

**6A-6.03311 Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities.**

Each public agency, including a school district, must establish, maintain and implement procedural safeguards that meet the requirements of this rule. A public agency means local educational agencies (LEAs), educational services agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(1) through (3) No change.

(4) Mediation. The Department of Education (“Department”) has established a mediation process to ~~shall~~ provide parents of students with disabilities and personnel of public agencies, including school districts, the opportunity to resolve disputes involving any matters arising under Part B of the Individuals with Disabilities Education Act (IDEA), including matters arising prior to the filing of a due process complaint, through a mediation process. ~~To promote the resolution of disputes, both parties should consider limiting the number of participants in a mediation session.~~

(a) Requirements. The mediation process must:

1. Be voluntary on the part of both parties;
2. Not be used to deny or delay a parent’s right to a due process hearing under subsection (9) of this rule, or any other rights under this rule; and,
3. Be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is Florida Supreme Court certified with no reported sanctions.

(b) Written request. A request for mediation must be in writing and must be filed with the Department by electronic mail, mail, hand-delivery, or facsimile. The Department has developed a form that may be used by parties requesting mediation. The form is available on request from the Department at IDEAMediation@fldoe.org and is also available on the Department’s website at <https://www.fldoe.org/core/fileparse.php/7675/urlt/MediationRequestForm.pdf>.

(c)(b) List of mediators. The Department ~~will~~ of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

~~(d)~~(e) Mediator assignment. ~~If a mediator is not selected on a random or rotational basis from the list described in paragraph (4)(b) of this rule, both the parent and the public agency, including a school district, must be involved in selecting the mediator and agree with the selection of the individual who will mediate.~~

1. For each mediation provided pursuant to this rule, the Department will assign a mediator on a random, rotational, or impartial basis, from the Department's list. The Department will provide the parties with written notice of the specific mediator assigned to conduct the mediation. The parties must not contact a mediator on the Department's list of mediators until the Department has provided the parties with the written notice of the mediator assignment.

2. If the Department is unable to assign a mediator from the list described in paragraph (4)(c) of this rule, due to scheduling conflicts or availability, the Department will provide an alternate list of mediators to the parent and the public agency, which includes a school district, and will permit the parties involved in the dispute to agree on the mediator.

~~(e)~~(d) Costs. The Department ~~will of Education shall~~ bear the cost of the mediation process described in subsection (4) of this rule.

~~(f)~~(e) Scheduling. Each session in the mediation process must be scheduled in a timely manner and must be held in a location, including an option for virtual mediation, that is convenient to both the parent and the public agency, including a school district.

~~(g)~~(f) Written agreement. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:

1. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;

2. Is signed by both the parent and a representative of the public agency, including a school district, who had the authority to bind the public agency, including a school district; and,

3. Is enforceable in any State court of competent jurisdiction or in a district court of the United States.

~~(h)~~(g) Confidentiality. Whether or not the dispute is resolved through mediation, discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any Federal court or State court.

~~(i)~~(h) Impartiality of the Mediator. An individual who serves as a mediator:

1. through 2. No change.

3. Is not an employee of a public agency, including a school district, or state agency solely because he or she is paid by the Department of Education to serve as a mediator.

(5) State complaint procedures. The Department of Education shall provide parents and other interested persons, including an organization or individual from another state, the opportunity to resolve any complaint that a public agency, including a local school district, has violated a requirement of Part B of the IDEA or its implementing regulations, or a state requirement, regarding the education of students with disabilities through its state complaint procedures. The Department of Education shall disseminate its state complaint procedures, which may be accessed at <http://www.fldoe.org/academics/exceptional-student-edu/dispute-resolution/> to parents and other interested individuals, including the parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

(a) Within sixty (60) calendar days after a complaint is filed under the provisions of this rule, the Department of Education shall:

1. Carry out an independent onsite investigation, if the Department of Education determines that an investigation is necessary;

2. through 4. No change.

5. Issue a written decision to the complainant that addresses each issue presented in the complaint and contains findings of fact, conclusions, and the reason(s) for the Department's Department of Education's decision; and,

6. No change.

(b) Procedures for the effective implementation of the Department's Department of Education's decision, if needed, include the following:

1. through 3. No change.

4. Where the Department of Education has found a failure to provide appropriate services, the Department must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement) and appropriate future provision of services for all students with disabilities.

5. If there remain disputed issues after the Department of Education issues its written decision, either the public agency or the person filing the complaint may, if they have not already done so, use mediation or file a request for a

due process hearing on the disputed issues, provided the aggrieved party has the right to file due process as specified in subsection (9) of this rule.

(c) Relationship to due process hearings.

1. If a written complaint is received that is also the subject of a due process hearing requested pursuant to this rule, or the complaint contains multiple issues, of which one or more are part of that hearing, the Department of Education shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved in compliance with the procedures described in this rule.

2. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the administrative law judge's (ALJ) decision is binding on that issue and the Department of Education shall inform the complainant to that effect.

3. The Department of Education shall resolve any complaint which alleges that a public agency, including a school district, has failed to implement a due process hearing decision.

(d) Filing a complaint. An organization or individual may file a signed written complaint and must forward a copy of the complaint to the public agency, including a school district, serving the student at the same time the party files the complaint with the Department of Education. The complaint must include:

1. through 4. No change.

(e) The Department of Education will develop a model form to assist parents and other parties in filing a state complaint. However, neither the Department of Education nor a public agency, including a school district, may require the use of the model form. Parents, public agencies, including school districts, and other appropriate parties may use the appropriate model form or another form or other document, as long as the form or other document that is used meets, as appropriate, the content requirements in paragraph (5)(d), above.

(f) Proposals to resolve the complaint. If a public agency, including a school district, submits a proposal to resolve the complaint, the complainant shall be provided the opportunity to review the proposal and provide voluntary written agreement to withdraw the complaint. Absent the voluntary written agreement of the complainant to withdraw the complaint, the Department of Education shall:

1. Review all relevant information and make an independent determination as to whether the public agency, including a school district, is violating a requirement of the IDEA or state statute or rule related to the education of

students with disabilities; and

2. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

a. Findings of fact and conclusions; and

b. The reasons for the ~~Department's~~ Department of Education's decision.

(6) through (8) No change.

(9) Due process Hearings and Resolution Sessions.

(a) A due process hearing request may be initiated by a parent or a public agency, including a school district, as to matters related to the identification, evaluation, eligibility determination, or educational placement of a student or the provision of FAPE to the student. In addition, in accordance with Section 1008.212, F.S., in the event that a school district superintendent requests an extraordinary exemption from participation in a statewide standardized assessment and the Commissioner of Education denies such request, the parent may request an expedited due process hearing. In this event, the Department of Education must inform the parent of any free or low-cost legal services and other relevant services available. The Department of Education shall arrange a hearing on this matter with the Division of Administrative Hearings. The hearing must begin within twenty (20) school days following the receipt of the parent's request by the Department of Education. The ALJ must make a determination within ten (10) school days after the expedited hearing is completed.

(b) through (c) No change.

(d) The due process hearing request. The public agency, including a school district, must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process hearing request (which must remain confidential). The party filing a due process hearing request must forward a copy of the request by mail to the Florida Department of Education at 325 West Gaines Street, Room 614, Tallahassee, Florida 32399 or via fax transmission to (850)245-0953. A due process hearing request must contain the following:

1. through 6. No change.

(e) No change.

(f) The Department of Education will develop a model form to assist parents and public agencies, including school districts, in filing a due process hearing request. However, neither the Department of Education nor a public agency, including a school district, may require the use of the model form. Parents and public agencies, including school districts, may use the appropriate model form or another form or other document, as long as the form or other

document that is used meets, as appropriate, the content requirements in paragraph (d) of this subsection.

(g) through (t) No change.

(u) Should a hearing be required, it shall be conducted by an ALJ appointed as required by section 120.65, F.S., from the Division of Administrative Hearings, Department of Management Services, on behalf of the Department of Education. At a minimum, an ALJ must not be an employee of the Department of Education or the public agency, including a school district, that is involved in the education or care of the student or have a personal or professional interest that conflicts with the person's objectivity in the hearing. In addition, an ALJ must possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts; must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. A person who otherwise qualifies to conduct a hearing under this paragraph is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ. The Florida Department of Education will keep a list of the persons who serve as ALJs, which must include a statement of the qualifications of each of those persons.

(v) through (w) No change.

(x) Attorneys' Fees.

1. In any due process hearing or subsequent judicial proceeding brought under this rule, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

a. The prevailing party who is the parent of a student with a disability;

b. To a prevailing party who is the Department of Education or public agency, including a school district, against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. To the prevailing Department of Education or public agency, including a school district, against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

2. through 4. No change.

(y) No change.

*Rulemaking Authority 1001.02(1), (2)(n), 1003.01(3), 1003.57, 1003.571, 1003.5715, 1008.212 FS. Law Implemented 1003.01(3), 1003.57, 1003.571, 1003.5715, 1008.212 FS. History—New 7-13-83, Amended 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90, 9-20-04, 12-22-08, 3-25-14, 7-14-21, 6-14-22.*