

# Dispute Resolution Options

---

Paula Souhrada, Navigator Program Coordinator

&

John Hamilton, Legal Affairs Director



# Dispute Resolution – what is it?

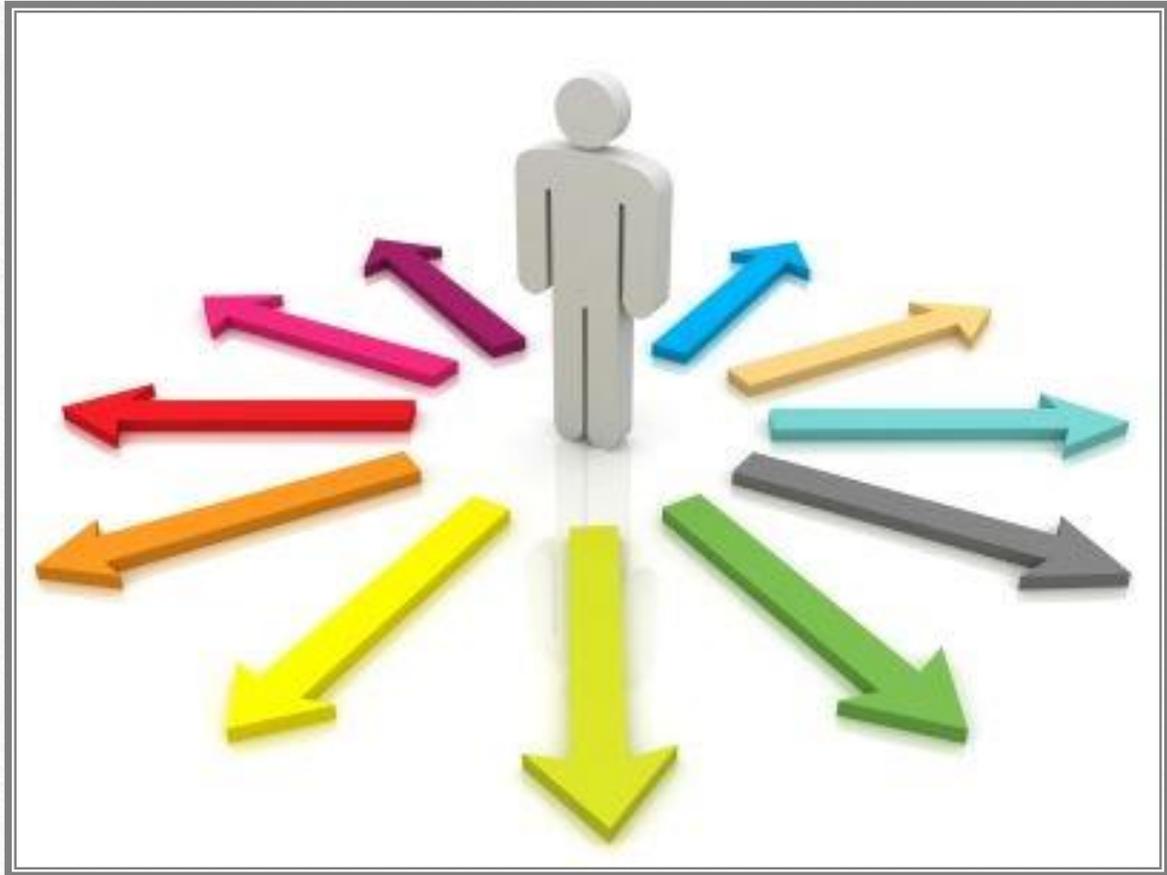
---

- Refers to different processes used to resolve disputes between parties

## Dispute Resolution Options in South Dakota

---

- Navigator Program
  - Mediation
  - Facilitation
- State Complaint
- Due Process Hearing
  - Civil Court
  - 504 Grievance
- 504 Due Process Hearing
  - OCR Complaint



# Navigator Program

---



- Provides individualized guidance to parents of children and youth with disabilities or special health care needs and school professionals at no cost
  - Navigators are neutral
  - Help locate/utilize information/resources
  - Improve family-school communication
  - Build (or re-build) partnership
  - Reach or make progress towards agreement



# Mediation

- A voluntary process that brings people together to resolve their disagreements. An impartial, trained mediator helps participants communicate with each other, so that everyone has an opportunity to express concerns and offer solutions.
  - Mediation can be sought at any time
  - Parents/School must both agree to participate for mediation to happen
  - Discussion is confidential; cannot be used as evidence in due process hearing or civil lawsuit
  - Mediator does not make decisions
  - Mediation agreements are enforceable in court



# Facilitation

---

- Similar to any other IEP meeting, facilitator joins meeting
  - Not required by IDEA, State/School Districts may provide
  - Families/School have to agree to have one join
  - Maintain open communication and ensures everyone participates fully
  - If disagreement arises during meeting, facilitator can help clarify/resolve
  - Does not address issues that are NOT related to IEP

# State Complaint

---

- A signed, written State Complaint can be filed by an organization or individual.
- The complaint must state the IDEA violation(s) and relevant facts, contact information, the school, the child, and a proposed resolution.
- Must allege a violation that occurred **not more than one year prior** to the date the complaint is *received*. 34 C.F.R. §300.153(a)-(c).
- SEA has 60 days from receipt to allow complainant to provide additional information, allow the LEA to respond, offer mediation, investigate, and issue a written decision. 34 C.F.R. §300.152(a). [Time may be extended for exceptional circumstances or if parties agree due to attempting mediation.]

# State Complaint

---

- Districts found out of compliance may be required to receive technical assistance and/or must provide a corrective action plan that the SEA must approve.
- In resolving a complaint when the SEA finds a failure to provide appropriate services, the SEA must address-
  - The failure to provide appropriate services, including corrective action to address the **needs of the child**, which may include providing reimbursement or compensatory educational services if appropriate, and
  - Appropriate **future provision** of services for all children with **disabilities** 34 C.F.R. § 300.151(b).

# Due Process Hearing

---

- A **parent or a public agency** may initiate a due process hearing complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 34 C.F.R. §300.507(a)(1).
- A parent or district must request an impartial due process hearing **within 2 years** of the date the parent or agency **knew or should have known about the alleged action that forms the basis of the complaint.** 34 C.F.R. §300.507(a)(2), §300.511(e).
- Content is similar to that of a State Complaint.

# Resolution Meeting

---

- The LEA must convene a Resolution Meeting with the parents and the relevant member or members of the IEP Team, including a representative of the public agency who has decision-making authority, within 15 days of receipt of the parents' due process complaint.
- Meeting may not include a school attorney unless the parent has an attorney.
- The purpose is for the parents of the child to discuss their complaint, and the facts that form the basis of the complaint, so that the LEA has the opportunity to resolve it.
- **The resolution meeting must be held unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process. 34 C.F.R. §300.510(a)(1)-(3).**

# Resolution Meeting

---

- The timeline for the Due Process Hearing begins if LEA has not resolved all the issues within 30 days of receipt of Due Process Complaint.
- The Due Process Hearing timeline may begin sooner if the LEA fails to hold a Resolution Meeting, the parties waive it, or if prior to the end of the 30 days, the parties determine the situation cannot be resolved.
- If resolution is reached, the parties must sign a legally binding agreement. The agreement is enforceable in court.

# Due Process Hearing

---

- Due process hearings are the “trial court level” in special education cases, and are conducted by an impartial hearing officer.
- Parents have the right to be represented by an attorney, to present evidence, to cross-examine witnesses, and obtain a copy of the proceeding and a decision.
- Hearing Officer may grant “any appropriate relief,” including reimbursement and compensatory education.
- 45-day time period for receiving final decision begins at expiration of Resolution Meeting time period.

# Due Process Hearing

---

- Hearing decisions must be made on substantive grounds based on whether the child received FAPE.
- A hearing officer will not find a denial of FAPE for procedural violations unless they:
  - impeded the child's right to FAPE;
  - significantly impeded the parents' opportunity to participate in decision-making; or
  - Caused a deprivation of educational benefits.

# Civil Court

---

- If either party disagrees with the hearing officer's decision, that party has 90 days to appeal the case to State or Federal court.
- The Court receives the administrative record, hears additional evidence at the request of a party, and bases its decision on a preponderance of the evidence.
- Typically, cases will be decided on the administrative record, written briefs by the parties, and oral argument.

# 504 Grievance Procedure

---

- LEAs are to have in place grievance procedures to internally resolve complaints of discrimination. 34 C.F.R. § 104.7(b).

# 504 Due Process Hearing

---

- Parents may request an impartial due process hearing under § 504. It is conducted by the LEA because the State has no authority over § 504 compliance and cannot use IDEA money to conduct § 504 hearings.
- The § 504 regulations contain nothing in terms of the process. Because OCR borrows heavily from IDEA in terms of compliance, presumably the same types of hearing rights would apply.

# OCR Complaint

---

- An individual or organization may file a complaint with the Office for Civil Rights of the U.S. Department of Education to address violations of § 504 and/or Title II of the Americans with Disabilities Act (ADA).
- The complaint may be in letter form or use the OCR Discrimination Complaint Form and must be filed within 180 days of the violation.
- The complaint must contain contact information, type of discrimination, school that is alleged to have discriminated, and a description of the alleged discriminatory acts.

# OCR Complaint

---

- OCR reviews the Complaint and makes a determination of whether to proceed with an investigation.
- OCR “guidelines” are to complete the process within 180 days.
- If the parties agree to an early resolution process (similar to mediation), OCR puts its investigation and internal timeline on hold pending the outcome.
- If the issues are found valid, OCR will attempt to reach voluntary resolution with the LEA. If not achieved, OCR will issue a decision requiring corrective action.

THANK YOU!

---