



**DISABILITY
RIGHTS**
MISSISSIPPI



Understanding IDEA and Section 504

KATHERINE HENDERSON
LEGAL DIRECTOR
DISABILITY RIGHTS MISSISSIPPI



Agenda

- Overview of Special Education
- IDEA
- Section 504
- The Special Education Process
- Procedural Safeguards

Hearing from You!

What is your Role?

- A. Parent
- B. Advocate
- C. Educator
- D. Administrator
- E. Attorney
- F. Other

Hearing from You!

How Familiar are you with Special Education Law?

- A. I have no experience with special education
- B. I am somewhat familiar with it
- C. I know about special education but need to learn about it
- D. I am very familiar with it

Special Education Overview



Relevant Federal Laws

There are 3 Federal laws that aim to provide students with disabilities an equal opportunity to participate in and benefit from public education

1. The American with Disabilities Act (ADA)
2. Section 504 of the Rehabilitation Act
3. The Individuals with Disabilities Education Act (IDEA)



Americans with Disabilities Act (The ADA)

Requires all schools (both private and public) to:

1. Reasonably accommodate people with disabilities
2. Create an environment that fits the needs of disabled children
3. Not discriminate against a child because of his/her disability



Section 504 of the Rehabilitation Act of 1974

Requires **public** schools and private schools that receive federal funding to:

1. Reasonably accommodate people with disabilities
2. Create an environment that fits the needs of disabled children
3. Not discriminate against a child because of his/her disability



IDEA (Individuals with Disabilities Education Act)

- Most Comprehensive
- Creates Specific Rights for children with disabilities
- Formally recognizes certain types of disabilities
- Request **public** schools to give services to students with disabilities
- Establishes procedures for parents to file complaints

Section 504 and the IDEA Compared

Section 504 and the ADA

- Defines “disability” more broadly
- Applies also to a student who the school perceives to have a disability, but does not in fact have one
- Provides protections against discrimination

The IDEA

- Defines “disability” more narrowly
- Only applies to students that are assessed and determined to have a recognized disability
- Provides legal entitlements and services to disabled students



The Individuals with Disabilities Education Act (IDEA)



State Responsibilities Under the IDEA:

- Create state laws that align with IDEA
- Identify and evaluate children with disabilities ages 3-20
- Provide special education services if these disabilities make it harder for the child to succeed in school
- Meet regularly with stakeholders to review and reevaluate services



Special Education Terms Created by IDEA

I. Individualized Education Program (IEP)

Written documents created by the school and parents on how to support the child

*Must be approved by parents

2. Related Services

Everything a child needs to receive special education



Special Education Terms Created by IDEA

3. Free, Appropriate Public Education (FAPE)

A Student with a disability has the right to attend public school, free of cost

4. Least Restrictive Environment (LRE)

Students with disabilities attend class with students without disabilities whenever appropriate



FAPE and LRE Work Together

1. Students with disabilities should be educated in the general classroom whenever possible, even if that requires aids and services
2. Even if a child is separated for certain lessons, they should be placed back into the general classroom whenever possible



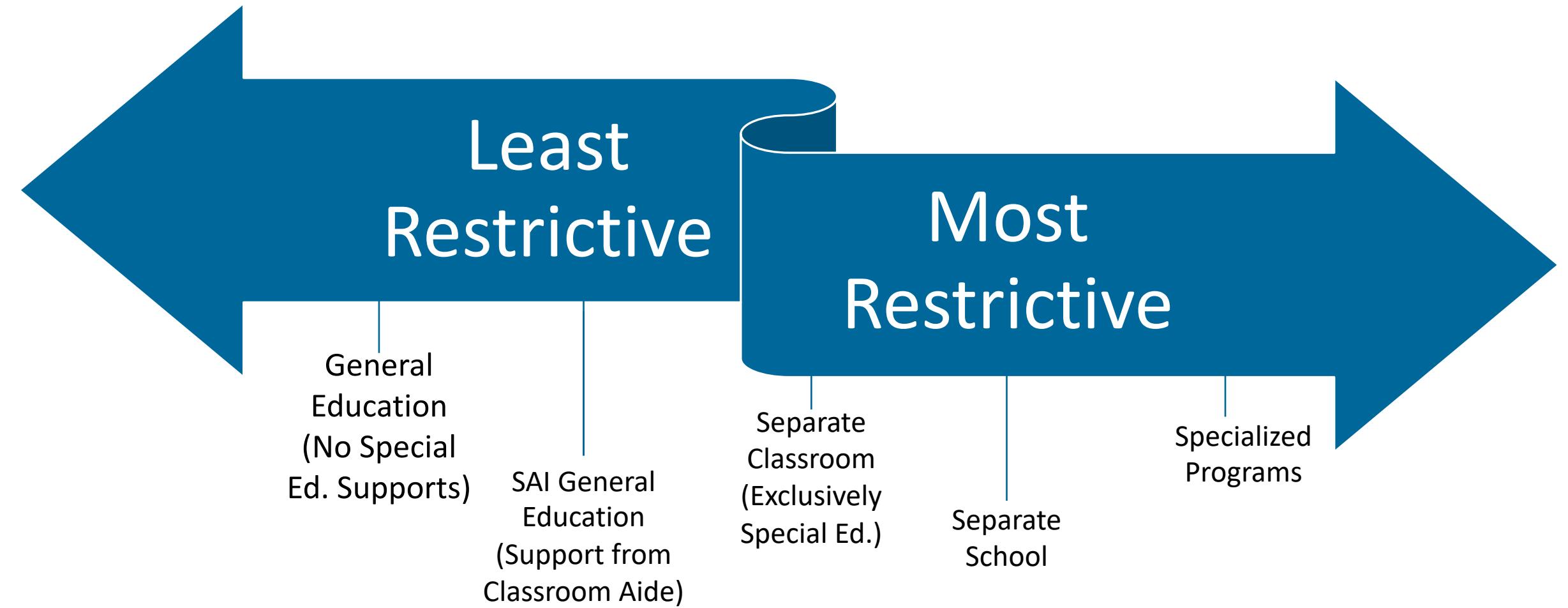
FAPE and LRE Work Together

In general:

“Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”



Each Public school must ensure that a continuum of educational placements and related services is available to meet the needs of children with disabilities



Possible Supports and Services

- Developmental, corrective and supportive services to help the student benefit from special education
- *Must be written in IEP to be actionable*
- Audiology
- Counseling Services
- Early identification and assessment of disabilities in children
- Medical Services (for diagnostic or evaluation purposes only)
- Occupational therapy
- Physical Therapy
- Transportation
- Parent Counseling and training
- Psychological services
- Recreation
- Rehabilitation Counseling
- School Health Services
- Social Work Services
- Speech Pathology



The Special Education Process

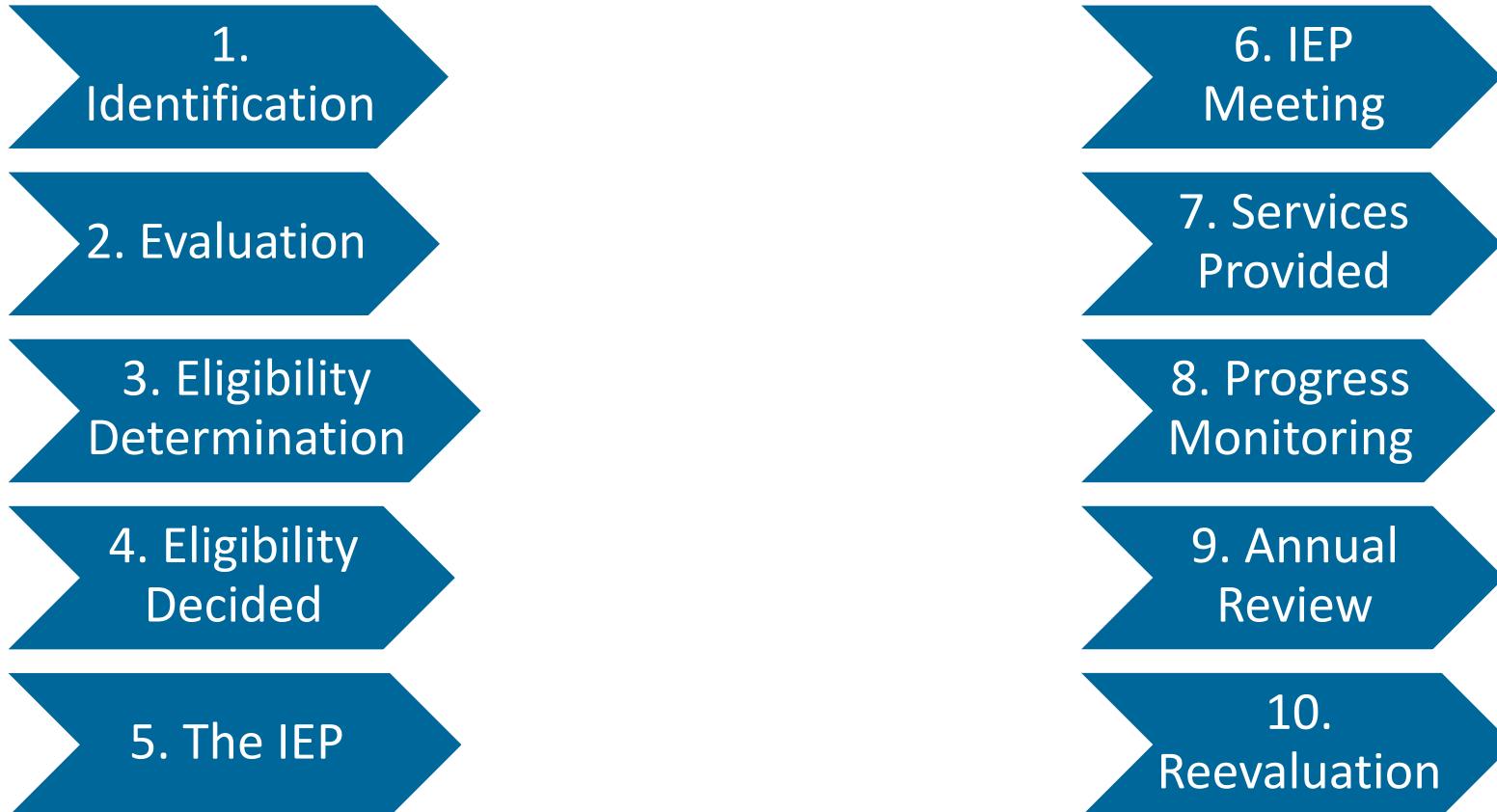
Quiz

1. Who can request an assessment for special education services?
 - A. Parent
 - B. A Teacher
 - C. The Principal
 - D. All of the Above
 - E. None of the Above
2. Students with disabilities should be educated in the general classroom whenever possible

True

False

Obtaining Special Education services is a multi-step process





Step I: Identification

- Child is identified as possibility needing special education and related services
- To Request an Assessment:
 - Submit a letter in writing, signed and dated with the reason for the request
 - Parent, Teacher or Administrator can request an assessment, but the parent must consent
 - The Multidisciplinary Evaluation Team (MET) meets within 14 days to consider parent's request and determine if evaluation is necessary



MET Notifies Parents of Decision to Evaluate (within 7 days of request)

If MET **agrees** to evaluate

They must get parental consent

They will develop an assessment plan within 15 days

If MET **declines** to evaluate

They must provide a detailed, written explanation (within 7 days of MET meeting)

Parents can challenge the decision by requesting a Due Process Hearing (within 2 years)



Step 2: Evaluation

- Child is Evaluated by school team
- The evaluation must take place within 60 days of parental consent





Step 3: Eligibility Determination



- Eligibility is decided based on the evaluation
- Parents/Guardians are part of the group that decides eligibility, and should receive prior notice of the meeting



Who is Eligible for Special Education Services Under IDEA?

A child who has an IDEA-listed disability

The Disability negatively affects the child's education

The Child must demonstrate a need for special education

What is a disability under IDEA?

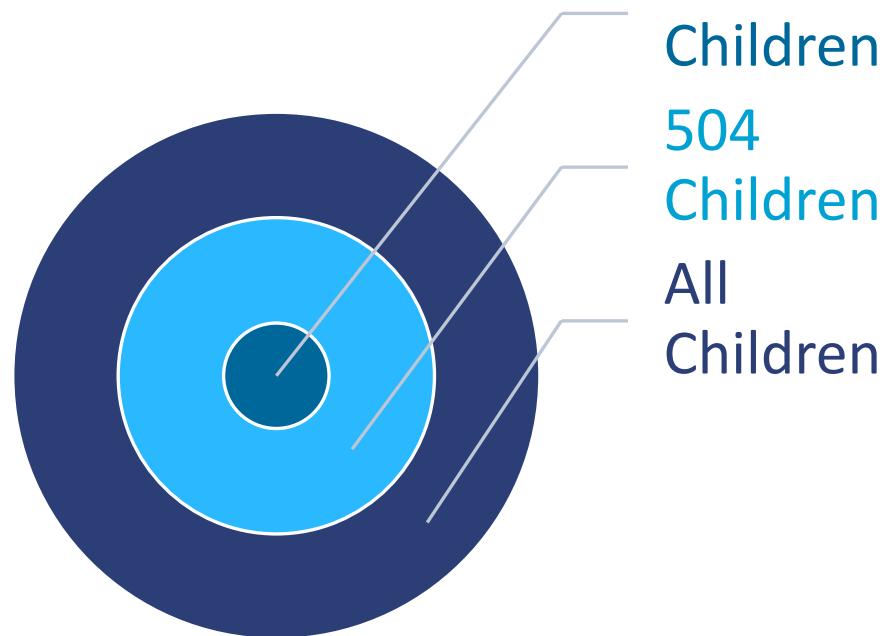
IDEA Specifically Covers:

- Intellectual Disabilities
- Hearing Impairments/Deafness
- Speech and Language Impairments
- Visual Impairments/Blindness
- Autism
- Orthopedic Impairments
- Traumatic Brain Injury
- Emotional Disturbances (beyond “socially maladjusted”)
- “Other Health Impairments” (ADHD/ADD, diabetes, asthma, etc.)
- Specific Learning Disabilities (dyslexia, developmental aphasia)

Quick Comparison: What is a disability under Section 504?

Any physical or mental impairment that makes a person's life activities more difficult

All Students with disabilities who are in school are covered under Section 504*





Step 4: Eligibility Decided

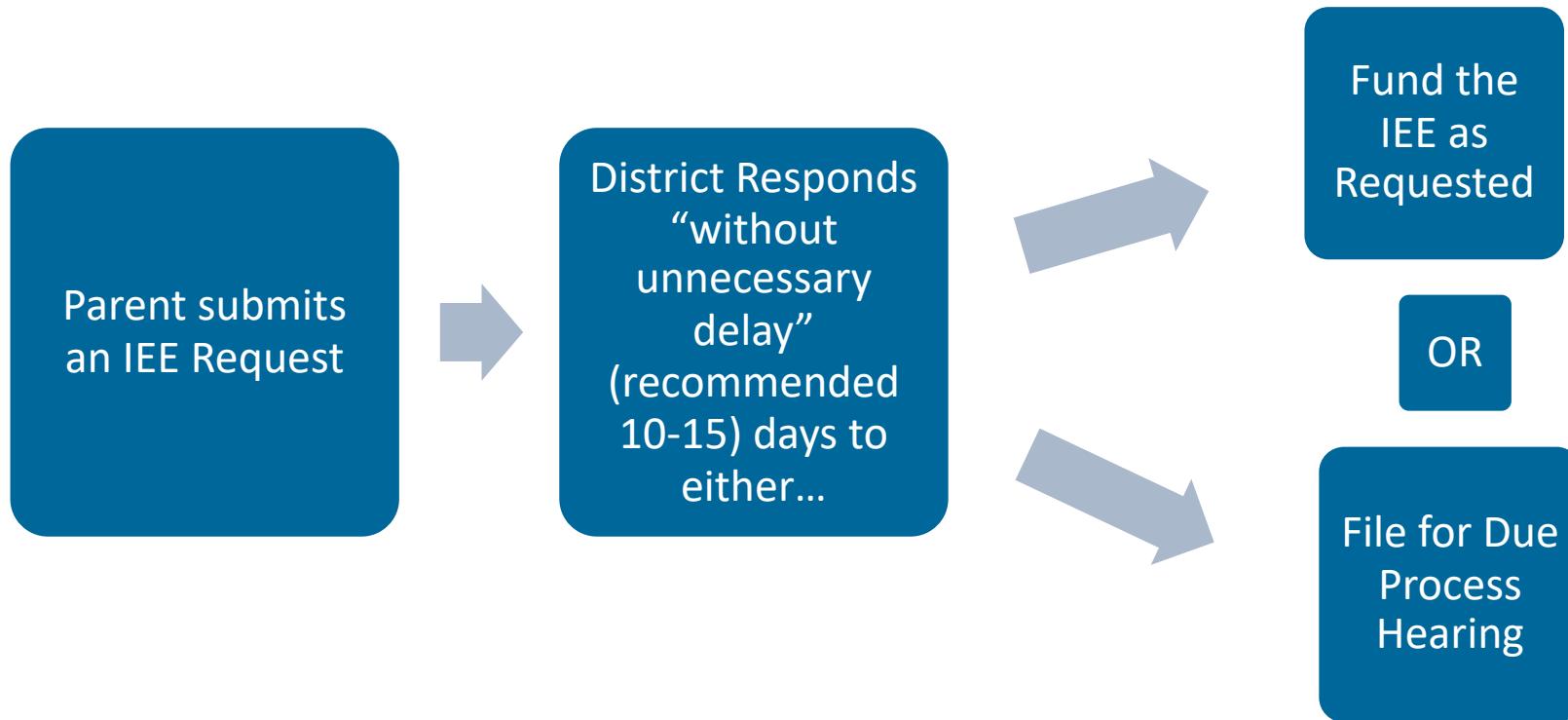
- Child is found eligible or not for eligible services
- If Child is not found eligible, parents can request an independent evaluation (IEE) at public expense

- In Mississippi, a parent may also submit a report to MET explaining why they disagree with a determination





Requesting an IEE





Sample IEE Request Letter

Today's Date (include month, day, and year)

Your Name

Street Address City, State, Zip Code

Daytime Phone Number

Name of Person to whom you are writing

Title

Street Address

City, State, Zip Code

Dear (Name),

My Son/Daughter, (Child's name), is in the () grade at (name of school), in (teacher's name) class. He/She was evaluated for Special Education Services in (month/year). I am writing to request an Independent Educational Evaluation at public expense, for the following reasons: (BRIEFLY list your reason(s). Be very specific. For Example,)

“I disagree with the evaluation results because...”

“The evaluation should have included...”

“Evaluation should have been done in the area of...”

I would like this Independent Educational Evaluation to be done as quickly as possible so that we can fully address (child's name) needs. Please respond as soon as possible and send me copies of the school's guidelines for this. My daytime telephone number is (____). Thank you.

Sincerely,

Your Name

CC: your child's principal and your child's teacher



Step 5: What is the IEP?

Individualized Education Program

When a child is found eligible...

- IEP Meeting is scheduled
- IEP meeting takes place
- IEP is written



Under the IDEA, any child determined eligible *must* get an IEP



An IEP is...

- Created only once it is determined that a child is eligible
- A legally binding document that outlines a child's strengths, needs, and goal in line with FAPE in LRE
- Tailored to the Student to provide the supports necessary to benefit from an educational program



IEP Components

- Present levels of Educational Performance
- Goals
- Special Factors
- Behavior Support Plan/Behavior Intervention Plan (if needed)
- Transition Plan (Required at age 14)
- Description of Services
- Team Action
- Signature Page



Quick Comparison: Section 504 Plan

May include:

- Accommodations (to remove barriers to provide access to learning)
 - Assistive technology
 - School services
-
- Does not typically include individualized instruction



Step 6: IEP Meeting

This is where the IEP is written

Must be scheduled to meet the requirement that an IEP is developed within 30 days of a child's positive eligibility determination





The IEP Team

- **Parent(s)/Guardians(s)**
- **Teacher**- special education and general education (if applicable)
- **Evaluation Team** (e.g., school psychologist, educational specialist, speech-language pathologist, occupational therapist)
- **Specialists**
- **School Representative**
- **Student, if appropriate**
- **Interpreter, if necessary**



Step 7: Services Are Provided

An IEP should outline dates for service, but in general must be implemented as soon as possible following parental consent





Parental Consent

No Parental Consent = No IEP

Can Consent to Parts of IEP

Parents do not have to sign the IEP at the IEP meeting



Step 8: Progress

Progress is measured and reported to parents

Parents may also ask how their child is progressing towards his/her IEP goals without waiting for the school to provide a report





Revising the IEP

The IEP can be revised if education is not appropriate

- IEP Meeting must be held for service changes
- IEP meeting must be held if the child is not making adequate progress
- Parent or District can request an IEP meeting at any time
- Parent may withhold consent for IEP revisions
 - If no consent → no IEP revision
 - Child “stays put”



Step 9: Annual Review of IEP

- IEP is reviewed at least once a year
- Review progress on previous goals
- Report present levels of performance
- Identify current needs
- Revise/update goals



An IEP can be reviewed any time if changes need to be made; parents can request this review



Step 10: Reevaluation

Child is reevaluated for eligibility at least every three years

If the parent and assessment team agree reevaluation is not necessary, there will only be a records-review



A parent may request reevaluation before the three-year period

- ❖ But no more than once per year



Quick Comparison: Annual review & Reevaluation for 504 plan

Annual review for 504 plan is not required but parent can request meeting to review

Periodic re-evaluation is required (every 3 years or so) but if there are changes in the child's needs or placement, parent can request a re-evaluation



Quiz

3. A child with an IDEA-listed disability is eligible for special education services

True

False

4. Parents must sign the IEP at the end of the IEP meeting

True

False



When do Special Education Services End?

- A student no longer *requires* Special Education Services
- The student graduates with a diploma
- The parent submits a written revocation
- Student ages out at age 21



Transitional Services

School districts are responsible for providing services to help students with an IEP transition out of high school

- College
- Vocational training
- Adult services
- Independent living





Transitional Services

Under the IDEA, the district must create a transitional plan once the child turns 16

Mississippi lowered the age to 14

The IEP Team develops the plan, and must include the parent

Like the IEP, the transitional plan must be reviewed annually





Quiz

5. The District decided your child no longer needs one of the services in the IEP. The District decides to end the service. Can the District do so?

Yes

No

6. The District Proposes a certain program for your child but you disagree. What should you do?

- A. Not sign the IEP
- B. Send a letter to the district stating why you disagree with the IEP
- C. Sign and consent to parts of the IEP you do agree with
- D. All of the Above



Special Education & Discipline



Accounting for Negative Behaviors in Advance

Students' disabilities may manifest in negative behaviors

IDEA requires schools to prepare for these behaviors in advance

Functional Behavioral Analysis: formal evaluation identifying problematic behaviors arising out of the disability

Behavioral Intervention Plan: in light of the known problematic behaviors, a plan for responding to them that accounts for the child's needs as a student with a disability



Disciplining a Student with a Disability

10 DAYS

(cumulatively in one school year)

Suspension less than 10 days → No special protections

More than 10 days → Change of placement



Rights after 10 Days of Suspension

Change of Placement → Manifestation Determination Review

Within 10 days of discipline: IEP Team Decides:

- Was the behavior caused by or have a “direct and substantial relationship” to the child’s disability?
- Did the Behavior directly result from the district’s failure to implement the IEP?

TWO Possible Results:

- IF Manifestation → school cannot suspend
- IF NOT Manifestation → may use normal discipline



Rights after 10 Days of Suspension

School should change services to prevent repeat of behavior leading to discipline

Student must “stay put” and receive services, regardless of discipline.

Exceptions:

- Guns
- Drugs
- Danger
- Student placed in *interim alternative education* setting for up to 45 days



Procedural Safeguards

THE IEP EXPLAINS HOW THE LRE IS A COMBINATION OF A SPED AND MAIN-STREAM CLASSROOM WITH SUPPORTS FROM THE OT, PT, AND SLP... AND OF COURSE EBA AND BIP. AN GOAL OF INCREASING 85 PERC

HERE'S A 50-PAGE COPY OF YOUR RIGHTS. NOW SIGN HERE...AND HERE...AND HERE...AND HERE...

UH...OK?





Parent Rights

To ensure a child gets the best education they can, parents have rights at multiple stages in the process

Most of these rights are the school and district's obligation





BEFORE

- Scheduling the IEP meeting
- Communications in parent's primary language

DURING

- Legal entitlements for participating in the IEP meeting
- Protections for meaningful participation
- Communications in parent's primary language

AFTER

- Parent voice in delivery of services
- Filing formal complaints



BEFORE an IEP Meeting

Parents are legally entitled to:

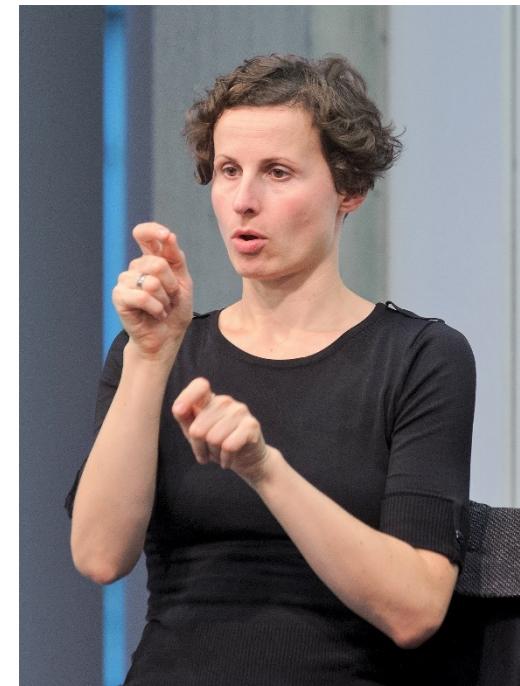
- Attend all meetings about their child at an agreed time and place
 - The school must make every reasonable effort to have the parent attend, including virtual conferencing as a last resort
- Bring an advocate or other individual with knowledge or expertise about your child



DURING an IEP Meeting

Parents are legally entitled to:

- Be an “equal participant” in the IEP and eligibility meeting
- Have an interpreter present





Ensuring Parents are “Equal Participants”

Parents have the right to:

- Receive notice when the district wants to change (or refuses to change) their child’s placement
- Withhold consent for an evaluation or provision about identification of services for their child’s evaluation
- See their child’s records



Ensuring Parents are “Equal Participants”

Parents have the right to receive information in their primary language around:

- Notice of an IEP Team meeting
- The IEP itself
- Assessment and evaluation materials
- School proposals to initiate or change the child’s plan
- Anything which requires parent consent
- Right to confidentiality



Parents Rights AFTER the IEP Meeting

After the IEP Team meeting, parents have the right to:

- Request a reevaluation when appropriate
- Insist the IEP is implemented as soon as possible
- Withhold consent for services and/or subsequent evaluations
- File a Complaint

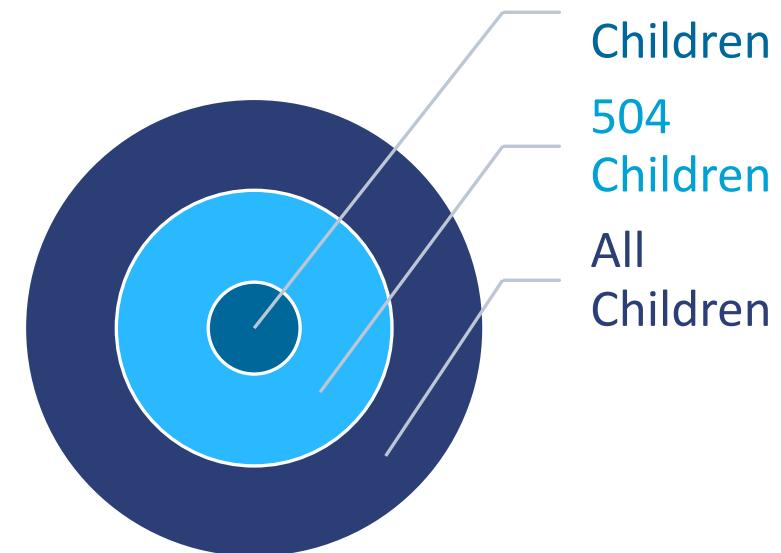


Quick Comparison: Procedures and Protections under Section 504

Section 504 is part of a federal anti-discrimination statute, so it is enforced by the U.S. Department of Education's Office for Civil Rights (OCR)

Students under Section 504 are also entitled to a FAPE in LRE, but the services and procedures to get there are different

Section 504 plans are subject to fewer requirements than IEPs





Complaint Types

If a parent or advocate disagrees with a school's decision or thinks the school has violated a regulation, there are three options for filing a complaint

- State Compliance Complaint
- Due Process Hearing Request
- OCR Complaint

1. State Compliance Complaint



A parent, agency, or organization can file an official compliance complaint with the state if they believe the district violated the IDEA. For Example:

- Failed to assess or refer a student for services
- Failed to meet mandated timelines
- Failed to notify parents of an IEP or evaluation meeting
- Failed to implement the IEP services

A complaint process can be used when you believe a district violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or State Policies Regarding Children with Disabilities (State Board Policy 7219).

Please fill out the front and back of this form as completely as possible.
(Use additional sheets of paper if more space is needed).

| | | | |
|------------------------|-------|-----------------------------------|-------|
| Student's Name | _____ | Student's Age or Date of Birth | _____ |
| Student's Address | _____ | | |
| School District/Agency | _____ | Date Completed | _____ |

Detailed summary of the situation: (Dates and facts are important.)

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What regulation(s) do you believe the school district/agency has violated?

8-31-11

This is the Mississippi Department of Education's sample form; though all of this information is required to submit a complaint, it does not need to be in this format

This form is available at:
<http://www.mdek12.org/OSE/parents>

Mississippi Department of Education
Office of Special Education

Please indicate your efforts to work out the situation:

YES NO I have talked with school district personnel about this issue. If yes, whom? when?

YES NO I have met with school district personnel about this issue. If yes, whom? when?

YES NO I have attended an IEP meeting in order to discuss this situation. If yes, when?

Proposed resolution of the problem(s) to the extent known and available at this time:

YES NO This alleged violation occurred not more than one (1) year prior to the date the complaint was filed with the Mississippi Department of Education.

If the alleged violation occurred more than one (1) year prior to the date that the complaint was received by the Mississippi Department of Education:

I believe a longer period of time is reasonable because I believe the violation is continuing.

Person Filing Complaint

Are you the student's legal guardian?

Relationship to Student

YES

NO

Signature of Person Filing Complaint

Address

Name of Organization, if Applicable

Telephone Number

Email Address

Mail or hand-deliver original
completed complaint form to:

Parent Consultant
Mississippi Department of Education
Office of Special Education
Post Office Box 771, Suite 331
Jackson, MS 39205-0771

This is a model form. The above information is required; however you may use other form of documentation in conveying your request to the Office of Special Education.

Send a copy of the complaint to the school district/agency serving the student at the same time you file the complaint with the Mississippi Department of Education.

*For homeless children, provide all available contact information and the name of the school the child is attending.

Page 2

8-31-11

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Office of Special Education

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Person Filing Complaint
Are you the student's legal guardian? YES NO

Signature of Person Filing Complaint _____ **Address** _____

Name of Organization, if Applicable _____ **Telephone Number** _____

Email Address _____

Mail or hand-deliver original completed complaint form to: Parent Consultant
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**For homeless children, provide all available contact information and the name of the school the child is attending.*

Reporter indicates whether they have first tried to speak to or meet with district personnel, or address the issue in the IEP

Indicate whether the violation occurred within the past year

Signature

Mailing address and instructions to provide a copy to the district



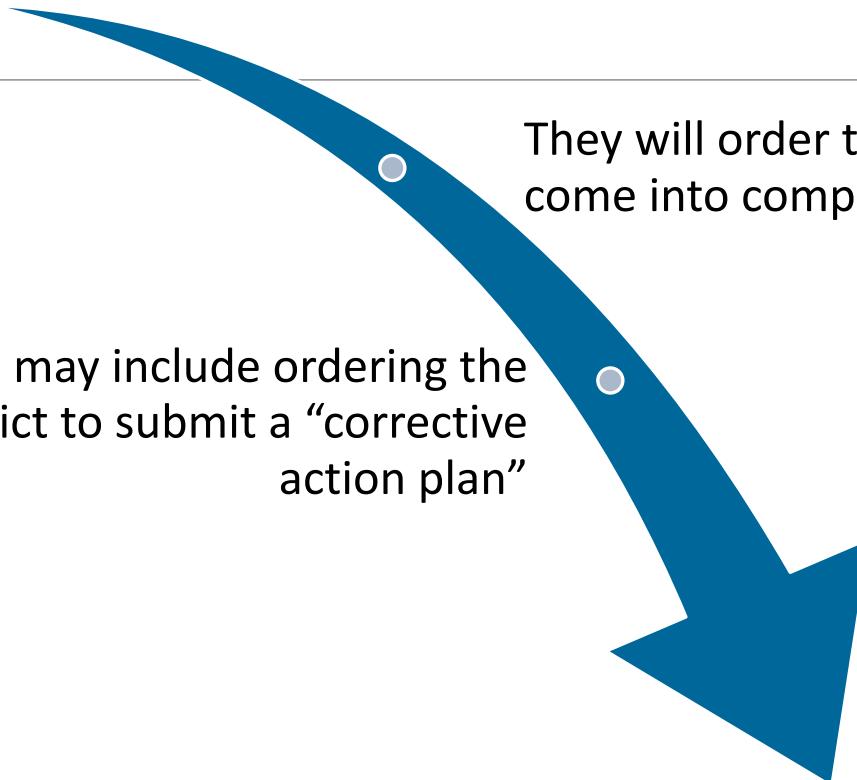
I. State Compliance Complaint: Timing

- ✓ The complaint should be filed within 1 year of the incident
- ✓ Once a complaint is filed, the Mississippi Department of Education (MDE) has 60 calendar days to resolve it.



I. State Compliance Complaint: Result

If the MDE decides
the district is NOT in
compliance



They will order the district to
come into compliance

This may include ordering the
district to submit a “corrective
action plan”

The MDE will approve or
modify the plan

2. Due Process Hearing



A parent and school staff meet before an impartial individual to present arguments and positions about a child's:

- Identification for special education eligibility
- Eligibility determination
- Assessment
- Placement and supports
- Provision of FAPE



2. Due Process Hearing: Submitting the Request

Written, formal request filed with the Mississippi Department of Education

- Must also send a copy to the school district

Requests must be filed within 2 years of when the parent knew or should have known of the alleged incident/action



REQUEST FOR DUE PROCESS HEARING UNDER PART B
OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004 AMENDMENTS

I, _____ am requesting a hearing before a State Level Hearing Officer.
Your name

Child's name _____ Parent's name _____

Address of the residence of the child _____ Parent's address _____

Child's resident district and school _____ Parent's phone number _____
Email Address _____

This problem(s) results from: Proposal to initiate or change: _____
The child's identification _____ The child's evaluation _____
The child's educational placement _____ Provision of a free appropriate
public education to the child _____
Refusal to initiate or change: _____
The child's identification _____ The child's evaluation _____
The child's educational placement _____ Provision of a free appropriate
public education to the child _____

Describe the following (use additional sheets of paper if more space is needed).
The nature of the problem(s) relating to the proposal or refusal indicated above:

The facts of this case relating to the above problem(s):

Your proposed resolution of the problem(s):

I/we agree to participate in a mediation process.
(This will not delay the opportunity for a hearing.) YES NO

Parent Signature _____ Date Form Completed _____

*Address and phone number of person filing request, *Position/role of person filing request, if not parent
(example: superintendent or attorney or parent representative)

This is a model form. The above information is required, however, you may use another form of documentation in conveying your request to the
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*If an attorney or other individual representing the parent completes this form on behalf of the parent, an authorization for representation signed by
the parent must accompany this form.

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0-31-11

Name, address and contact information for the child and parent



Description of the reason for the request



Any relevant facts



The parent or advocate's proposed resolution



Indicate willingness to participate in mediation



Signature



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Your name

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(if not parent)

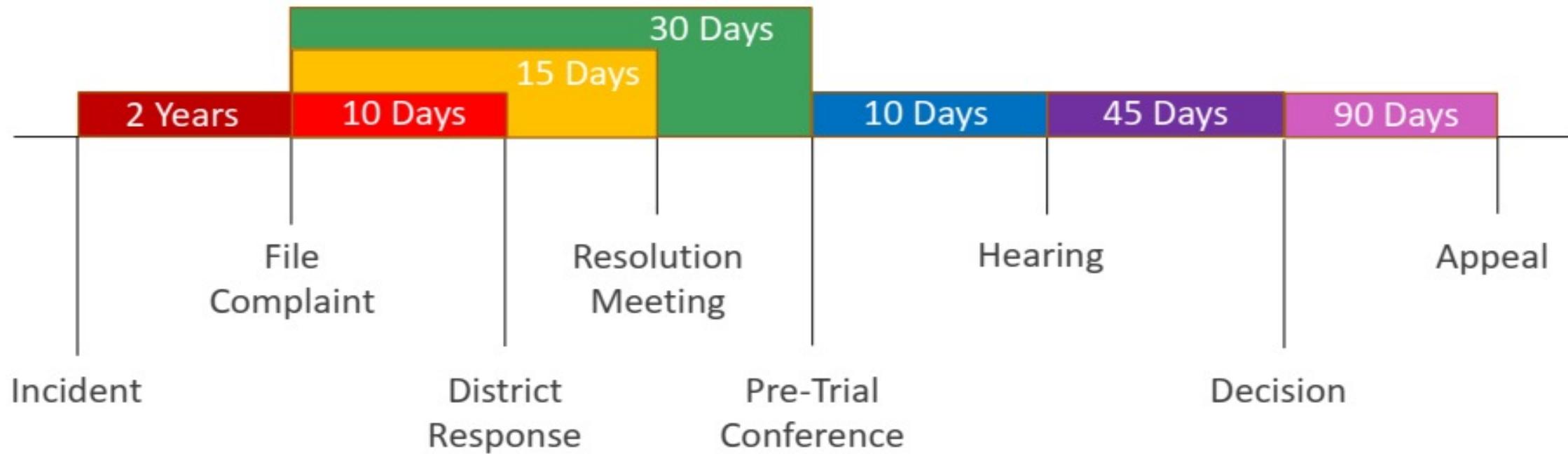
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If an attorney or other individual representing the parent completes this form on behalf of the parent, an authorization for representation signed by
the parent must accompany this form.

If the district believes the
complaint did not contain
sufficient information, they may
file an objection within 15 days
of receiving the complaint

The Mississippi Dept. of Ed.
Hearing Office then has 5 days
to determine its sufficiency, and
must notify both parties of its
determination

Due Process Timeline





2. Due Process Hearing: Next steps



District Response: includes an explanation of why the district proposed or refused to take action in question

Resolution Meeting: informal resolution meeting with the parent and relevant members of the IEP team

- District may NOT bring an attorney unless the parent does, too
- If both parties are willing to go to mediation, mediation may take the place of a resolution meeting
- If an agreement is reached through the resolution meeting or mediation, it will be binding



2. Due Process Hearing: Next steps



Pre-Trial Conference: Parties meet with the hearing officer to discuss the upcoming hearing (matters to be discussed and what the procedures will be) as well as set the time and date

Hearing: must be at a time and place reasonably convenient to the parent



2. Due Process Hearing: What to Expect

Hearings are conducted by an Administrative Law Judge in the Office of Administrative Hearings

Similar to a trial, parties may call witnesses and give opening statements and evidence

- Evidence must be given to opposing party at least 5 days prior

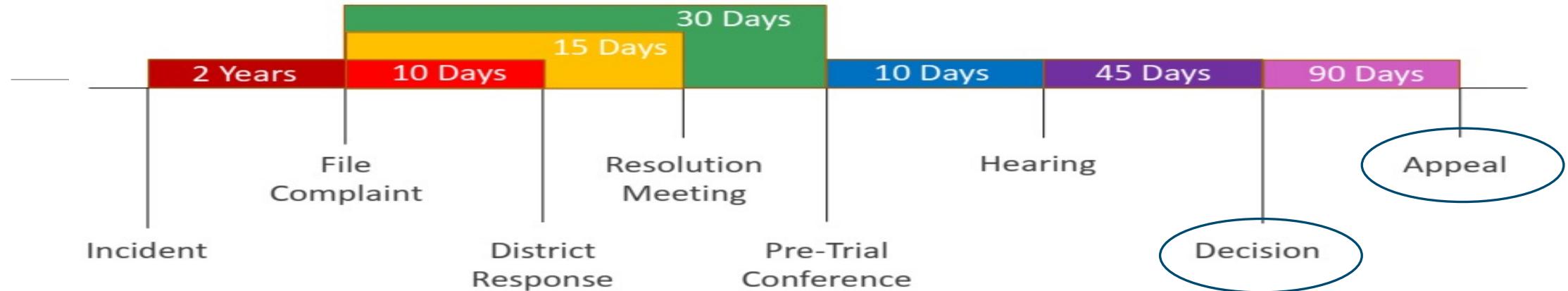
Parents have the right to:

- Be represented by an attorney
- Obtain a written copy of the hearing transcript
- Represent themselves





2. Due Process Hearing: Next steps



Decision: Parties will receive written notice of the decision

Appeal: Although the decision is binding on both parties, it may be appealed by filing a civil action in state or federal court

3. Office for Civil Rights (OCR) Complaint



Appropriate to address discrimination against a child based on their disability status

Specifically, these claims are under Section 504 or the ADA

Note: “Discrimination” can include anything from a school district failing to make accommodations (such as a wheelchair ramp), or failing to address bullying that targets a child’s disability status and interferes with their access to FAPE



3. OCR Complaint: Steps

A complaint must be filed within 180 days of the incident(s)

OCR will acknowledge receipt by phone or letter

OCR will decide whether or not to open an investigation

OCR will act as the fact-finder in conducting an investigation





2. OCR Complaint: Filing

A complaint can be filled out on OCR's website, or downloaded and mailed to the appropriate regional office.

It is a 6 page document that asks for:

- Contact information of the person filing the complaint and of the child
- Name and addresses of the institution or agency accused of discrimination
- A description of the discriminatory acts, including dates and names of parties involved and any witnesses
- Indication of whether you are filing within the 180-day window or are requesting a waiver of the filing period
- A description of any prior attempts to resolve the issue
- Description of the remedy sought



2. OCR Complaint: Filing

The last page is a form asking for consent to reveal names and other information in the report to others

WHY?

OCR often investigates by directly asking the school about the incident

WHY GIVE CONSENT?

If OCR thinks using names or other information is necessary and you did *not* consent, they may simply close the investigation



2. OCR Complaint: Result

If OCR finds unlawful discrimination, they will contact the district to attempt to reach a voluntary agreement to fix it



If the district refuses to negotiate, OCR may refer them to the Department of Justice, or initiate administrative proceedings



If the district still refuses, OCR is authorized to withhold funding



Questions?



Katherine
Henderson

khenderson@drms.ms

601-968-0600

