

Comparison of Major Dispute Resolution Options

TYPES of DISPUTE RESOLUTION¹

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request ² Resolution Process
<p>Mediation is a discussion process conducted by a qualified and impartial mediator to resolve a disagreement between a parent and a school district.</p> <p>Mediation may address any matter under the Individuals with Disabilities Education Act (IDEA), the special education law.³</p> <p>Mediation may also address disputes and conflicts related to communication about these issues.</p>	<p>Complaint Resolution is an investigation process. It is not a judicial or court process.</p> <p>A complaint is a written and signed form or letter to the Oregon Department of Education (ODE) stating that a school district (or other public agency) has violated some part of IDEA. Complaints are usually filed by parents, but may be filed by other individuals or organizations.</p> <p>Individuals or organizations that file complaints are referred to as “complainants.”</p> <p>School districts are the “respondent party,” meaning they respond to the complaint.</p>	<p>A due process hearing request is a request filed by a parent, school district, or other public agency, to begin an impartial due process hearing on any matter relating to the following for a child with a disability:</p> <ul style="list-style-type: none"> • Identification • Evaluation • Educational placement; or • The provision of a Free Appropriate Public Education (FAPE) for a child with a disability. <p>A resolution process is an opportunity for parents and the school district or program to attempt to resolve the issues in a parent’s due process complaint before the due process hearing process begins.</p>
<p>Who is involved?</p> <ul style="list-style-type: none"> ○ Parent(s) ○ Selected Mediator⁴ ○ Parent advocate, if any ○ District representative <p>Which Oregon Department of Education (ODE) staff might contact you?</p> <ul style="list-style-type: none"> • Dispute Resolution Specialist 	<p>Who is involved?</p> <ul style="list-style-type: none"> ○ Parent(s) or other complainant ○ District representative ○ Assigned complaint investigator <p>Which ODE staff might contact you?</p> <ul style="list-style-type: none"> • Legal Specialist • Legal Assistant • Dispute Resolution Specialist 	<p>Who is involved?</p> <ul style="list-style-type: none"> ○ Parent(s) ○ District representative and district’s attorney ○ State Office of Administrative Hearings – Administrative Law Judge (ALJ) <p>Which ODE staff might contact you?</p> <p><i>If the parties decide to mediate –</i></p> <ul style="list-style-type: none"> • Dispute Resolution Specialist <p><i>If the Final Order requires corrective action –</i></p> <ul style="list-style-type: none"> • Legal Specialist • Dispute Resolution Specialist • Legal Assistant

¹ Definitions of types of dispute resolution processes quoted from: Pagano, L. (2008, February). Options for dispute resolution (Module 18). *Building the legacy. IDEA 2004 training curriculum*. Washington, DC: National Dissemination Center for Children with Disabilities. Available online at: <http://idea.ed.gov/explore/home>

² In its dispute resolution materials, ODE uses the term “due process hearing request” to mean “due process complaint”.

³ Pagano, L. (2008, February). Options for dispute resolution (Module 18). *Building the legacy: IDEA 2004 training curriculum*. Washington, DC: National Dissemination Center for Children with Disabilities

⁴ Independent mediators under contract with the Department.

Comparison of Major Dispute Resolution Options

AVAILABILITY – Who May Request Dispute Resolution?

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>Who may request mediation?</p> <ul style="list-style-type: none"> ○ Parents/guardians ○ Adult student ○ School district; or ○ ECSE program. <p>Mediation may be requested at any time, before, during and even after a hearing or investigation.</p> <p>Mediation is a voluntary and optional process for parents and school districts.</p> <p>For mediation to occur both parties must agree to mediate; either party may decline an offer to mediate.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Dispute Resolution Specialist 	<p>Who may file a complaint?</p> <ul style="list-style-type: none"> ○ Parents/guardians ○ Adult students; or ○ An organization <p>The written and signed complaint must allege a violation of IDEA that occurred <i>not more than one year before</i> the date the Department receives the complaint.</p> <p>ODE has 60 days to resolve the complaint. The 60 day timeline begins the day after ODE receives the complaint form or letter. This does not include any corrective action time.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Legal Specialist; or • Dispute Resolution Specialist 	<p>Who may request a due process hearing?</p> <ul style="list-style-type: none"> ○ Parent/guardian; ○ Adult student; ○ School district; ○ EI/ECSE program <p>The due process hearing request must allege a violation that occurred <i>not more than two years before</i> the date of the request.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Office of Administrative Hearings; or • Your attorney

ROLE OF MEDIATOR, COMPLAINT INVESTIGATOR and ADMINISTRATIVE LAW JUDGE

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>Mediator:</p> <ul style="list-style-type: none"> • Acts as impartial negotiator and facilitator of communication. • Guides process, informally maintains order of conference. • Attempts to find areas of agreement; suggests options and possible compromises; does not impose own views on parties or make decisions for them. • Assists parties in understanding the nature of their dispute, encourages future problem solving by parties and reaching a mutual agreement. <p>Mediator is under contract with ODE.</p>	<p>Complaint Investigator is:</p> <ul style="list-style-type: none"> • Neutral, objective fact-finder; • Knowledgeable about IDEA requirements; • Acting on behalf of the Department; • Responsible for organizing interviews, document reviews, and for initial report to ODE to complete the process in 60 days. <p>Complaint investigator is an employee of, or under contract with ODE.</p>	<p>Administrative Law Judge:</p> <ul style="list-style-type: none"> • Conducts the due process hearing; • Controls hearing; may question witnesses; rules on objections. • Elicits information needed; decides in favor of one party or the other. • Makes impartial decision and issues an order. <p>Office of Administrative Hearings provides the Administrative Law Judge (ALJ).</p>

Comparison of Major Dispute Resolution Options

PREPARATION for DISPUTE RESOLUTION

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>Parent or District sends request for mediation to the Department.</p> <p>Link to Mediation request form: http://www.ode.state.or.us/services/disputeresolution/mediation/requestformmediation.pdf</p> <p>ODE provides mediator selection process to parent and District (also called parties)</p> <p>Parties choose mediator from selection list.</p> <p>Selected mediator is the individual both parties choose.</p> <p>Selected mediator contacts parties to discuss and scheduled mediation.</p> <p>Parties determine objectives for mediation and prepare for session.</p>	<p>Parent (complainant) sends signed complaint form or letter to the Department and to the school district.</p> <p>Link to Complaint form: http://www.ode.state.or.us/services/disputeresolution/complaints/complaintreqform.pdf</p> <p><i>Within 10 days</i> after the Department receives the complaint, the Department:</p> <ul style="list-style-type: none"> • Reviews the complaint form or letter; • May request clarification of issues. <p>Department dismisses complaint if it contains only allegations that:</p> <ul style="list-style-type: none"> • Are not part of IDEA (outside the scope); or • Allegations not supported by parent's information. <p>ODE may investigate the complaint if it contains any allegations that, if true, would be a violation of IDEA.</p> <p>To begin the investigation, ODE:</p> <ul style="list-style-type: none"> • Assigns complaint investigator • Send request for response to school district; • Encourages parties to mediate to resolve disputes. <p>District sends ODE and parent copies of documents and information responding to the complaint. (This usually occurs within 10 work days from date the school district receives the request for response.)</p> <p>Parent may provide additional information to ODE and district after reviewing district's response. In each complaint ODE will specify a timeline for parents to respond.</p>	<p>Parent or District send signed request for due process hearing to the Department and to the other party.</p> <p>Link to form to request due process hearing: http://www.ode.state.or.us/services/disputeresolution/dueprocess/reqfordphering1184-e.pdf</p> <p>Upon receipt, ODE forwards the request to the Office of Administrative Hearings (OAH).</p> <p>OAH appoints an Administrative Law Judge (ALJ) to hear the case.</p> <p>ALJ is a neutral, third party. ALJ is not an employee of ODE or any school district.</p> <p>School districts must retain an attorney.</p> <p>Parents may retain attorney or represent themselves.</p> <p>Parties research, organize, and prepare evidence (documents and witnesses) and legal information, following standard legal procedures.</p>

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PROCEDURES

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>Mediation is an informal meeting process, facilitated in conference style by a mediator.</p> <p>Discussions are confidential and may not be used as evidence in legal proceedings.</p> <p>Each party may present views and hear opposing views in joint session and then speak privately with the mediator.</p> <p>Parties engage in negotiation and compromise; emphasis on underlying interests and solutions.</p> <p>No formal record of proceedings. If agreement reached, mediator will prepare written agreement to be signed by the parties.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Dispute Resolution Specialist 	<p>Complaint resolution is an investigative process, not a judicial proceeding.</p> <ul style="list-style-type: none"> • Emphasizing fact-finding about the parent's allegations of non-compliance; • Participants not under oath; • No witnesses, cross examination, standards of evidence, or other actions found in court proceedings. <p>A neutral Investigator:</p> <ul style="list-style-type: none"> • Reviews information from both parties; • Schedules and conducts interviews (onsite or telephone) with parents and school district staff knowledgeable about the issues alleged in the complaint. <p>ODE:</p> <ul style="list-style-type: none"> • Reviews all information related to complaint; • Makes an independent determination of compliance or noncompliance; and • Issues a written decision (Final Order) to the parent and the district. <p>Final Order:</p> <ul style="list-style-type: none"> • Addresses each allegation; • States any findings of noncompliance related to the allegation; and • States explanations of decisions. <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Legal Specialist; or • Assigned Investigator 	<p>Due Process Hearings & Resolution Process</p> <p>Within 15 days of the filing of a due process hearing request, school district holds a resolution session;</p> <p>OR</p> <p>Parties waive resolution session and proceed to mediation.</p> <p>Parties may waive both resolution session and mediation and proceed to hearing.</p> <p>Legal hearing conducted by Administrative Law Judge (ALJ).</p> <p>Hearing may have many participants and is conducted in litigation style with:</p> <ul style="list-style-type: none"> • Opening and closing arguments; • Direct and cross-examination of witnesses under oath; • Introduction of evidence; and • Raising objections. <p>Parties present evidence to ALJ to support their cases.</p> <p>Court maintains a formal record of proceedings (tape or transcript) that is available to parents after the hearing.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Office of Administrative Hearings; or • Your Attorney

Comparison of Major Dispute Resolution Options

OUTCOMES of DISPUTE RESOLUTION

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>The outcome of successful mediation is a signed mediation agreement between the parent and the district.</p> <p>Signature indicates willingness to abide by agreement, stake in outcome, and commitment to its success.</p> <p>The agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.</p> <p>If agreement is not reached, parties can pursue other dispute resolution options.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Dispute Resolution Specialist 	<p>The outcome of a complaint investigation is a written decision, a Final Order, issued by ODE to the parent and the school district.</p> <p>The Final Order includes the findings, conclusions, and corrective action (if any) required.</p> <p>In some circumstances, the parties may request corrections or changes in the Final Order or may appeal the decision in court.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Legal Specialist about corrections or changes of the Final Order or judicial appeal. • Dispute Resolution Specialist about corrective action 	<p>The outcome of a due process hearing is a written decision, a Final Order, signed by the Administrative Law Judge (ALJ).</p> <p>A Final Order may dismiss the hearing issues or include the findings conclusions, and corrective action (if any) required. The Final Order identifies which part (parent or district) prevailed.</p> <p>A decision may be appealed to state or federal court.</p> <p>The hearing decision is binding on all parties (whether or not they are satisfied with it) unless it is reversed on appeal.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Your attorney, if you disagree with the content or the outcome or want to file an appeal; • Legal Specialist; or • Dispute Resolution Specialist about corrective action.

TIMELINES

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>See Mediation Handbook http://www.ode.state.or.us/services/disputeresolution/mediation/medhandbook.pdf</p> <p>Mediation can usually be scheduled before or at the same time as (concurrent with) a due process hearing request.</p>	<p>See Complaint and Corrective Action Timelines http://www.ode.state.or.us/services/disputeresolution/complaints/complainttimelines.pdf</p> <p>Beginning the day after the complaint form or letter is received, the Department must issue a Final Order within 60 calendar days, unless:</p> <ul style="list-style-type: none"> • Exceptional circumstances require an extension; or • The parent and the district agree to extend the timeline for mediation or local resolution. • Any ordered corrective action must be completed by the dates specified in the order, 	<p>See Due Process Hearing Timelines http://www.ode.state.or.us/services/disputeresolution/dueprocess/hearingtimelines-idea.pdf</p> <p>District must schedule a resolution session within 15 days of the filing of the hearing request.</p> <p>30 day resolution period; If the district has not resolved the complaint to the satisfaction of the parents by Day 30, the due process hearing time period begins.</p> <p>The hearing and Final Order must be completed within 45 calendar days after the end of the 30 day</p>

Comparison of Major Dispute Resolution Options

	unless the Department extends the timeline; and <ul style="list-style-type: none"> • Not later than one year from the date the Department issues the order. 	resolution period, unless the Administrative Law Judge (ALJ) agrees to an extension at the request of either party.
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COSTS

Mediation	Complaint Resolution	Due Process Complaint/Hearing Request Resolution Process
<p>Cost: The cost of mediation is paid by ODE.</p> <p>Time: A few hours (or more) for preparation, typically 5-7 hours in mediation session.</p> <p>Other parent costs: Expenses of time away from work; transportation; possibly child care.</p> <p>Other district costs: Substitute teachers.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Dispute Resolution Specialist 	<p>Cost: The cost of the investigation is paid by ODE.</p> <p>Time: Depends on amount of time to prepare materials, to respond to allegations, and possibly for an on-site investigation visit.</p> <p>Other parent costs: Expenses of time away from work; transportation; possibly child care.</p> <p>Other district costs: Substitute teachers.</p> <p><i>Questions or Concerns? Contact:</i></p> <ul style="list-style-type: none"> • Legal Specialist; or • Dispute Resolution Specialist 	<p>Cost: Both parties (parent and district) pay costs. Parties pay own attorney's fees, witnesses' expenses, and expert witnesses' fees, if any. The District pays the cost of the Administrative Law Judge and the cost of the transcript; and the parent's attorney's fees if the parents prevail.</p> <p>Time: Typically 50 to 100 hours of preparation; 2 or more days for the hearing.</p> <p>Other parent costs: Expenses of time away from work; transportation; possibly child care; or in very limited circumstances, may pay district's attorney fees.</p> <p>Other district costs: Substitute teachers; cost of staff time</p> <p><i>Questions or Concerns? Contact:</i></p> <p>Your attorney of you disagree with the content of the outcome, you may file an appeal.</p>

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