.

Read more: [who qualifies as a parent under the IDEIA](#).

### Who Qualifies for Services?

Your child must meet two requirements to get special education. First, your child must have one of the following disabilities:

§ Mental Retardation

§ Hearing impairments (including deafness)

§ Speech or language impairments

§ Visual impairments (including blindness)

§ Serious emotional disturbance (also referred to as emotional disturbance)

§ Orthopedic impairments

§ Autism

§ Traumatic brain injury

§ Other health impairments

§ Specific learning disabilities

Second, your child's disability must be impacting her in such a way that she needs "special education and related services." In other words, the disability must be interfering with your child getting an education.

### How Do You Get a Child Special Education and Related Services?

The first thing to realize is that the school district has a legal obligation to search out and find children with disabilities that live in their districts. This requirement is called the "*child find*" requirement.

If a school district has "reason to suspect" that a child has a disability and is in need of special education and related services, they must try to identify that child even if that child is passing from grade to grade. Even children who are highly mobile (such as migrant children, homeless children or children who are wards of the state) are covered by the *child find* provision.

Historically, only the parent or educational institute had the authority to ask for special education testing. However, the new law allows for "other state agencies" to request initial testing.

Unfortunately, many students with disabilities are missed by school districts. As a result, it is often up to the parent to start the ball rolling. The way to do this is to request that the school district test your child to see if she needs special education. It is always better to request testing in writing.

### What Happens After You Request a Special Education Evaluation?

## **Getting Informed Consent**

The school district has a maximum of thirty days after you request testing to have you, the parent, sign a form that gives the school permission to test your child. This is called “informed consent.”

If the school district decides that they do not have reason to suspect a disability, they can inform the parent during those thirty days that they are not going to do testing. If you disagree with school’s decision not to test your child, you can file a due process complaint--discussed below.

Sometimes school districts want to test children but the parents do not want the testing done. If you refuse to consent to testing, the school district has a choice about what to do. If the district feels strongly about having your child tested, they can file a due process complaint and ask for permission to do testing over your objection. On the other hand, they can choose to honor your refusal to do the testing. If the district honors your decision not to do testing, you usually cannot come back later and complain that the school district discriminated against your child because of a disability.

## **Re-Evaluations**

Once your child has been identified as a special education student, he or she must be re-tested in certain circumstances. The district is required to conduct a re-evaluation if you or a teacher requests one or if the school district feels that a re-evaluation is necessary due to changes in your child’s academic achievement and functional performance. At a minimum, testing must be completed at least every three years—unless you and the school district agree that re-testing is not necessary. However, the district is not obligated to test your child more than once a year. Finally, a school district must re-evaluate your child before finding he or she no longer qualifies for special education services.

School districts are supposed to get your consent for re-evaluations. However, unlike the consent requirement for an initial evaluation, school districts can go forward with a re-evaluation even without your consent if the district can show that it tried to get your consent and you failed to respond.

## **The Testing Timelines**

Once the school district gets informed consent, they have sixty calendar days to complete the testing and hold a meeting to discuss whether your child has a

disability. In Missouri, this meeting is called an “eligibility conference.”

You must be given notice of the eligibility conference and a chance to be present and participate. You are also allowed to bring other people to the meeting with you who know about your child’s needs (family members, social workers, etc.). It is the group of people at the eligibility conference who decide whether your child is disabled and needs special education services.

If you are not happy with the testing that was done by the school district you can request an “independent educational evaluation”--also called an IEE. An IEE must be independent. In other words, the person doing the evaluation can not work for the school district. The IEE must also be paid for by the school district.

If you are happy with the evaluation but disagree with the eligibility team’s decisions about whether or not to identify the child as having a disability, you can file a complaint with the Missouri Department of Elementary and Secondary Education. This complaint, discussed in more detail below, is called a “due process complaint”.

#### What Happens After Your Child is Identified as Having a Disability Under the IDEA?

Under the IDEA, children with disabilities are entitled to a “free and appropriate public education”—also referred to as FAPE. A free and appropriate public education includes two types of services: special education, and related services.

The definition of special education services is “specially designed instruction, at no cost to parents, that meets the unique needs of a child with a disability.” What this means is that the school district must develop an educational program that is specific to your child’s needs. They cannot simply force a child into whatever program they have available.

In addition to special education services, your child is also entitled to “related services.” Related services are any other services that your child needs in order to help them benefit from their special education. A variety of services can qualify as related services. Some of the most common are transportation, psychological services, physical and occupational therapy, recreation, social work services, counseling services, interpreting services, school nurse services and many others.

Both special education and related services must be provided by the school district at no cost to you.

The changes to the law appear to have created a parental right to refuse special education and related services. In the past, the school district could try to override your refusal by filing for a due process hearing. If the hearing panel decided your child needed special education and related services, despite your refusal, they could order the school district to provide those services. This is no longer the case.

Under the new law if you simply doesn't respond to the district's request to provide services, the district is *not* required to develop an IEP for your child, and you cannot later complain about your child not getting a free and appropriate public education. As a result, if you would like your child to continue to receive special education services it is important that you respond to the district when they try to set up IEP meetings.

What is an IEP—Individualized Education Program?

The way that your child gets his special education and related services is through an Individualized Education Program—also call an IEP. An IEP is the written plan for how your child will get all the services he needs. The school district is required to have an IEP in place for each child with a disability by the beginning of each school year. An IEP is developed by a specific group of people, called an IEP team. The IEP team is made up of:

§ The parents of the child;

§ Not less than one regular education teacher of your child (if your child is or may be participating in regular education);

§ Not less than one special education teacher or special education provider for your child;

§ A representative of the public agency who—

§ Is qualified to provide, or supervise provision of, specifically designed instruction to meet the unique needs of children with disabilities;

§ Is knowledgeable about the general curriculum; and

§ Is knowledgeable about the resources available in the public agency

§ An individual who can interpret the instructional implications of the evaluation results (one of the team members listed above can also fulfill this function);

§ At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, and

§ If appropriate, the child.

The school district must notify you of any IEP meetings. They must give enough notice for you to be able to go to the meeting. The meeting must be scheduled for a mutually agreeable time and place. If a school district tries to call you the night before a meeting and then refuse to reschedule the meeting even though you are unavailable, the district is in violation of the federal regulations. On the other hand, a school district can hold an IEP meeting without you if you refuse to come to the meeting or if you keep scheduling meetings and then don't show up.

The 2004 law changed the rules on attendance at IEP meetings. Generally, you and the school district can agree that an IEP team member does not have to be present at the IEP meeting if—

§ The IEP team member's area of the curriculum or related services is not being modified or discussed in the meeting;

§ Even if the IEP team member's area is being discussed at the meeting, that team member may be excused if, *before the meeting*, he or she has given written IEP plan comments to you and IEP team.

An IEP team member may be excused only if both you and the school district consent. Your consent must be in writing.

Finally, the 2004 law allows for changes to be made to your student's IEP without a formal IEP meeting. The new law seems to suggest that any type of change can be made to the IEP as long as you and the school agree. In addition, neither the new law nor Missouri's proposed regulations require that you approve these changes *in writing*. In fact, the school is not even required to send you a copy of the changed

IEP unless you ask for one. As a result, you should be very careful about agreeing to changes in your child's IEP without a formal IEP meeting. Without a meeting, you could unintentionally agree to a significant change in your child's services. Miscommunication between you and the school could result in changes you did not intend to approve.

### What Does "Least Restrictive Environment" Mean?

One of the most important requirements of the IDEIA is that children with disabilities get educated in the "least restrictive environment."

What this means is that school districts must educate children with disabilities, when appropriate, with children who are not disabled. The more time that a special education student spends away from non-disabled students, the more restrictive the placement.

For example, a child who is placed in a self-contained special education classroom in a regular High School could still have contact with non-disabled students during lunch, elective classes, and school functions.

A student placed in a self-contained special education building (where all students who attend the school are special education students) would have no contact at all with non-disabled students. As a result, the self-contained classroom in the regular education High School is a less restrictive environment and is where the student should be placed unless their disability is so severe that they can't be educated in that placement.

In other words, school districts cannot segregate children with disabilities into separate classrooms or buildings unless it is necessary because of their disability.

### When and How Can the School Discipline Special Education Students?

How a school district can discipline a special education student depends on whether or not the student was identified as a special education student under IDEIA at the time of the behavioral incident.



## **Children Who Were Identified as Special Education Students at the Time of the Incident**

Children who were already identified under the IDEIA at the time of the behavior incident cannot be suspended for more than ten days in a school year for behavior that is related to their disability. Exception: Children who possess drugs or weapons on school grounds or students who inflict “*serious bodily injury*” on another person while on school grounds or at a school function. In those cases, a child can be suspended for forty-five school days, even if the behavior is related to their disability. However, the school must provide an alternative education program. *Serious bodily injury* means an injury with a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of a bodily member, organ or mental faculty.

If a school wants to suspend your disabled child for more than ten days in a school year they must first hold a meeting to find out whether the behavior incident was related to your child’s disability. This meeting is called a “manifestation determination review.” You, the school district, and any members of the IEP team agreed upon by you and school must be present at the meeting.

In order to find out whether the behavior incident was related to your child’s disability, the IEP team must answer these questions:

§ Was your child’s conduct caused by, or did it have a direct and substantial relationship to your child’s disability?

§ Was your child’s conduct the direct result of the school’s failure to implement the IEP? New law caution: These two questions are significantly different from the questions that used to be asked at a manifestation hearing and are more likely to result in your child’s behavior being found *not* related to his or her disability.

If the IEP team answers yes to either of these questions, the behavior incident is automatically related to your child’s disability. Again, if the behavior is related to the disability, the school district cannot suspend your child for more than ten days in a school year. However, if the behavior is not related to the disability, the school district can suspend or expel your child in the same ways that they can suspend or expel a non-disabled student.

Even if the school district has the right to suspend your child for more than ten days, they still have to provide your child with a free and appropriate education. This means that the school district must provide education services that will allow your child to make progress on his IEP goals and to make progress in the general education curriculum.

In practice, school districts often just provide suspended and expelled students with three to five hours a week of homebound education services. In most cases, this limited amount of education services is not enough to meet the free and appropriate education requirement.

### **Children Who Were Not Identified as Entitled to Special Education at the Time of the Behavior Incident**

The law is a little bit different for students who were not identified as special education students at the time of the behavioral incident. What matters is whether the school district had “*knowledge*” that your child suffers from a disability before the behavioral incident took place.

There are only three ways the school district can have *knowledge*:

§ You (the parent) told the school—in writing—sometime before the behavior incident that you were concerned about your child and think that she needs special education. New Law Caution: There used to be an exception to the writing requirement for parents who cannot read. This exception appears to have been eliminated in the 2004 law.

§ You requested special education testing before the behavioral incident.

§ The teacher or other people at your child’s school expressed specific concerns about a pattern of behavior and those concerns were expressed directly to supervisory personnel of the agency or the director of special education. New Law Caution: Under the 2004 law, it is much more difficult to prove that the school district had *knowledge* your child suffered from a disability before the behavior incident. Even if your child’s behavior or performance should have warned the district that your child might suffer from a disability, the change in the law no longer penalizes the district for ignoring that information.

If the school district had *knowledge* (meets one of the criteria above) that your child suffered from a disability before the behavior incident, then your child gets the same protections as if she were already identified as a special education student. These protections include a right to a manifestation hearing and the right to file a due process complaint. Example: You requested special education testing two weeks before your child got into a fight. The school gave your child a ten day suspension and there is now a hearing to see whether they will suspend her for the rest of the school year. Since you requested special education testing, the school district has knowledge that your child may suffer from a disability. They cannot suspend her for the rest of the school year unless they hold a manifestation review first. Remember, the school must answer those two questions to decide whether the behavior incident was a manifestation of your child's disability. In this case, there is no way the school can answer those questions until the testing is completed. As a result, until the testing is completed, the school can't suspend your child for more than ten days. If it turns out that your child is not disabled under IDEIA, then the school can suspend or expel her just like any other student. However, if it turns out that your child is disabled, the school district can't suspend her for longer than ten days without holding a manifestation hearing. Remember, the second question in a manifestation hearing is whether the conduct in question was the direct result of the school's failure to implement the IEP. Since your child was not yet identified, there was no IEP or special education placement, and there should have been. If the Manifestation Team decides that behavior incident was the direct result of the school failing to implement an IEP, the team will have to find the behavior incident related to the disability.

If the school did *not* have knowledge of a disability, then they can suspend your child the same as any other student. Exception: You can still have your child tested for special education during a long-term suspension or expulsion. In fact, the law requires the school district to expedite testing during a suspension or expulsion. If your child qualifies for special education, the school must develop an IEP and give your child whatever special education and related services they need. Children who are suspended or expelled must still receive a free and appropriate public education (FAPE). This means they must be able to make progress in the general curriculum and on their IEP goals. School districts usually just offer suspended and expelled students three to five hours a week of "homebound" services; this almost never meets the law's FAPE requirement. There is nothing in the law that says the school can't put your child in a full-day program or an alternative program if that is what

they need to get FAPE.

## How Can I Complain if I Disagree With What the School is Doing?

There are two different ways of filing complaints in Missouri. One is called a [Due Process Complaint](#) and the other is called a [Child Complaint](#).

### Filing a Due Process Complaint

#### **Who Can File a Due Process Complaint?**

Only the parent can file a due process complaint. The IDEIA has a broad definition of parent:

§ A natural, adoptive or foster parent.

§ A legal guardian or a person who is legally responsible for the child. This does *not* mean the state. Agencies, such as the Division of Family Services (DFS), who have custody over a child are *not* considered a parent under the law and are not allowed to file due process complaints.

§ A person acting in place of a natural or adoptive parent (including a grandparent, stepparent or other relative with whom the child lives).

§ A surrogate parent who has been appointed under IDEIA.

Read More: [who qualifies as a parent](#).

#### **What Can You File a Due Process Complaint About?**

The IDEIA allows a parent to file a complaint if they *disagree* with the following:

§ *Identification as a special education student*. You can file a due process complaint if you disagree with the school's decision either to identify your child as a special education student or the schools refusal to identify your child if you think she should have been.

§ *Evaluation*. You can request a due process hearing if you disagree with the district's decision to evaluate or not evaluate your child. You can also request a due process hearing if you disagree with the results of the evaluation or if you have requested an independent evaluation and the district is refusing to pay for one.

§ *Educational placement*. If you disagree with an IEP team decision to change your child's educational placement you can file a due process complaint. It is important to understand that educational placement means the type of services the school is providing, not necessarily the building. Example: The IEP team decides your child needs to move from resource services to a self-contained classroom. The school district then moves your child to a different elementary school and puts her in the self-contained classroom in the new school. You have a right to file a due process complaint if you disagree with the decision to put your child in a self-contained classroom. However, if you agree that your child needs a self-contained class but don't want them in a specific elementary school, you do not have a right to file a due process complaint.

§ *Manifestation hearing finding*. If you disagree with an IEP team's decision about whether a behavior incident was related to your child's disability, you can file a due process.

§ *FAPE*. If you feel that your child's IEP does not provide them with a Free and Appropriate Public Education, you can file a due process complaint.

You can only file a due process if the school's action that you are disagreeing with happened within the last two years. However, sometimes parents don't know about a school's violation until much later. In those cases, you have two years to file a due process from the date that you either learned about the violation or reasonably should have learned about the violation. If the school district did something to prevent you from becoming aware of the problem (claimed they fixed the problem when they didn't or kept information from you that they were required by law to provide) then the two year limit does not apply.

## **You Must Include the Following Things in Your Due Process Complaint Letter**

§ Name of the student.

§ Address where the student resides (for homeless children this can be simply contact information).

§ Name of the school the child is attending.

§ Description of the problem. You can only file a due process complaint if you disagree with the school on one of the five areas listed above. If you have a complaint about a different issue, do not file a due process complaint. Instead, call the Department of Elementary and Secondary Education to find out what procedure you should use.

§ Proposed resolution—basically, what you want to have happen.

### **Where to File Your Due Process Complaint**

Department of Elementary and Secondary Education (DESE)

Division of Special Education Compliance

P.O. Box 480

Jefferson City, Missouri 65102-0480

Or fax a letter to:

Fax# [573-526-4404](tel:573-526-4404), Attention: Compliance Section

*You must send a copy of Your Due Process Complaint to the Local Education Agency (school district).*

What Happens After You File a Due Process Request?

### **School District's Answer**

The 2004 law requires that the school district respond in writing to your due process complaint. The district has ten days to send you a response including the following information:

§ An explanation of why the agency proposed or refused to take the action that you are complaining about.

§ A description of other options that the IEP team considered and the reasons why those options were rejected.

§ A description of each evaluation procedure, assessment, record or report the agency used as the basis for the proposed or refused action.

§ A description of the factors relevant to the agency's proposal or refusal.

This information must be given to you in writing. If the school district already provided you with this information before you filed your due process complaint, they do not have to do so again.

## **Resolution Session**

Within fifteen days of receiving notice of your due process complaint, the school district must hold a meeting with you and any relevant members of the IEP team. The purpose of this meeting is to allow the school district a chance to resolve the complaint. The district must make sure there is a person at the meeting who has the authority to make decisions, so the meeting is not a waste of time. You and the school district can agree to skip this hearing if you are going to use mediation—see below. The school district is not allowed to have their attorney at the meeting unless you bring your attorney.

If you and the school come to an agreement during the resolution meeting it must be put in writing. The written document must be signed by both you and someone who has authority to bind the school district. Be sure that you agree with all of the sections of the written agreement before signing it because it will be legally binding and enforceable by a judge. If you sign a settlement agreement and then decide it was a mistake, you have three business days from the date of the meeting to change your mind (void the agreement). Put your decision to void the agreement *in writing*, and save a copy.

## **Mediation**

You and the school can agree to resolve your due process complaint through mediation. The mediation process is free to you. The state is responsible for paying for any costs associated with mediation.

Attorneys are not allowed to participate in mediation. However, if you have an advocate helping you who is not an attorney you can bring them to the mediation.

If you and the school reach an agreement during mediation, a settlement agreement will be written. The written document must be signed by both you and someone who has authority to bind the school district. Caution: Unlike the agreement that may come out of a “resolution session” (discussed above), there does *not* appear to be any right to “void” a settlement agreement from a mediation. Be sure that you agree with all of the sections of the written agreement before signing it because it will be legally binding and enforceable by a judge.

Any statements made by either you or the school during mediation are *confidential*. This means they cannot be brought up or discussed at a future due process hearing. If you can’t settle your complaint during mediation and you go on to have a formal due process hearing, any statements made by either you or the school can’t be discussed at the due process hearing or any court case.

## **Due Process Hearing**

The school district has thirty days to try to resolve your complaint. After the thirty days, you have a right to go forward with the due process hearing.

The Missouri Department of Elementary and Secondary Education—DESE—will put together a panel of three people to listen to your complaint. DESE will provide you with a list of eligible panel members. You choose one panel member, the school chooses one panel member and DESE chooses one panel member. The panel member chosen by DESE will be called the “hearing chair” and will always be a lawyer. The hearing chair is the person who schedules the hearing date, makes decisions about what evidence can be introduced, and will write the panel’s final decision.

Under the law, the panel has 45 days to hear your case and send you a written decision. This 45 days does not start until after the school has had thirty days to try to [resolve](#) your complaint. If either you or the school asks for a continuance, the hearing chairperson can give you more time. It is not uncommon for it to take a lot longer than 45 days for a due process complaint case to be finished.

A due process hearing looks and feels like a trial. The process is supposed to be made simple enough that parents don’t have to bring a lawyer to the hearing. However, parents often find this type of hearing very confusing and overwhelming. If you can get an attorney to represent you, it is usually a good idea.



## **Stay-Put Provision**

When you file your due process complaint you can invoke a section of the law called the “stay put” provision. This part of the law says that while you are waiting for a hearing and decision on your due process complaint, your child must remain in her “then current educational placement.” In other words, whatever IEP is currently being implemented at the time you file your due process complaint will be your child’s placement until the due process panel gives you their written decision.

If you are at an IEP meeting and realize that the school is proposing a change of placement that you do not agree with, you will generally have ten days to file a complaint before the new placement becomes effective. If you wait until after the new placement has gone into effect, that will be your child’s placement until the due process hearing is resolved.

## **Expedited Due Process Hearings**

You can request an expedited due process hearing. If you do so, the process is a little different. Instead of three, there will be only one hearing officer—a lawyer chosen by DESE—and the hearing absolutely must be held and a decision made within 45 days. In other words, there are no continuances.

## **What Are Your Rights at a Due Process Hearing?**

In Missouri, a due process hearing looks very much like a trial. You have the right to:

§ Have a lawyer represent you - this does not mean that the state has to pay for a lawyer for you. However, if you hire a lawyer, the hearing panel must let him or her help you at the hearing.

§ Present your evidence and questions the witnesses for the other side.

§ Subpoena witnesses to attend the hearing.

§ Get a record of everything that was said at the hearing for free.

§ Get a copy of the findings and decisions of the hearing panel for free.

§ Have your child come to the hearing.

§ Open the hearing to the public.

## **Attorneys Fees**

Generally, a judge can order the school district to pay for your attorney's fees if you are a "prevailing party" at the hearing. Whether or not you are a prevailing party can be a very complicated issue and is something that you should discuss with your attorney. Caution: If you file a complaint that is frivolous, unreasonable or without foundation a court can order you to reimburse the district for its reasonable attorneys fees.

## **Can You Appeal a Due Process Hearing Decision?**

Yes. If you are unhappy with the outcome of your due process hearing you have a right to appeal the decision in either state or federal court. However, you only have ninety days to file an appeal.

## **Filing a Child Complaint**

### **Who Can File a Child Complaint?**

Any person or organization can file a child complaint. This is very different from a due process complaint, which only a parent can file.

### **What Can You File A Child Complaint About?**

You can file a child complaint if you feel that a school district has violated any state or federal regulation relating to IDEIA. This sounds overwhelming, but what it really means is that you can file a complaint if you think that the school district has violated IDEIA. You only have one year, from the time the school district violated the law/regulation, to file a child complaint. There are some exceptions to the one year timeline. If you are beyond the timeline, you can contact DESE to see if your situation falls into one of the exceptions.

### **How Do You File A Child Complaint?**

Child complaints must be in writing and must include:

§ Facts describing a violation of federal or state IDEIA regulations--the facts about your complaint.

§ Name, address, and phone number of the person or organization filing the complaint.

§ Name, address and phone number of any specific student(s) involved.

We also recommend that you include:

§ Copies of any letters you sent to the school about the problem;

§ Copies of any letters that you have received from the school regarding the problem;

§ A copy of the most recent IEP for your child;

§ Copies of any other relevant documents.

In Missouri, you file the complaint by sending a letter to:

Department of Elementary and Secondary Education (DESE)

Division of Special Education Compliance

P.O. Box 480

Jefferson City, Missouri 65102-0480

Or faxing a letter to:

Fax# [573-526-4404](tel:573-526-4404), Attention: Compliance Section

## **What Happens After You File a Child Complaint?**

What happens when you file a child complaint is very different from what happens when you file a due process complaint. When you file a child complaint you do not get a hearing. Instead, DESE investigates your complaint to see if the school district violated the IDEIA. DESE has sixty days to do the investigation and write a letter to you and the school with their decision. DESE can make any of the following three findings:

§ The school district did not violate the IDEIA.

§ The school district did violate the IDEIA but they have already corrected the problem so nothing further needs to be done.

§ The school district violated the IDEIA and is still out of compliance. If DESE finds that the district is still violating the law, they can order the district to make any changes necessary to fix the violation.

### **Can You Appeal a Child Complaint Decision?**

No. A child complaint decision is a final decision and you have no right to appeal.

### **When Should You Write A Child Complaint?**

You can file a due process complaint for any violation of the IDEIA. However, there are certain situations that lend themselves more easily to a child complaint. You might want to consider filing child complaints in the following cases:

§ When you are not considered a parent under the IDEIA. Remember, only a parent can file a due process complaint. Other interested people can only make complaints through the child complaint process.

§ When there are multiple children involved. Sometimes a school district is violating many children's rights under the IDEIA. Example: If the special education teacher at a school gets sick for several months and the school does not find a substitute for her, the school district is violating the IDEIA for all of the special education students that go to that school. In this situation, each parent could file a due process complaint or a child complaint separately. However, an interested person or organization (such as DFS or the juvenile court) could also file a child complaint and list as many children as they are aware of in the complaint.

§ When the violation is straight forward and factual. Remember DESE does an investigation when you file a child complaint, you do not get a hearing. DESE will make its decision based on the school documents, interviews, and visits to the school. So it is easier to get a result that you want when you have a very straight forward factual case. Example: Your child is suspended for thirty days from school and the school district never held a manifestation hearing to find out if the behavior incident is related to you child's disability. This is clearly a violation of the IDEIA and is something that DESE can easily check by looking at the records. Example: Your child is supposed to be in a certain type of placement (like a self-contained classroom) but the school never put her in that type of class. Again, this is generally easy for DESE to confirm by looking at the records or interviewing staff.

More complex issues, such as whether a particular placement is appropriate for your child, are not very good types of cases to file child complaints on. This is because the records and interviews may not be enough to tell your side of the story.

## **Notice**

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