



Protecting the Rights and Improving the Lives of Maine's Children

Laws Protecting Students with Disabilities

Individuals with Disabilities Education Act (IDEA): (federal)

Entitlement to special education and supportive services to ensure student with 1 of the 13 qualifying disabilities receives a “free appropriate public education” in the “least restrictive environment” through an “individual education plan.”
20 USCA 1400 et. seq., 34 CFR Part 300

Purpose of IDEA:

Ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities. 20 USC 1400(c)(1)

2004 Amendments:

IDEA 2004 was passed by Congress and became effective as of July 1, 2005. Federal and state regulations will be revised in order to comply with the new federal statute.

Exceptional Children: (state)

Maine law complying with IDEA, 20-A MRSA 7201 et seq

Maine Special Education Regulations

Chapter 101, Maine Department of Education

Section 504 of the Rehabilitation Act: (federal)

Anti-discrimination law for students with qualifying disabilities to ensure students receive a “free appropriate public education” so long as school receives federal financial assistance
29 USCA 706 and 794; 34 CFR Part 104

Americans with Disabilities Act: (federal)

Anti-discrimination law for people with disabilities
42 USCA 12101 et seq; 29 CFR Part 1630

Maine Human Rights Act (state)

Maine’s anti-discrimination law for students with disabilities (as well as gender, race, color, national origin, religion, familial status, and sexual orientation); applies in education area
5 MRSA 4601 et seq



Family Education Rights Privacy Act: (federal) –

Protects confidentiality of school records for special education and non-special education students and gives parents right to correct/amend those records
20 USCA 1232g; 34 CFR Part 99

Case Law

The Standard: Free Appropriate Public Education (FAPE)

Appropriate means the educational program is reasonably calculated to enable the student to achieve an educational benefit. It is not the best program.

Bd. of Education of the Hendrick Hudson Central School District v. Rowley, 458 US 176, 102 S.Ct. 3034 (1982)

No Student is “too” disabled

Zero Reject Rule: there is no benefit eligibility test under IDEA. All children are eligible even if considered non-educable (ie, in a coma) as IDEA requires an appropriate education to meet the unique needs of the individual student.

Education is broadly defined. Timothy W. v. Rochester School District, 875 F.2d 954 (1st Cir. 1989)



Learning the Language of IDEA

BIP – Behavior Intervention Plan

An individually positive based intervention system designed by the PET to assist a student to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors (MSER 2.15).

DOE = Department of Education

Educational Performance –

This includes academic areas (reading, math, communication, etc.), non-academic areas (daily life activities, mobility, etc.), extracurricular activities, progress in meeting goals established for the general curriculum, *and* performance on State-wide and local assessments.

ED - Emotional Disability

One of 13 disabling conditions under IDEA, also referred to as “severe emotional disability.” See Disabling Conditions Section.

FAPE = Free Appropriate Public Education - Students classified with a disability are entitled to a free appropriate public education. Appropriate means reasonably calculated to lead to the advancement in the general curriculum. Free and public means at no cost to the parent, including transportation expenses, for an individualized education program involving modifications in the classroom or curriculum and/or supportive services, such as transportation, counseling, speech therapy, etc. in the least restrictive environment. IDEA applies to public schools.

FBA or Functional Behavioral Assessment – school based process in PET Meeting to determine 1) why student engages in challenging behaviors resulting in disciplinary action, 2) to hypothesize and address the general conditions under which a problematic behavior occurs, 3) probable consequences to the student, and 4) strategies that include positive behavioral approaches to address those behaviors

IDEA – Individuals with Disabilities Act

Federal law entitling students with one of 13 qualifying disabilities to receives specialized instruction and supportive services. 20 USCA 1400 et. seq., 34 CFR Part 300

IEP = Individualized Education Plan - Written document developed at a PET Meeting detailing the student’s educational program and services, including the student’s problem areas, current level of performance and annual goals with short-term measurable and objective achievement goals. One must be in place at the beginning of every school year. Educational programs involve both academic and non-academic skills (ie., social skills, communication skills, extracurricular activities).



IEE or Independent Educational Evaluation - If the parent disagrees with the school's evaluation, the parent may request an independent evaluation at public expense. This means the school must pay for it and the parent may choose the evaluator. The evaluator, however, must be located in the state of Maine and must be qualified to conduct the evaluation. A school can request a due process hearing if it disagrees with the need for an independent evaluation. The school has 30 days to respond to the parents' request. If the school refuses to grant an IEE, the school must request a due process hearing with the Maine Department of Education.

IAES = Interim Alternative Educational Setting - A temporary educational setting (up to a maximum of 45 school days) for students classified with disabilities who are being disciplined for 1) bringing a weapon to school, 2) bringing illegal drugs to school, or 3) injuring someone. If the behavior does not involve one of the 3 conditions listed above, the school cannot place a student in an IAES without first requesting a hearing before the Maine DOE and proving that the student presents a danger to self or others.

LD – Learning Disability

One of 13 disabling conditions under IDEA. See Disabling Conditions Section

LRE = Least Restrictive Environment - The actual placement for a student with a disability. LRE involves interaction with non-disabled peers to the maximum extent appropriate and located physically closest to the child's home. Students with disabilities must be placed in the LRE. Continuum of LRE placements is as follows (from least restrictive to most restrictive): regular classes, resource classroom, self-contained placement, public separate day school, private separate day school, public residential, private residential, and hospital/home tutoring. Please note tutoring is the most restrictive placement.

Manifestation Determination - When a child is going to be removed from school for more than 10 cumulative or consecutive school days, the PET must hold a manifestation meeting to determine if the behavior resulting in the disciplinary action

- 1) is directly and substantially related to the child's disability or
- 2) is directly a result of the school's failure to implement the IEP

If there is a manifestation, student cannot be disciplined for behavior. Instead, IEP should be changed to address behaviors. If there is not a manifestation, student can be disciplined like non-special education students.

MH – Multiply Handicapped

One of the 13 qualifying disabilities under IDEA that involves a determination that the student has 2 or more of the qualifying disabilities identified under IDEA. See Disabling Conditions Section.

OCR = Office of Civil Rights (504) – Investigates violations of and enforces compliance with Section 504.



OHI – Other Health Impairment

One of the 13 qualifying disabilities under IDEA. See Disabling Conditions Section.

PET = Pupil Evaluation Team -- Group that determines whether a student has a disability requiring special education, and if so, develops the IEP. Participants must include: parents, one regular ed teacher if the child takes any regular ed classes, one of the student's special ed teachers, school district rep (usually the special ed director), someone who can interpret the evaluations, the student if appropriate, anyone the parent or school invites who has some special knowledge about the student, and if transition planning is required, the agency that will be handling the transition plan services.

Section 504 (of the Rehabilitation Act of 1973) - First law entitling students with disabilities to a free appropriate public education, actually included in a federal labor statute, 29 USCA 706 and 794; 34 CFR Part 104. In order for Section 504 to apply, the school must receive federal financial assistance. The definitions of disability are broader than under IDEA for classification purposes; however, for procedural protection purposes, Section 504 is not as strong as IDEA. If the student is classified under section 504, a 504 plan must be put in place. If a school violates Section 504, parents follow the local school district policy regarding 504 grievance and can also file a complaint with the regional Office of the Civil Rights.

SED – Severe Emotional Disability

Also referred to as Emotional Disability (ED), which is one of the 13 qualifying disabilities under IDEA. See Disabling Conditions Section.

SLD – Specific Learning Disability

Also referred to as Learning Disabled (LD), which is one of the 13 qualifying disabilities under IDEA. See Disabling Conditions Section.

Stay Put -- When a due process hearing is requested and pending, the child stays in the current educational placement (“stay put”) unless the parents and school agree to an interim placement throughout the course of the litigation.

Transition Plan- Results oriented programming that serves to move the student from school to community living. There must be a transition plan as part of the IEP that takes into account the student's interests once the student is 16 and it must address both academic and functional needs.

Triennial Evaluation -- The school must conduct a new evaluation on a student classified with a disability every 3 years.



13 DISABLING CLASSIFICATIONS UNDER IDEA

Autism	Deaf-Blindness
Deafness	Emotional Disability(ED)
Hearing Impairment	Mental retardation
Multiple Disabilities (MD)	Orthopedic Impairment
Other Health Impaired (OHI)	Specific Learning Disability (SLD)
Speech/Language Impairment	Traumatic Brain Injury
Visual Impairment including blindness	

- In order to be eligible, the disability must adversely affect educational performance (MSER, part 3)

Specific Learning Disability:

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

20 USC 1401(30)

Exceptions: if determinant factor is lack of appropriate instruction in reading, math, or student has limited English proficiency (LEP). 20 USC 1414(b)(5)

Not required to take into consideration whether severe discrepancy between ability and achievement exists and may use process that determines if child responds to scientific, research based intervention as part of evaluation procedures.

20 USC 1414(b)(6)

Emotional Disability: MSER 3.5

One of 5 criteria must be present

1. Inability to learn that cannot be explained by intellectual, sensory, or health factors
2. inability to build or maintain satisfactory interpersonal relationships with peer and teachers
3. inappropriate types of behaviors or feelings under normal circumstances
4. a general pervasive mood of unhappiness or depression
5. a tendency to develop physical symptoms or fears associated with personal or school problems



Exception: Social Maladjustment

Litmus Test Re: Oppositional Defiant Disorder or Conduct Disorder is inappropriate

See: Springer v. Fairfax County School Board, 134 F.3d 659 (1998, 4th Cir.)



EVALUATIONS UNDER IDEA

- Informed parental consent required for evaluations
 - If parent refuses to consent, school may request hearing
 - 20 USC 1414(a)(D)
- Initial Evaluations:
 - Made at the request of parent, Maine DOE, the school or other State agency (20 USC 1414(a)(1)(B))
 - Timing: made within 60 days of receipt of parental consent unless state mandates other timeframe (20 USC 1414(a)(1)(C)(i)(I))
 - Exception to timeframe: child transfer schools after original school receives parental consent but before the PET makes a determination of eligibility, and the new school is making sufficient progress to ensure the prompt completion of evaluations, and the parent and school agree to a specific time frame for completion of the evaluations
 - Parent/child refuses to show for the evaluation
 - 20 USC 1414(a)(1)(C)(ii)
 - Must include procedures to determine if student is eligible for services and what the student's educational needs are
- Reevaluations:
 - Conducted when school determines child's need warrant reevaluation or if requested by parent or teacher (20 USC 1414(a)(2))
 - NOT more frequently than once a year, unless a parent and school agree to more
 - AT LEAST every 3 years unless parent and school agree unnecessary
 - 20 USC 1414(a)(2)(B)
 - Discharge from Special Ed
 - School must re-evaluate student before discharging from special ed unless student is discharged because of graduation or aging out
 - 20 US 1414(c)(5)(A)
- General Information about Evaluations:
 - Purpose: gather relevant "FAD" information in all suspected areas of disability (20 USA 1414(b)(3)(B))
 - Functional,
 - Academic and
 - Developmental
 - including that provided by parent – 20 USC 1414(b)(2)(A)
 - Assess relative contribution of cognitive, behavioral, physical and developmental factors (20 USC 1414(b)(2)(C))



- No one single measure can be used as the sole criterion in determining eligibility 20 USC 1414(b)(2)(B)
- Must be administered in the language and form most likely to yield accurate information unless it is not feasible to do so
 - 20 USC 1414(b)(3)(A)(ii)
- Copy of the evaluations must be given to the parent
 - 20 USC 1414(b)(4)(B)
- Deciding what evaluations are needed
- PET decision
 - PET must review, as appropriate, existing evaluations including those provided by parents, current assessments, classroom observations and observations by teacher and related service providers (20 USC 1414(c)(1)(A)) and on basis of that review determine what if any additional info is needed
 - 20 USC 1414(c)(1)(B)



PARTICIPATION AT PET MEETING

- **Members**
 - Parents
 - At least 1 regular ed teacher (if child is or may be in regular education programming)
 - at least 1 special ed teacher
 - School rep who knows about general curriculum and availability of school resources and is qualified to provide or supervise provision of “specially designed instruction”
 - Someone who can interpret the instructional implications of evaluation results (can be one of the school staff listed above)
 - At parent or school discretion, someone with knowledge or special expertise regarding child, including related services staff
 - When appropriate, the child
 - 20 USC 1414(d)(1)(B)

- **Attendance:**
 - Parent and school can excuse a member from attending the PET if that member’s participation is not necessary because that subject area is not being discussed at the PET (20 USC 1414(d)(1)(c)(i))
 - Member may be excused during a PET meeting when remaining issues for the PET do not involve that person’s area if both parent and school consent in writing and the member to be excused submits input in writing for development of IEP before the PET meeting occurs (20 USC 1414(d)(1)(c)(ii))

- **Technology**
 - Parent and school can agree to use videoconference and conference calls for PET participation
 - 20 USC 1414(f)

- **Access to Records:**
 - Parents must have opportunity to examine all records relating to child and to participate in PET meetings and to obtain IEE (20 USC 1415(b)(1))



Who is the “Parent”

- Defined: natural, adoptive, foster parent, or legal guardian (but cannot be the State)
- Surrogate parent: (20 USC 1401(23))
 - Someone acting in place of natural/adoptive parent who
 - the child lives with, or
 - who is legally responsible for the child
 - Role: protect rights of child when
 - parents not known
 - parents cannot be located or
 - student is a state ward
 - Foster parent is automatically appointed as surrogate parent (20 USC 1401(36)(B))
 - Exception: DHHS notifies school of objection to foster parent’s appointment as surrogate. In that case, foster parent is not automatically appointed and DHHS must recommend to Maine DOE person to serve as surrogate parent for child (20-A MRSA 7207-A))
 - Surrogate cannot be school or state agency representative (DOE, DHHS, DOC if involved in care or education of child)
 - State ward: Schools must notify DHHS that case worker has authority to request PET and attend and participate in any PET meetings and include time and place of meeting 20-A MRSA 7202(10)
 - Judge in child protective case may appoint surrogate parent 20 USC 1415(b)(2)(A)(i)
 - Unaccompanied homeless youth, school must appoint surrogate parent 20 USC 1415(b)(2)(A)(ii).
 - Timing:
 - Reasonable efforts must be made by the state to ensure a surrogate parent is appointed within 30 days after agency determines a surrogate is needed (20 USC 1415(b)(2)(B))



NOTICE TO PARENT UNDER IDEA

- Must be provided by school
 - before any proposed changes in the IEP or refusal to initiate changes to the IEP occur (20 USC 1415(b)(3)) and
 - include a description of what was proposed or refused
 - an explanation of why
 - a description of evaluations, records, reports that school used for the basis of its decision and
 - a description of other options the PET considered
 - 20 USC 1415(c)(1)(A) and (B) and (E)
- Notice of Due Process Rights
 - must include the opportunity to mediate (20 USC 1415(b)(5), and
 - to file a complaint (20 USC 1415(b)(6) within one year of violation or if requesting comp ed within 3 years of when complaint received (20 MRSA 7206(1) and
 - procedures to file due process (20 USC 1415(b)(7))
- Procedural safeguards notice to parents (once per year or upon parent request)
 - Must include parents have a right to
 - Independent educational evaluation
 - Prior written notice
 - Parental consent
 - Access to education records
 - Opportunity to present complaint, including time limits, school's opportunity to resolve disagreement and mediation
 - Stay put
 - Procedures of IAES
 - Requirements for unilateral placements by parents at public expense
 - Due process hearings
 - Civil actions, including time periods
 - Attorney's fees
 - 20 USC 1415(d)
- Emails:
 - Notices may be provided by email if parent requests that and the school has email available to it (20 USC 1415(n))
- Language barriers
 - Notice must be in native language of parents unless not feasible to do so (20 USC 1415(b)(4))



Individual Education Plan (IEP)

- **Must contain:**
 - present levels of academic achievement and functional performance,
 - how disability affects child's involvement and progress in general educational curriculum,
 - those who take alternate assessments for alternative achievement standards, description of short-term objectives
 - measurable annual goals, including academic and functional goals, to make progress in general curriculum and to meet other educational needs that result from the child's disability
 - description of how it will be measured
 - special ed and related services based on peer reviewed research to extent practicable and statement of program modifications or supports for school personnel that will be provided for the child to meet annual goals, participate in extracurricular and nonacademic activities and participate with other children with disabilities and nondisabled children and explain why child will not be with nondisabled children regular class and activities
 - necessary accommodations for assessments
 - explanation why alternate assessment necessary and identify the alt assessment
 - projected date for service start date, anticipated frequency, location and duration
 - Transition plan in first IEP that is in place the school year in which the student turns 16 years old,
 - appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills
 - At least when child turns 17 statement that child informed that rights will transfer to student at age 18
 - 20 USC 1414(d)(1)(A)
- **Effective dates**
 - IEP must be in effect at beginning of each school year (20 USC 1414(d)(2)(A) and
 - reviewed at least annually and revised as appropriate to address lack of expected progress, results of re-evaluations, information provided by parents, child's anticipated needs, other matters (20 USC 1414(d)(4)
- **Considerations in developing IEP:**
 - Strengths
 - Parents concerns
 - Results of most recent evaluations
 - FAD needs
 - When behavior impedes child's or other children's learning, positive behavior interventions, supports, strategies to address behavior
 - LEP language needs
 - Braille



- Communication needs of child
- Need for assistive technology
- 20 USC 1414(d)(3)(A) and (B)

- Revisions to IEP
 - Through the PET by consensus
 - Exception:
 - Changes can be made without a PET meeting if parent and school agree and written document amends or modifies IEP (20 USC 1414(d)(3)(D))

- Parental Consent:
 - Must be given for services to begin. If not provided, school not have to provide the services.
 - 20 USC 1414(a)(1)(D)(ii)(II)

- Research focus for instructional methodology
 - Implementation of IDEA has been impeded by low expectations, and insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities (20 USC 1400(c)(4))
 - High quality intensive pre-service preparation and professional development for all personnel, including use of scientifically based instructional practices (20 USC (c)(5)(E))
 - DOE establish qualifications to ensure personnel are appropriately and adequately prepared and trained, including possessing content knowledge and skills to serve children with disabilities (20 USC 1412(A)(14))
 - Parents do not have an individual right of action under this section (20 USC 1412(A)(14)(E))
 - School ensure all personnel necessary to carry out IDEA are appropriately and adequately prepared (20 USC 1413(a)(3)) – failure to comply can result in state reducing or stopping payment until compliance after notice and opportunity for a hearing (20 USC 1413(d)(1)) with notice to public within school jurisdiction (20 USC 1413(d)(2))

- Services must be in Least Restrictive Setting (LRE)
 - Continuum of services from least to most restrictive (reg. 11.3 – 11.11)
 - Regular class placement at least 80% of time
 - Resource room placement (outside regular class for less than 60% of day)
 - Self-contained placement (outside regular class for more than 60% of day)
 - Public separate day school placement
 - Private separate day school placement
 - Public residential placement
 - Private residential placement
 - Hospital/homebound placement
 1. Tutoring Services = homebound



Tutoring Services = Homebound

MSER state “tutoring services shall be determined on an individual basis by the PET and shall consist of services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student’s I.E.P. Home-based tutorial services are usually appropriate for only a limited number of students, such as students who are medically fragile and are not able to participate in a school setting with other students.” (MSER 5.8)

- In the Least Restrictive Environment continuum, home instruction is placed with Hospital placement, meaning VERY restrictive. (MSER 11.11)
- If tutoring will be more than 10 school days, PET needs to develop a new IEP
- If tutoring for more than 60 calendar days, certified special ed teacher must be the tutor (MSER 5.8)
- Parents should not have to transport for tutoring. If parents do, they should be reimbursed for mileage at the same rate as the school staff. (MSER 6.17)



TRANSITION PLANNING

- Providing effective transition services to promote the successful post-school employment or education of a student with a disability is an important measure of accountability (20 USCA (c)(1401))
- Definition: 20 USC 1401(34)
- results oriented process,
- focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including
 - post-secondary ed,
 - voc ed,
 - integrated employment,
 - continuing and adult ed courses,
 - adult services,
 - independent living or
 - community participation,
- based on
 - child's needs,
 - strengths,
 - preferences and
 - interests and
- and includes
 - instruction,
 - related services,
 - community experiences,
 - development of employment and other post school adult living objectives and
 - when appropriate, the acquisition of daily living skills and functional vocational evaluations

If IEP transition services are not provided by outside agency

school must convene PET to identify alternative strategies to meet transition objectives in IEP (20 USC 1414(d)(6))

Graduation/Age Out

School must provide child with summary of his/her academic achievement and functional performance, including recommendations on how to assist the child in meeting his/her post-secondary goals. 20 USC 1414(c)(5)(B)(ii)



DISCIPLINE ISSUES UNDER IDEA

Manifestation Determination

- Case by case determination for students who violate the student code of conduct that results in more than 10 school days of school removal requires a manifestation determination (20 USC 1415(k)(1)(A) and (B))
- Participants must include parent and relevant members of PET (as determined by parent and school) and must review all relevant information in student's file, including IEP, teacher observations and other relevant information provided by the parents (20 USC 1415(k)(1)(E))
- The questions that must be considered (only one need be yes for a manifestation to be found)
 1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or
 2. if the conduct in question was the direct result of the school's failure to implement the IEP.

20 USC 1415(k)(1)(E)(i) and (ii)

- If manifestation is found
 - a functional behavior assessment must be conducted and a behavior intervention plan (BIP) must be implemented or modified as necessary to address the behavior and
 - student must be returned to the placement (s)he was removed from unless agreement between parent and school to place elsewhere as modification of BIP (20 USC 1415(k)(1)(F))
- If no manifestation if found
 - student may be disciplined like non-special ed students (ie, expulsion) (20 USC 1415(k)(1)(c))
 - student is still entitled to a FAPE if expelled (20 USC 1415(k)(1)(D))
 - Parent may appeal manifestation determination by requesting a due process hearing (20 USC 1415(k)(3))

Services after 10 school days of removals (cumulative or consecutive)

- If student is removed from school regardless of the manifestation finding,
 - (s)he must received education services that enable him/her to participate in the general education curriculum (although in another setting) and
 - progress toward IEP goals, and
 - receive a functional behavioral assessment and behavioral intervention services and modifications to address behavior
 - 20 USC 1415(k)(1)(D)

Interim Alternative Educational Setting (IAES)

- Can last for a maximum of 45 school days, regardless of the manifestation determination IF
 - Carries/Possesses Weapon,
 - Possesses or Uses Illegal Drugs,
 - Sells or Solicits sale of controlled substance or
 - inflicted serious bodily injury
 - at school, on school grounds or at school function
 - 20 USC 1415(k)(1)(G)
 - All other grounds to place in an IAES can only occur after school proves at a due process hearing that the student’s staying in his/her current placement is “substantially likely to result in injury” to self or to others (20 USC 1415(k)(3)(A) and (B)(ii)(II))
- PET determines the IAES (cannot be a unilateral decision by school administration) (20 USC 1415(k)(2))
 - If parent disagrees with appropriateness of IAES, (s)he may request a due process hearing
 - Expedited: 20 school days for hearing, 10 schools days afterwards for decision (20 USC 1415(k)(4)(B))
 - “Stay Put” is IAES until the 45 school day maximum time permitted has expired (20 USC 1415(k)(4)(A))
- What does this mean:
 - A placement of 2 hours of tutoring a day is either
 - A violation of IDEA because a FAPE is not provided, it’s not the LRE, and/or it wasn’t determined by a PET, or
 - School is not treating tutoring like an IAES but is instead suspending the student for more than 10 days in violation of the students due process rights to an expulsion hearing before the school board under 20-A MRS 1001(9)

Discipline and non-identified IDEA students

- A referral for special education may occur during or after the student has been suspended or expelled. In that case, the evaluation must be expedited (20 USC 1415(k)(5)(D))
- Students not yet eligible for IDEA may be protected by procedures (manifestation determination, IAES, functional behavior assessment and behavior interventions) if school had knowledge that the student had a qualifying disability before the behavior occurred (20 USC 1415(k)(5)(A))
 - Basis of knowledge (20 USC 1415(k)(5)(B))
 - Parent submitted written concerns that child needs special ed and related services to school administration or child’s teacher
 - Parent requested evaluation, or
 - Student behavior



- Teacher or other school staff expressed specific concerns about behaviors to special ed director or other school supervisory personnel
- Exception: Parent did not consent to evaluation, refused services, or the student was evaluated and determined ineligible for services (20 USC 1415(k)(5)(c))



REQUESTING A DUE PROCESS HEARING

Time Limits:

- Request must occur within 2 years of when the parent or school knew or should have known of the action that is basis of complaint (20 USC 1415(f)(3)(c))
- Exceptions: (20 USC 1415(f)(3)(D))
 - The parent was prevented from requesting a hearing due to the school's withholding information that was required to be provided to the parent or
 - The school misrepresented that it had resolved complaint

Due Process Hearing Request Notice Requirements (20 USC 1415(b)(7)(A))

- Must be sent to opposing party and Maine DOE
- Must include name and residence of child and name of school child attends
- If homeless child, must include available contact information for the child and the name of school
- Description of problem, including facts relating to problem
 - Issues at the hearing are limited to those listed in the notice (20 USC 1415(f)(3)(B))
- Proposed resolution of problem

Sufficiency of Notice

- Can be challenged in writing and must be submitted to the hearing officer and the opposing party (20 USC 1415(c)(2)(A))
- Must be done within 15 days of receipt of complaint (20 USC 1415(c)(2)(c)).
- Hearing officer has 5 days from receipt of written challenge to decide if notice is sufficient ((20 USC 1415(d)(2)(D))
- An amended complaint may be submitted if
 - opposing party consents and is given the opportunity to resolve the complaint or
 - hearing officer grants permission to amend and amendment is received at least 5 days prior to the due process hearing
 - 20 USC 1415(c)(2)(E)
 - Remaining timelines for due process hearing start at time amended notice is filed (20 USC 1415(c)(2)(E)(ii))



School Response to Complaint (20 USC 1415(c)(2)(B))

- School has 10 days from receipt of complaint to send parent a response
 - why it made the decision,
 - description of other options considered by PET
 - reason for rejection of those options,
 - description of evaluations, records, reports that support the school's decision and
 - factors that are relevant to school's decision

PROCEDURES BEFORE DUE PROCESS HEARING

Dispute Resolution Session (new procedure under IDEA 2004)

- Purpose: Opportunity for parents to discuss their complaint and supporting facts, and school has an opportunity to resolve the complaint (20 USC 1415(f)(1)(B)(i)(IV))
- Must occur before the due process hearing unless the school and parent agree in writing to waive the meeting or to use mediation instead (20 USC 1415(f)(1)(B)(i))
- Meeting must occur within 15 days of the school's receipt of the due process notice and must include the parent(s), PET members with knowledge regarding the facts contained in the complaint and a school representative with decision-making authority (20 USC 1415(f)(1)(B))
- School may not have an attorney present if the parents do not have an attorney present (20 USC 1415(f)(1)(B)(i)(III))
- If an agreement is reached, it is legally binding and enforceable in state or federal court, but it may be voided within 3 business days of the agreement's execution (20 USC 1415(f)(1)(B)(iii) and (iv))
- May be waived if BOTH parties agree.

If the matter is not resolved within 30 days of the school's receipt of the parent's complaint, the due process hearing may occur and the timelines kick in

20 USC 1415(f)(1)(B)(ii)

PROCEDURES BEFORE DUE PROCESS HEARING

Mediation (20 USC 1415(e)(2))

- Can be requested on its own
- Will be offered to the parties when a complaint or due process hearing is filed
- Will only occur if both parties agree to participate (voluntary)
- It cannot be used to deny or delay a parent's rights to a due process hearing
- The mediator must be "qualified and impartial"
- The cost is born by the State ((20 USC 1415(e)(2)(D))
- Mediation must be timely scheduled and held in a mutually convenient location (20 USC 1415(e)(2)(E))
- Any agreement reached is reduced to writing and is legally binding and enforceable in state or federal court (20 USC 1415(e)(2)(F))
- All discussions that occur in mediation are confidential (20 USC 1415(e)(2)(F)(ii))

Pre-Hearing Conference: (MSER 13.9)

- Clarification of the issues
- Exhibits provided by requesting party
- Length of time needed for hearing

Disclosure of Evaluations: (20 USC 1415(f)(2))

- 5 business days before hearing, each party must disclose to the other party all the evaluations that have been completed and the recommendations offered by those evaluations that will be used at hearing or else those evaluations may be prohibited from the hearing



THE DUE PROCESS HEARING

MSER 13.12

- opening statements made by both parties
- Witnesses sworn in
- sworn witness testimony, including cross-examination and rebuttal
 - subpoenas may be issued by DOE
- recording of hearing (written or electronic)
- admission of exhibits
- requesting party goes first and has the burden of proof
- oral or written summation given
- hearing must occur within 30 days of receipt of request (post amended notice and dispute resolution time periods) (MSER 13.7)
- extension for up to 10 days for good cause only (MSER 13.7)
- decision rendered within 15 days after close of hearing (MSER 13.14)

“Stay Put” - (20 USC 1415(j), MSER 12.12)

- Student remains in “then current educational placement” during hearing process unless parents and school agree to other placement

Hearing Decisions and Appeals

Basis for Decision by Hearing Officer

- Decision must be based on substantive grounds (20 USC 1415(f)(3)(E)(i))
- Procedural violations must have affected child’s right to FAPE or significantly impeded parent’s opportunity to participate in decision-making process re: FAPE or caused a deprivation of educational benefits (20 USC 1415(f)(3)(E)(ii))

Appeals:

- Decision may be appealed by either party in state court or federal district court (regardless of amount in controversy) within 30 days of decision (which is the State time limitation) (20 USC 1415(i)(2))
- Preponderance of the evidence standard (20 USC 1415(i)(2)(c)(iii))
- Additional evidence may be heard at the request of a party (20 USC 1415(i)(2)(c)(ii))



Attorney's Fees

- Reasonable attorneys' fees for due process hearing may be awarded to prevailing parent (20 USC 1415(i)(3)(B)(i)(I))
- May not be awarded for PET meeting unless PET is result of hearing or court action (20 USC 1415(i)(3)(D)(ii))
 - Dispute resolution sessions are not a hearing or court action
- May not be awarded for services performed after a written offer of settlement to parents if
 - offer is made 10 days before due process hearing,
 - offer is not accepted within 10 days and
 - hearing officer/court decision rules parent's relief is not more favorable to parents than offer
 - 20 USC 1415(i)(3)(D)(i)
- School can seek reasonable attorneys' fees
 - *against parent's attorney* if cause of action is frivolous, unreasonable or without foundation (20 USC 1415(i)(3)(B)(i)(II) or
 - *against parent or parent's attorney* if case presented for improper purpose (harassment, unnecessary delay, increase cost of litigation) 20 USC 1415(i)(3)(B)(i)(III)