

What Parents Should Know...

Parent Rights and Responsibilities in Special Education

Did you know that there are Procedural Safeguards to protect your child? When Congress enacted Public Law 94-142 as the Education for All Handicapped Children's Act in 1975, they included a system of PROCEDURAL SAFEGUARDS designed to protect the rights of children with disabilities and their parents. During subsequent reauthorizations of the law, now known as the Individuals with Disabilities Education Act, Congress maintained and added to these safeguards. Procedural safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation (IEE) of the child. Parents have the right to written notice when the school proposes to change or refuse to change the identification, evaluation or placement of a child. More importantly and the focus of this brief, the law also includes several ways to resolve disputes which are listed below.

FACILITATION: A parent or school can request the state Department of Education - Special Education (DOE-SEP) to provide a facilitator who will serve as a one-time team leader to guide the meeting process of the IEP team. A facilitator's job is to support everyone to do their best thinking as the team works within the regulations. IEP facilitation is not used to resolve disputes unrelated to the IEP.

MEDIATION: Either parent or the school superintendent can request the state Department of Education to assign a mediator, a qualified and impartial individual who is trained in effective mediation techniques, to work with the parties to review concerns, seek common ground, and suggest a resolution. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to those involved. This may or may not include attorneys.

COMPLAINT: Parents may file a complaint, a written signed statement with the state Department of Education, listing the ways in which they believe the school district is out of compliance with the IEP. The statement must include an explanation of the violation, facts on which the statement is based, signature and contact information, specific child's information, description of the nature of the problem, and a proposed resolution. A copy of the complaint must also be provided to the district serving the child. An investigator is assigned to study the situation, review the paperwork, interview participants, and make a determination. State complaints must be resolved within a 60-calendar-day timeline. Disability Rights South Dakota can help a family determine whether this is an appropriate course, and if they are able to assist in the process.



DUE PROCESS: Either parent or the school superintendent can file for a due process hearing with the state Department of Education. This is the most adversarial approach to dispute resolution within the state education system. The complaint must remain confidential and include specific child information, the nature of the problem, and a proposed solution. Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the district must convene a Resolution meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint. Parents must attend this meeting unless the parents and school agree to waive it or agree to Mediation. If the district has not resolved the due process complaint to the satisfaction of the parents within 30 days of receiving the due process complaint, the timeline for the due process hearing begins. The state assigns a hearing examiner or administrative law judge who receives background material as evidence ahead of time, hears information from both sides, and issues a decision that has the force of law, no later than 45 days after the expiration of the 30 day period regarding a resolution meeting. Parents contemplating filing for a due process may contact Disability Rights South Dakota to request legal representation.

<https://doe.sd.gov/sped/documents/parentalrights/Eng.pdf>
www.drslaw.org

OCR COMPLAINT: If parents feel there has been discrimination against the student, they can file a complaint with the U.S. Department of Education's Office of Civil Rights. A written complaint must be filed within 180 calendar days of the date of the discrimination.

<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

NAVIGATOR PROGRAM:

An alternative resolution available to those in South Dakota at no cost is the Navigator Program, a partnership between South Dakota Department of Education – Special Education Programs and South Dakota Parent Connection. The Navigator Program provides individualized guidance to parents of children and youth with disabilities or special health care needs and school professionals at no cost. Peer Navigator Consultants are located around the state and have expertise on issues related to special education, disability, special health care needs, communication and conflict resolution.

The Navigator remain objective and neutral as they help families understand and participate in the IEP process; help school personnel support family involvement; help parties locate and utilize resources; help parties improve communication; help parties partner and improve results/outcomes for students; help parties reach or make progress towards agreement; and help families gain confidence and skills to proceed independently. Contact SDPC sdpc@sdparent.org or 800-640-4553.



Sioux Falls
3701 W. 49th St Ste 102
Sioux Falls, SD 57106
605-361-3171

Rapid City
2310 N. Maple Ave
Rapid City, SD 57701
605-358-0305

Aberdeen
1707 4th Ave SE Ste C
Aberdeen, SD 57401
(605)626-8333

www.sdparent.org
1-800-640-4553



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