

## PARENT AND CHILD RIGHTS IN GIFTED EDUCATION PROCEDURAL SAFEGUARDS NOTICE



### New Mexico Public Education Department

You as a parent or guardian play a vital role in your child's education. State law requires districts to inform and include parents in the educational decisions made regarding their child's education. One of the requirements of state law is to provide the parent with Procedural Safeguards in print or at the election of the parent via e-mail. This Notice is designed to provide you with information about the Procedural Safeguards and your rights related to gifted education.

Your school district must provide you with a copy of this Procedural Safeguards Notice one time each year and also when the following occurs:

1. The first time you or the school district asks for an evaluation;
2. You ask for a copy of these procedural safeguards;
3. The first time in a school year you request a due process hearing or file a state complaint; and

*Note: For the purposes of this Notice, "school district includes charter schools and other public agencies responsible for the provision of a public education to your child.*

### THE GIFTED EDUCATION PROCESS

"Gifted child" means a school-age person whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the state gifted eligibility criteria and for whom a multidisciplinary team determines that gifted services are required to meet the child's educational needs. There is a process that schools use to determine whether a child is eligible for and provided with gifted education services.

To understand your role and rights in the decisions made for your child, it may be helpful to first look at how the gifted education process works. The basic process is as follows:

**Step One:**

**INITIAL EVALUATION:** A parent or district staff may refer a child for an evaluation to determine whether the child is eligible for gifted services. The child is evaluated. This will involve formal testing, observations, and information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, and judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations... Parents must give written informed consent before an evaluation can begin.

**Step Two:**

**DETERMINE IF ELIGIBLE:** Based on all the information gathered, a multidisciplinary team of qualified professionals and the parent determine whether the child is eligible for gifted education services.

**Step Three:**

**IEP DEVELOPMENT:** If the child is found eligible, a team meets to develop an Individualized Education Program (IEP). The IEP is the master plan for the child's gifted education services. The district must invite the parent(s) to the meeting, and provide opportunities for parent(s) to participate as members of the IEP team.

**Step Four:**

**IEP IMPLEMENTATION:** Parental consent is required before beginning any gifted education services. Once the plan is developed, the district implements the IEP as written.

**Step Five:**

**IEP REVIEW/REVISION:** The IEP team, which includes the parent(s), must formally review the child's IEP at least once a year. The IEP team may review the IEP more often if necessary, as requested by the district, or if requested by the parent(s).

## DECISION MAKERS FOR STUDENTS

Every child who is below the legal age of adulthood (age 18 in New Mexico) must have an adult available to make educational decisions and protect the child's legal rights. Usually that person is a natural or adoptive parent. If no parent is available, the adult decision-maker may be any of the following:

- A person acting in the place of a parent, such as a grandparent;
- A step-parent, or other relative that lives with the child;
- A legal guardian (but not the state, if the child is in state custody);
- An educational decision-maker appointed by a court; and
- If none of the above are available, a surrogate parent appointed by the district to make educational decisions and protect the child's educational rights.

In New Mexico, children become legal adults at age 18. They are then entitled to make their own educational decisions and protect their own rights unless the courts have declared them incompetent and appointed guardians for them. Unless this is completed before the child's 18<sup>th</sup> birthday, the child will automatically have all rights and responsibilities of adulthood when he or she reaches the age of 18, which includes making educational decisions. The district will inform the parent of the laws and options regarding transfer of rights beginning at each annual Individual Education Program (IEP) review for a child who is 14 or older.

*Note: For the purposes of this Notice, "parent" or "you" includes any of the above kinds of decision-makers for a student who is 18 or older and has not graduated from high school.*

## PRIOR WRITTEN NOTICE (PWN) OF PROPOSED ACTION

The district must provide the parent(s) the PWN in a manner that is understandable and in the parent's native language or other mode of communication, unless it is clearly not feasible to do so.

PWN is a written notice that requires the district to give to the parent(s). This notice must be provided either in hard copy format or at the election of the parent electronically before the district takes or refuses to take any action regarding:

- Identifying your child as a gifted child; or
- evaluating your child to determine eligibility for gifted education services; or
- Initiating and/or changing the gifted education services provided for your child, including IEP development or changes.

The district is required to inform the parent(s) a reasonable time before the district can formally evaluate your child, beyond the requirements for all students, before the district identifies or refuses to identify your child as needing gifted education services, and before the district can change your child's existing IEP.

The PWN must include:

- a description of the action the district proposes or refuses to take;
  - a description of the reasons for its decision;
  - a description of other options that have been considered by the IEP team and the reasons why those options were rejected;
  - description of each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
  - a description of other factors that are relevant to the district's proposal or refusal;
  - a description of the information the team used to arrive at its conclusion;

At any time subsequent to the initial provision of gifted education, you may revoke your consent for the continued provision of gifted education. If you as the parent(s) wish to revoke (cancel) your consent for your child to receive gifted education, the revocation must be in writing. Withdrawal of consent does not undo (negate) any action that occurred before the withdrawal. It is important to consider the new role and responsibilities the district will have as a result of revoking your parental consent. Once a parent has revoked his/her consent for all such gifted education services, the district is not required to convene an IEP meeting, nor is it required to amend educational records regarding any reference to receiving gifted education services.

The district may not use the procedural safeguards (i.e., mediation, state level complaint, resolution meeting, or an impartial due process hearing) to obtain an agreement or a ruling that gifted education be provided to your child if: 1) you as the parent(s) did not respond to an initial request to provide written consent; or 2) you as the parent(s) refused or later revoked the written consent. It is important to note that the district will not be considered to be in violation of any state rules for not providing any further gifted education. The child will then be considered a general education child and therefore, the district is not required to develop an IEP or conduct an IEP meeting. If you choose to revoke your consent in writing at any point after your child was provided gifted education, the district cannot continue to provide such services.

## **STUDENT RECORDS**

The IEP team may use your child's school records as one source of information when determining your child's eligibility for special education services. You the parent(s), or someone who has your permission, can inspect and review all of your child's records kept by the district unless it is advised you do not have authority under applicable State laws due to guardianship, separation or divorce.

You can review your child's records 1) before any meeting involving your child's IEP; or 2) before a due process hearing. You can request to review the records at other times, but the district has up to 45 days to honor your request. You can also request a copy of the records, but the district may charge you a reasonable fee unless the fee would prevent you from acquiring a copy. Note that there may be certain instances in which the district will not allow viewing of full records. This may occur if there are names or

information about individuals other than your child in the record, or if authorities direct the district to exclude certain people from viewing the records.

You or your authorized representatives are entitled to have the district explain anything in your child's records that you do not understand. If, after reviewing the records, you feel there is incorrect information or something that violates the privacy rights of your child, you can ask the district to amend the records. If the district refuses to amend the records, you may file a request with the district for a formal hearing to challenge the contents of the records under the procedures under the Family Educational Rights and Privacy Act (FERPA). You can also ask to have records destroyed once they are no longer needed for educational purposes.

The district is responsible for keeping children's records confidential. Parents may review their child's records kept by certain district personnel. Districts must transfer educational records when your child moves to a new district. The district also must keep a record of parties who have obtained legal access to records (except access by parents and authorized employees of your school district) including name(s) of the party, the types of records the date and the purpose of the access.

## **EDUCATIONAL EVALUATION**

If the district or you suspect that your child is gifted, and of possibly needing gifted education services, the district will need more information in order to be able to make that determination. In either case, this may involve any number of different types of assessments and/or observations, depending upon the information the district needs to gather about your child. The district will give the parent(s) a Prior Written Notice (PWN) of the district's intent to evaluate the child and identify the assessment tools the district will use. The district will ask for your consent to conduct the evaluation, and you will receive a copy of the results.

The evaluation process is important because the conclusions drawn from the evaluation are likely to determine not only if your child has a disability, but also if he or she qualifies for gifted services. These safeguards are built into the evaluation process:

- The district will inform the parent(s) ahead of time about what tests and other assessments they will use for the evaluation.
- The parent(s) must give informed written consent before any action is taken.
- The district will not discriminate against your child due to race, culture, language, or because of a disability.
- The evaluator will present tests and procedures in the child's language and/or mode of communication that will most likely yield accurate information about what your child knows and can do academically, developmentally, and functionally.
- When the evaluation is complete, the district will schedule a meeting with the parent(s) to discuss the results and conclusions drawn from the tests.

## Evaluation Components

A student must receive a complete and comprehensive evaluation to determine if the student is eligible for gifted education and services. State eligibility for gifted students requires evaluation in intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem-solving critical thinking. These areas are defined as follows:

1. "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area. 6.31.2.12(B) (i) NMAC.
2. "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources. 6.31.2.12(B) (ii) NMAC.
3. "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources. 6.31.2.12(B) (iii) NMAC.
4. "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources. 6.31.2.12(B) (IV) NMAC.

The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including

1. standardized measures, and
2. information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.

If you obtain and share an independent educational evaluation of your child that you obtained at private expense, the school district must consider the results of the evaluation of your child as part of the information regarding your child's abilities. However, you do **not** have the right to an independent educational evaluation at public expense.

## **GIFTED ELIGIBILITY STANDARDS**

State law allows for two methods for identification of gifted students.

### **Standard Method for Identification**

Under the standard method for identification, a student who meets the criteria for intellectual ability and one or more of the other areas will qualify for consideration of service. An IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

### **Alternative Method for Identification**

A district may use an alternative protocol for all students but must apply to and obtain approval from the Public Education Department to utilize an alternative protocol.

If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol will be used in all districts to determine student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.

An alternative protocol must be designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking. Eligibility of a student will be determined by use of the alternative protocol.

Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.

## **THE INDIVIDUALIZED EDUCATION PROGRAM**

If it is determined that your child meets the criteria for gifted education, the next step is to develop a Gifted Individualized Education Plan (IEP) for your child. An IEP is a written statement of the educational program designed for a child to meet his or her needs. Every child who receives gifted education services must have an IEP. The IEP has two general purposes: 1) to set reasonable annual learning goals for your child; and

2) to state the services and classroom setting the district will provide to help achieve the annual goals.

An IEP will include:

- your child's present levels of academic achievement and functional performance;
- annual goals and how progress will be measured;
- what gifted education will be provided, including how often and by whom;

The IEP is developed by two parties, the parent(s) and the school team. Each person who participates in the development of the IEP has information or insight about the child that will contribute to designing a program that is appropriate for him or her. Because you are the person, who knows your child best, your active participation and input is very valuable and must be considered by the IEP team.

IEP team participants will vary depending on the needs of the child. Generally, participants will include:

- the parent(s);
- at least one regular education teacher if the child is likely to be participating in the general education program and environment;
- at least one gifted education teacher or specialist;
- one or more qualified district representatives;
- your child if appropriate especially if transition services are being discussed, and
- Anyone else the parent or the district invites who may have special expertise or knowledge about your child. This may include advocates who are invited by you.

### **The IEP Meeting**

An IEP meeting is not the same as a parent-teacher conference where you discuss your child's progress or needs. The IEP meeting is a formal gathering of a team of people for the purpose of setting annual goals for your child and determining what services he or she needs to achieve them.

Because of the scope and importance of the meeting, the district will make every reasonable effort to involve the parent(s), including providing an interpreter if needed, or person who can present the information in a manner that the parent can understand. An IEP meeting is necessary when there are plans to do any of the following:

- make decisions about a child's initial plan for gifted education services;
- significantly change or review an existing IEP (an IEP must be reviewed at least once a year);
- change or review the child's program or placement; and/or
- evaluate a child upon a request by the parent(s).

As mentioned, you are an important member of your child's IEP team. Before the meeting, you may request any proposals that the district has drafted about your child. When scheduling a meeting, the district will make every effort to inform and invite the



parent(s) to participate in the development of the IEP. You will receive written notice of an upcoming meeting. If you want to participate but cannot attend at that time, let the district know that you want to reschedule the meeting. If you cannot attend for other reasons or do not respond, the district will attempt to involve you in other ways such as telephone conferences, home visits, or delivering written information for your review. If unsuccessful after trying to include you, the district can have the meeting without you and mail your child's IEP and the district's Prior Written Notice (PWN) of its proposed action. The district provides the PWN so that you can review the IEP before any program begins and gives you the opportunity to disagree with the district's plans for your child.

## **RESOLVING DIFFERENCES**

As two parties with the same goal, to provide an opportunity for success for your child, the parent(s) and the district need to communicate opinions and concerns. This cooperative approach usually results in agreement and a smooth implementation of special education services for the child. However, each child and circumstances are unique and there may be times when you and the district may not agree on the special education services your child needs. Under state rules, both the district and the parent(s) have the right to have their opinions heard and considered. The parent has the right to disagree with the district's findings, plans, or actions regarding their child. Also, after considering the parent's opinions or requests, the district has the right to disagree as well.

State rules provide several avenues for resolving differences. As they are discussed below, keep in mind that even in disagreement, the focus is the child's best interest and the outcome should be that the child is the winner.

### **Working Directly With District Personnel**

As a first step, you should voice your concerns directly to the school or district level personnel responsible for your child's program. Ask for a new IEP meeting. In many cases, the district will gather information about the situation from all concerned and attempt to work with you to resolve the problem.

### **Facilitated IEP Meeting**

A Facilitated IEP meeting is an IEP team meeting that includes an impartial facilitator who promotes effective communication and assists an IEP team in developing an IEP based on the student's needs. A Facilitated IEP Meeting can be useful when there is a history of communication challenges or a meeting is expected to be particularly complex or controversial. The facilitator helps to keep the team focused on the appropriate development of the IEP while working through conflicts that arise and ensuring the participation of each IEP team member. The facilitated IEP meeting includes all of the required team members.

You may ask the district to provide a Facilitated IEP (FIEP) meeting, agreed upon by both parties, where a third party assists the parties in communication and problem solving to reach a consensus on the child's IEP. The district is responsible for paying for the FIEP.

If you have filed a formal state complaint or due process hearing request as described below, you may ask the PED to provide a FIEP meeting which will be at no cost to you or the school district. To request a FIEP meeting from the PED, you will need to mail, fax, or email a written request to the PED Special Education Division at 120 South Federal Place, Room 206, Santa Fe, NM 87501, (505) 954-0001 (Fax), [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us). A model form for an FIEP request is available at <https://webnew.ped.state.nm.us/wp-content/uploads/2020/09/1-ADR-Request-2020.pdf>. You do not need to use this form, but must include the information in the form in any FIEP request.

If you have any questions about FIEP meetings, please contact ED at the Special Education Division at (505) 827-1457 or [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us).

## **Mediation**

Mediation is a procedure in which the parties discuss their dispute with the assistance of a trained impartial third person who assists them in reaching an agreement about their dispute. Mediation is available through PED to allow you and the school district to resolve disagreements involving any matter under the IDEA. Mediation is offered by the PED at no cost to you or the school district.

You and the district may request mediation. Use of this option is voluntary and both parties must agree to mediation. The process is intended to result in a legally binding written agreement between you and the district.

All discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

The NMPED will provide a mediator if you and the district jointly submit a signed, written request to the NMPED in which you describe the matter(s) in dispute and any previous attempts to resolve these matters at the local level. If you and the district reach agreement about any IEP related matter(s) during mediation, it will then be necessary to hold an IEP meeting to inform the child's service provider(s) of their responsibilities under that agreement, and revise the child's IEP accordingly.

To request Mediation, you will need to mail, fax, or email a written request to the PED Special Education Division at 120 South Federal Place, Room 206, Santa Fe, NM 87501, (505) 954-0001 (Fax), [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us). A model form for a mediation request is available at

<https://webnew.ped.state.nm.us/wp-content/uploads/2020/09/1-ADR-Request-2020.pdf>.

You do not need to use this form, but must include the information in the form in any mediation request.

If you have any questions about mediation, please contact NMPED at the Special Education Division at (505) 827-1457 or [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us).

## **Formal State-Level Complaint**

The state complaint process is another way to resolve disagreements or concerns involving any matter under the IDEA. A state complaint is a process which requires that the PED investigates alleged violations of state law and rules for gifted students, identify violations of the law, issue a written complaint resolution report, and require corrective action by the school if appropriate. If the PED finds a failure to provide appropriate services, the PED must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child and providing technical assistance to the school district to correct practices impacting the appropriate provision of gifted education.

The state complaint process is provided by the PED at no cost to you or the school district. The PED has written procedures for the filing and resolution of any special education complaint, including a complaint filed by an organization or individual from another state. The PED widely distributes the state complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

### Complaint Requirements

An organization or individual may file a complaint under the state complaint procedures. The individual filing the complaint does not need to be a parent. The complaint can be about a specific child, or can be about a gifted education issue that may affect more than one student.

A complaint must include the following information:

1. A statement that the school district or other public agency has violated a requirement of state laws or rules for gifted students;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations regarding a specific child:
  - a. The name of the child and address of the residence of the child;
  - b. The name of the school the child is attending;
  - c. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
5. A description of the nature of the problem of the child, including facts relating to the problem; **and**

6. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

A state complaint must allege a violation of the state laws and rules for gifted students that occurred not more than one year before the date that the complaint is received by the PED.

#### Complaint Investigation Procedure and Time Limit

The PED is required to complete the complaint procedures and issue a decision within 60 calendar days after receipt of your complaint.

During this time, PED will assign an investigator who will:

1. Carry out an independent on-site investigation, if PED determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to try mediation or a FIEP to resolve the dispute;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of the state law or rules for gifted students; and
5. Issue a written decision that addresses each allegation in the complaint with (a) findings of fact and conclusions; and (b) the reasons for PED's final decision.

There can be an extension of time permitted for completion of the complaint process, but only in limited circumstances. The PED can permit an extension of the 60-calendar-day time limit if exceptional circumstances exist with respect to a particular State complaint that would justify an extension. The PED also can permit an extension of the 60-day calendar-day time limit if you and the school district voluntarily agree to extend the time to try mediation or a Facilitated IEP Meeting to resolve the dispute.

To submit a state complaint, you will need to mail, fax, or email a written complaint to the PED Special Education Division at 120 South Federal Place, Room 206, Santa Fe, NM 87501, (505) 954-0001 (Fax), [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us). A model form for a mediation request is available at <https://webnew.ped.state.nm.us/wp-content/uploads/2020/09/State-Complaint-Form.pdf>. You do not need to use this form, but must include the information in the form in any complaint.

If you have any questions about state complaints, please contact PED at the Special Education Division at (505) 827-1457 or [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us).

### **Due Process Hearing**

A due process hearing is another way to resolve disputes with the school district. A due process hearing is an administrative hearing before an impartial due process hearing officer. You and the school district would present testimony and documentary evidence to the hearing officer who will decide the case and issue a written decision.

You or the school district may request a due process hearing on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child.

#### **Hearing Request Requirements**

The due process hearing request must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the school district at the time.

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) file a due process hearing request that includes this information.

The due process hearing request must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint. This two year timeline does not apply to you if you could not file a due process hearing request within the timeline if: 1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or** 2. The school district withheld information from you that it was required to provide you under state law or rules for gifted education.

### **Requesting a Due Process Hearing**

To request a hearing, you must send a due process hearing request to the school district's superintendent by fax or mail. The hearing request must contain all of the content listed above and must be kept confidential.

You must also mail, fax, or email the due process hearing request to the PED Special Education Division at New Mexico Public Education Department, Special Education Division, 120 South Federal Place, Room 206, Santa Fe, NM 87501, or (505) 954-0001 (Fax), [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us). A model form for a due process hearing request is available

<https://webnew.ped.state.nm.us/wp-content/uploads/2020/09/Request-for-Due-Process-Hearing.pdf>. You do not need to use this form, but must include the information in the form in any due process hearing request.

If you have any questions about due process hearing requests, please contact PED at the Special Education Division at (505) 827-1457 or [spedfeedback@state.nm.us](mailto:spedfeedback@state.nm.us).

### **Sufficiency of Hearing Request**

For a due process hearing request to go forward, it must be sufficient (meet the content requirements above). The hearing request will be considered sufficient unless the party receiving the hearing request (you or the school district) notifies the Hearing Officer and the other party in writing that the receiving party believes that the hearing request does not meet the requirements listed above.

A notice challenging the sufficiency of the hearing request must be filed by the receiving party with the Hearing Officer within 15 days of receiving the request. The Hearing Officer must decide if the due process hearing request is sufficient within 5 days of receiving the notice. The Hearing Officer must notify you and the school district in writing immediately.

### **Amendment of Hearing Request**

You or the school district may make changes to the hearing request only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process hearing request through a resolution meeting; **or**
2. By no later than 5 days before the due process hearing begins, the Hearing Officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process hearing request, the timelines for the resolution meeting (within 15 calendar days of receiving the hearing request) and the time period for resolution (within 30 calendar days of receiving the hearing request) start again on the date the amended complaint is filed.

### **School District Response to a Due Process Complaint**

If the school district has not given you a prior written notice regarding the subject matter in your due process hearing request, the school district must, within 10 calendar days of receiving the due process hearing request, send you a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;

2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from stating that your due process hearing request was insufficient.

### **Other Party Response to a Due Process Complaint**

The party receiving a due process request (parent or school district) must send the other party a response that specifically addresses the issues in the hearing request within 10 calendar days of receiving the hearing request.

### **Your Child's Placement While the Due Process Hearing is pending**

Once a due process hearing request is sent to the other party, during the resolution period and while waiting for the decision of any impartial due process hearing or court proceeding, your child must remain in his or her current educational placement unless (1) you or the school district agree otherwise **or** (2) the Hearing Officer has issued an order changing the current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

### **Resolution Meeting**

The purpose of the resolution meeting is for you to discuss your due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute. Within 15 calendar days of receiving your due process hearing request, and before the due process hearing begins, the school district must hold a resolution meeting. A resolution meeting is not required if:

1. You and the district agree in writing to waive the meeting; **or**
2. You and the district agree to try mediation. The resolution meeting should include you and the relevant member or members of the IEP team who have specific knowledge of the facts identified in your due process hearing request. You and the school district determine the relevant members of the IEP team to attend the meeting. The resolution meeting must include a representative of the school district who has decision-making authority on behalf of the district. The meeting may **not** include an attorney for the school district unless you bring an attorney.

### **Resolution Period**

The resolution period for a due process hearing request is 30 calendar days when the request was received. If the due process hearing request is not resolved during the 30-calendar-day resolution period, the due process hearing may occur. The

Hearing Officer has 45 days after the end of the 30- calendar-day resolution period to conduct a hearing and issue a final written decision.

### **Adjustments to the 30-calendar-day Resolution Period**

The 45-calendar-day timeline for issuing a final decision begins at the end of the 30- calendar-day resolution period, unless one of the following circumstances applies. Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a resolution meeting.

If, after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the district may, at the end of the 30-calendar-day resolution period, request that the Hearing Officer dismiss your request for a due process hearing.

Documentation of the district's efforts must include a record of attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the school district does not hold the resolution meeting within 15 calendar days of receiving notice of your due process hearing request **or** does not participate in the resolution meeting, you may ask the Hearing Officer to order that the 45-calendar-day due process hearing timeline begin. If you and the school district agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30- calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar day timeline for the due process hearing starts the next day. If you and the school district agree to try mediation at the end of the 30- calendar-day resolution period, both parties can agree in writing to continue the mediation process until an agreement is reached. However, if either you or the school district withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

### **Written Settlement Agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to hold the district to the agreement; and
2. Enforceable in any state court of competent jurisdiction (a state court that has authority to hear this type of case) or in a federal district court.



## **Agreement Review Period**

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the district) may void the agreement within 3 business days of the time that both you and the school district signed in the agreement. You should notify the school district if you have decided that you wish to void the agreement.

## **Alternative Dispute Resolution**

After you file a due process hearing request, you still have an opportunity for alternative dispute resolution. You have the choice of requesting Alternative Dispute Resolution options of Mediation or a Facilitated IEP Meeting to try to resolve your conflict with the school district. The PED will ask both parties if they would like to participate in Alternative Dispute Resolution options. The decision to participate in Alternative Dispute Resolution options is voluntary.

**IMPARTIAL DUE PROCESS HEARING** Whenever a due process hearing is requested, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing.

## **Impartial Due Process Hearing Officer**

At a minimum, a Hearing Officer:

1. Must not be an employee of the PED or the school district that is involved in the education or care of the child. A person is not an employee of the school district solely because the person is paid by the school district to serve as a Hearing Officer;
2. Must not have a personal or professional interest that conflicts with the Hearing Officer's objectivity in the hearing;
3. Must be knowledgeable and understand state laws and rules pertaining to gifted education, and legal interpretations of those state laws and rules by courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The PED keeps a list of those persons who serve as Hearing Officers and a statement of the qualifications for each one. The list is available on the PED website or contacting NMPED, Office of Special Education Parent and Community Liaison, Elizabeth Cassel; (505) 490-3918; Email: [elizabeth.cassel@ped.nm.gov](mailto:elizabeth.cassel@ped.nm.gov)

## **Rights at Hearings**

Parents must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Any party to a due process hearing has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or, at your option, electronic findings of fact and Decisions.

### **Timelines and Convenience of Hearings**

PED ensures that not later than 45 calendar days after the end of the 30-calendar-day period for resolution meetings or, as described under ***Adjustments to the 30-calendar-day Resolution Period*** above, not later than 45 calendar days after the end of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A Hearing Officer may grant specific extensions of time beyond the 45-calendar day time period at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### **Subject Matter of Due Process Hearing**

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process hearing request, unless the other party agrees.

### **Additional Disclosure of Information**

At least 5 business days before a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the district intend to use at the hearing. A Hearing Officer may prevent any party that does not comply with this requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

**Finality of Hearing Decision and Appeal.** A decision made in a due process hearing is final, except that any party involved in the hearing (you or the school district) may appeal the decision by filing an action in a state court of competent jurisdiction (a State court that has authority to hear this type of case). The party (you or the school district) bringing the action has 30 calendar days of receipt of the Hearing Officer's decision to file a civil action.

**Representation and Attorneys' Fees.** You do not need to have an attorney represent you in a gifted education due process case. It is important to know that you cannot be represented by an advocate who is not a licensed attorney in a due process case, so if you want representation, you will need an attorney. If you or the school district chose to be represented by an attorney, each party is responsible for their own attorneys' fees and costs in a gifted education due process case.