

HOW TO RESOLVE SPECIAL EDUCATION DISPUTES

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

WHAT SHOULD I DO FIRST IF THINGS AREN'T WORKING FOR MY CHILD AT SCHOOL?

Parents sometimes disagree with the evaluation, Individualized Education Program (IEP), or placement the school offers their child. Other times, the parents agree at first, but after awhile change their minds because things just do not seem to be working. For example, your child may not be getting enough help to understand her class work, may still have serious behavior problems, or may not be learning enough in a life skills program. Here are some steps you can take if things aren't going well:

Talk with the child's teacher or other school staff by phone or in person. Ask if the teacher sees the same problems and can suggest any changes in the classroom that might help. Ask to see any assessments (tests) and copies of the child's work. Other things to ask: Are all of the services in the IEP being provided? Does the class have more children than state law permits? Are there some classes or times of day that seem harder for your child? Are the teaching strategies working for your child? Does your child need a "functional behavioral assessment" - an evaluation of the best ways of dealing with her behavior? Are there ways the family can help by working with the child at home?

Write to the principal and request an IEP Team meeting to discuss whether changes in the child's IEP would help. A *Sample Letter Requesting an IEP Team Meeting* can be found at www.elc-pa.org. Often, it is helpful to have the district's Special Education Director at an IEP Team meeting because he should know what other help the district can offer your child. You can ask that the Special

Education Director be invited to your meeting. At the IEP Team meeting, you can raise your concerns. You can also ask whether the IEP goals need to be changed; whether and why the child is making less progress than everyone expected; whether more or different related services are needed; whether your child could spend more or all of her time in a regular education classroom if she had more supports; and any other questions you have about the child's IEP and placement.

When you meet with the school staff, here are some things to think about:

- If no one knows what to do differently, perhaps your child needs a reevaluation. An "instructional" evaluation may identify better strategies to help teach the child, and a "behavior assessment" can show what changes are needed to the behavior program. *Remember, all needed evaluations must be done without cost to the family.*
- If you want a reevaluation, ask to sign the "Permission to Reevaluate-Consent Form" as soon as possible (at the meeting if possible). Remember, a school district has **60 calendar days** (minus the summer months) from the day you sign the Permission to Reevaluate-Consent Form to finish the reevaluation and give you the Report.
- If a reevaluation will be done, ask if the Team can agree to some short-term changes to the IEP in the meantime. A word of caution: The IEP is like a contract - the school only has to give your child what is written in the IEP. So, make sure the school writes the change into the IEP, and make sure that the IEP is clear that the change will only last until the results of the re-evaluation if that is what you want.
- If you think there will be problems at the IEP meeting, you may want to ask the school to agree to **IEP Facilitation**. IEP facilitators do not work for the school (they work for the Pennsylvania Office for Dispute Resolution, "ODR"). A facilitator can come to the meeting and help the school and family solve difficult problems. IEP facilitators are not Hearing Officers so they **CANNOT** order the school or parent to do anything. But sometimes having a facilitator at the IEP meeting can lead to a good outcome. For more information on IEP Facilitation, check the ODR website at
- <http://odr.pattan.net/earlydisputeresolution/IEPFacilitation.aspx> or call ODR at 1-800-222-3353.

WHAT IF I'VE FOLLOWED THESE SUGGESTIONS AND THERE ARE STILL PROBLEMS WITH MY CHILD'S IEP OR PLACEMENT?

If you still have not been able to reach an agreement with your school, your options include filing a complaint with the state's Bureau of Special Education (BSE), going to mediation, or requesting a due process hearing. Pre-hearing conferences are no longer available in Pennsylvania.

As explained below, which option you choose will depend on the kind of disagreement you are having with your school or charter school.

TYPES OF DISAGREEMENTS

- 1) **COMPLIANCE**: The school is not following some or all of your child's IEP or it is not following legal rules or required timelines. File a Complaint with the Bureau of Special Education. (see below)
- 2) **DISAGREEMENT OVER APPROPRIATENESS OF CHILD'S PROGRAM**: You and the school district can't agree on what should be in the IEP. For instance, you think your child needs three (3) sessions of physical therapy per week, and the school thinks only one (1) session is enough.
 - a. Request IEP Facilitation (explained above)
 - b. Request Mediation (see below)
 - c. Request a Special Education Hearing (also called a Due Process Hearing) (see below)
- 3) **DISCRIMINATION**: The school district is refusing to make a reasonable adjustment so that your child can participate in part of the school program or an extracurricular activity. For instance, the school is telling you that a child in a wheelchair cannot go on the class field trip because the school doesn't have a lift van. File a complaint with the Bureau of Special Education, the Office for Civil Rights, or the Pennsylvania Human Relations Commission. (explained below)

WHEN SHOULD I FILE A COMPLAINT WITH THE BUREAU OF SPECIAL EDUCATION?

A parent should file a complaint with the state's Bureau of Special Education (BSE) if she believes the school is not following her child's IEP or the school is not following the laws or required timelines, or is discriminating against

her child because of her child's disability. You can only complain about things that happened within the past calendar year. (So if it is December 2, 2008 you can only complain about things that happened after December 2, 2007). Advocates and advocacy organizations can also file complaints with the state, either about a specific child or about a districtwide or statewide problem. You can even file a complaint against the state.

A parent should ***not*** file a complaint with the BSE about any of the following issues: (1) the school's decision that the child is (or is not) eligible for special education, (2) the amount or type of services the school offers in an IEP, (3) the placement the school offers to a child. For example: if you believe your child needs one hour a week of physical therapy, but the school is only offering an IEP with one hour a month, this is not an issue for a BSE complaint. Why? The Bureau of Special Education will not decide whether an IEP is appropriate - you will have to ask for mediation or a special education hearing to settle "factual" questions.

Parents can also call the BSE's Special Education ConsultLine at 1-800-879-2301 if they have questions about special education law or their child's IEP. The ConsultLine also helps parents with filing complaints, and may refer the parent to outside agencies for more help.

HOW DO I FILE A COMPLAINT WITH THE BUREAU OF SPECIAL EDUCATION?

To file a complaint with the BSE, you can fill out the "Complaint Form" that is found at the following website:
http://odr.pattan.net/files/odr/complaint_form_111606_eng.pdf. Or, if you don't want to use that form, you can send a letter to the BSE.

Either way, the following information must be in the complaint:

1. The child's name, school, and home address (or contact information if the child is homeless).
2. A statement that the school (or the state) has broken a special education law.

For example: "The school has not followed the law because it took more than 60 calendar days to evaluate my son" or "I believe the school broke the law because it isn't giving my daughter the two hours of speech therapy a week that is written in

her IEP.”

3. Any facts you know about the problem.

For example: “The speech therapist quit in September and my daughter has not had any therapy even though it is written in her IEP.”

4. A proposed solution to the problem (if you can think of one). If you want the school to **make up for services** the child missed, you should ask for “**compensatory education services.**” Or, you may want to ask the school to **reimburse you** (pay you back) for services you think the school should have provided.

For example: “I would like the BSE to make the school contract with a new speech therapist immediately and I want compensatory education services (make up services) for the speech therapy that my daughter missed.”

5. Your contact information and signature.

You should attach copies of any papers that help explain your problem, such as a copy of your child’s IEP, to the complaint form or letter.

Complaints should be sent to:

Pennsylvania Department of Education
Bureau of Special Education
Division of Compliance, Monitoring and Planning
333 Market Street, 7th Floor
Harrisburg, PA 17126-0333

***You must also send a copy of the complaint to the school.

We recommend that you send the copy to the school district’s or charter school’s Director of Special Education.***

Make sure to keep a copy of the complaint you send for your records.

The Bureau of Special Education has **60 calendar days** to investigate your complaint and issue a report. If the school and parents agree, they can use mediation to solve the complaint (but the BSE must still give a report in **60**

calendar days unless you agree to give it more time). As part of the investigation, you can give the BSE additional information by phone or in writing. The school will also be given a chance to explain itself and to offer a solution to the problem. If the BSE report says that the school broke the law, it must tell the school what it has to do to correct the problem (called "Corrective Action"). The BSE must follow up to ensure that the school completes all of the "corrective action."

If the parent is not satisfied with the outcome of the complaint, the parent may go to a due process hearing.

WHEN SHOULD I USE MEDIATION?

Mediation is free and voluntary (this means that both the school and the parent have to agree to use mediation or it will not take place). It can be a quick and informal way to resolve disputes.

A "mediator" is assigned by the state Office for Dispute Resolution (ODR) — this person does not work for the school and is trained to help people reach agreements. A mediation session usually will be scheduled within seven to ten days of your request. The mediation session must be held at a place that is convenient to you. All discussions at mediation sessions are confidential (private) and cannot be used by the school or the parent in any future special education hearings or court cases. So, you should not worry about saying "the wrong thing" at the session.

The mediator usually will meet with each side separately, and then both sides together, to help solve the problem. Neither the school nor the parent can bring their lawyer to the session, but the school must send someone who has the power to make decisions for the school. If the school and parent reach an agreement, it must be put in writing and signed by the parties. If the agreement requires a change in the child's IEP, the school or school district should hold an IEP meeting to make the changes to the IEP. If the school signs the agreement but doesn't follow it, you can file a complaint with the BSE to enforce the IEP, or go to court to enforce the agreement. For more information on mediation, see the ODR website at <http://odr.pattan.net/>.

If you would like to use mediation, you can download and fill out the mediation request form: http://odr.pattan.net/files/odr/mediation_request.pdf. If you do not have access to a computer or the internet, call 1-800-222-3353 to reach ODR. You can also start mediation by checking the "box" for mediation on a NOREP and then contacting ODR.

WHEN SHOULD I ASK FOR A SPECIAL EDUCATION HEARING (ALSO CALLED A "DUE PROCESS HEARING")?

A parent can request a special education hearing to resolve disputes about whether a child is receiving a free appropriate public education in the least restrictive environment, whether the school district should pay for an Independent Educational Evaluation, and more - pretty much any disagreement between the parents and the school district can be the subject of a special education hearing. The most common topics are the appropriateness of a child's program or placement. Sometimes the school is the one who requests a hearing (for example, if the school wants to deny your request for an independent evaluation). Almost all of the rules that apply when a parent requests a hearing also apply when a school requests a hearing.

How do I request a hearing?

To request a hearing, you can check the "Due Process Hearing" box on a NOREP. But that is not enough. You must also send a letter, called a "complaint," to the school that includes certain information (you can attach this letter to the NOREP when you send it back to the school). You must also mail a copy of the "complaint" letter to Pennsylvania's Office for Dispute Resolution at: 6340 Flank Drive, Suite 600, Harrisburg, PA 17112-2764. ODR's fax number is 717-657-5983, and the e-mail address is odr@pattan.net.

A Sample Letter Requesting a Special Education Due Process Hearing can be found at www.elc-pa.org. ODR also has a "Due Process Complaint Notice" available at its website at <http://odr.pattan.net/files/ODR/dpcomplaintnotice.pdf>. ODR's "Due Process Complaint Notice," however, asks the person completing the notice to provide more information than is actually required by special education law (for example, the law does not require the notice to contain the name of the Superintendent/CEO, or the name and address of the LEA contact). If you are using ODR's form to ask for a hearing, just fill out the contact information for the school to the best of your ability. The most important sections of the "complaint" are discussed below.

You can request a hearing even when you have not been given a NOREP by the school - just write the "complaint" letter and mail it to both the school and to ODR.

What information must a special education hearing request contain?

A special education hearing request or "complaint" letter must contain the following information (in as much detail as possible):

1. The child's name, school, and home address (or contact information if the child is homeless);
2. An explanation of the problem(s); and

For example: "The school wants my son to stay in his emotional support class, but for the last two years he has been in that class and getting bad grades because he is bored. His therapist says he would do better in a regular classroom where the school work is more challenging if he had some extra support, such as help from an itinerant teacher. The school district wouldn't change his class or provide the extra help, so I am now asking for a hearing."

3. When possible, any suggestions you have for solving the problems. Remember to include a request for **compensatory education**, if appropriate. Compensatory education is make-up services for your child for services missed or inappropriate services from the school. See ELC's fact sheet entitled *When Is Your Child with a Disability Entitled to Compensatory Education Because the School District Has Violated Her Rights?* at www.elc-pa.org.

For example: "I would like my daughter to be moved to a regular education classroom with supports and given compensatory education for the time she spent in the inappropriate emotional support classroom."

If the school thinks the parent's "complaint" letter is missing some of the required information, it has **15 calendar days** to tell a Hearing Officer that it thinks the request is "insufficient." If this happens, the Hearing Officer has **five calendar days** to make a decision and notify the parties in writing. If the Hearing Officer rules that a request is "insufficient," the hearing will not be scheduled. At that point, you can either "amend" your request to add the missing information (see below) or you can start over by writing a new "complaint" letter and sending it to the school and to ODR.

TIP: Before you ask for a hearing in your "complaint" letter, think carefully about the problems that you want the Hearing Officer to decide. The Hearing

Officer is only allowed to decide issues that you include in your "complaint" letter - if you forget something you cannot bring it up later on unless the Hearing Officer or the school allows you to "amend" your request (see below).

Is there a deadline for requesting a hearing?

A parent must request a hearing within **two (2) years** of the date that the parent knew (or should have known) about the problems listed in the complaint. The only **exceptions** to this rule are: 1) when the parent was prevented from requesting a hearing because the school specifically misrepresented that the problem was solved, or 2) because the school did not give the parent information about the problem that it was required to provide under the law. For example, if you want a hearing because you think the school should not have stopped giving your child speech therapy, you must file the complaint within two years of receiving the IEP and NOREP that no longer include speech therapy. But, you might be excused for waiting longer than two years if the school falsely told you that your child was receiving speech therapy.

TIP: If the problems have been going on for more than two years, you can still request a hearing but the award you will be given (if you win) will be limited to the two-year period unless you meet one of the exceptions.

Example: You might only win two years of compensatory education if you knew or should have known that your child was not getting help with her reading disability and you waited three years to ask for a hearing.

Can I change my hearing request?

A parent can "amend" a hearing request if one of two things happens: (1) the school agrees to your amendment, or (2) if the Hearing Officer agrees to let you amend the complaint more than **five calendar days** before the hearing was scheduled to start. But, if you amend your complaint, the timeline and other requirements for a hearing start over again - which is why it is important to get it right the first time if at all possible.

Does the school have to reply to my hearing request?

If the school has not already given you a NOREP that explains its reasons for each of the actions that you are complaining about in your hearing request, it must send you either a NOREP or a written response to the issues you have raised within **10 calendar days** of receiving the "complaint" letter. If the school already gave you a NOREP that covers all the issues, it doesn't have to send you a new NOREP.

What happens after the hearing request and the school district's response?

Within **15 calendar days** of receiving the "complaint" letter, the school must schedule a "**resolution session**." If you have already had a mediation session about the issues in the "complaint" letter, you can skip the resolution session. Or, the parent and the school can agree in writing to skip the resolution session.

A resolution session is a meeting with the parent and any IEP Team members who have knowledge of the facts in the hearing request. The family can bring an advocate or a lawyer to the meeting. If you do not bring a lawyer, the school can't bring its lawyer. The school must send someone to the meeting who has decision-making authority. Any agreement reached at the meeting must be put in writing and signed by the parties. After the meeting, the parent and school have **three business days** to change their minds and cancel the agreement. Make sure that the agreement is included in your child's IEP. Then, if the school doesn't follow the IEP, you can file a complaint with the BSE. You can also go to court to ask a judge to force them to follow the agreement. For more information about resolution sessions, including how to prepare for one, see *Resolution Meetings: A Guide for Parents and Educators* at

<http://odr.pattan.net/files/ODR/ResolutnMtgs011608.pdf>.

When does the hearing begin?

The resolution session and mediation are designed to help the parties avoid a hearing. If the problem is not resolved, the hearing can be scheduled if:

- It has been **30 calendar days** after the school received the parent's "complaint" letter and the parent went to a resolution session or to mediation and doesn't think the problem was fixed. However, the parties do not have to wait for the 30 day period to end if the parties have agreed in writing to waive or end the resolution session or mediation. The parties can also waive the 30 day limit in writing and complete mediation.
- It has been **15 calendar days** since the school received the parent's "complaint" letter and the school has not scheduled (or has failed to show up at) a resolution session, then the parent can ask the Hearing Officer to schedule the hearing.

However, the hearing will not start if the parent skips a resolution session (but the school does need to try to schedule the session at a mutually agreeable time). In fact, if the school can show that the parent hasn't cooperated in scheduling the resolution session or has failed to go to the session, the school can ask the Hearing Officer to dismiss the complaint. If this happens, you will have to start the hearing process over with a new "complaint" letter (which will limit the

parents' ability to get compensatory education or reimbursement to two (2) years from the new complaint).

What rules apply at the hearing?

The family (and the school) has the right to bring a lawyer to the hearing. However, if you cannot afford an attorney, you do not have the right to have one provided for you. You do not need to have a lawyer to go to a hearing, though. You can represent yourself. This is called proceeding *pro se*. The school will almost always be represented by a lawyer at a hearing. The family may also bring non-lawyers who have special knowledge or training about the problems of children with disabilities with them to consult. The family must be given access to their child's school records before the hearing. The family (or the school) may ask the Hearing Officer to order (subpoena) a person to attend the hearing as a witness.

Five (5) business days before the hearing, the family and school must exchange a list of all documents and witnesses that they want to use at the hearing. The school and family must also give each other copies of any evaluation reports that will be shown to the Hearing Officer at the hearing. If you don't follow this rule, the Hearing Officer can stop you from using the documents or witnesses at the hearing.

TIP: If you want to ask questions of a school employee at the hearing, and they aren't on the school's witness list, ask the Hearing Officer before the hearing begins to order that person to come to the hearing and testify. The Hearing Officer has the authority to issue a "subpoena" to that person requiring them to testify at the hearing.

What happens at the hearing?

The case will be decided by one of five full-time Hearing Officers employed by the BSE. A list of all Pennsylvania Hearing Officers is at <http://odr.pattan.net/files/odr/honames.pdf>. At the hearing, the family will have a chance to explain the child's situation to the Hearing Officer, to present witnesses and experts, and to question the school's witnesses. The parent will want to show why the school's current or proposed evaluation, IEP, or placement of the child is not appropriate. You should also show why the evaluation, IEP, or placement that you want would be appropriate.

For example, you may want to show the Hearing Officer copies of your

child's current and past IEPs and past report cards/progress reports to show that the IEP hasn't changed over that time and that your child has not made much progress. The parent may also want to use an outside "expert," like a therapist or certified school psychologist, to discuss what's wrong with the current IEP and what improvements are needed. The school will then have a turn to show the Hearing Officer documents and to present witnesses. Each side gets to "cross-examine" (ask questions) of the other side's witnesses.

Much more information about the procedures used during a hearing can be found in *Pennsylvania's Special Education Dispute Resolution Manual* (formerly known as the Hearing Officer Handbook) put out by ODR. This manual can be found at: http://odr.pattan.net/files/ODR/SEDR_Man.pdf.

TIP: If you have had an independent evaluation of your child, it would help a lot if the expert who evaluated your child would come to the hearing. Unfortunately, while the school may have to pay for the evaluation, the school will not have to pay for the expert to come to the hearing. If you can't afford to pay the expert to come to the hearing, you can still bring the expert's report and show it to the Hearing Officer.

How long does it take to finish the hearing and get a decision?

Once the timeline for scheduling the hearing begins, the Hearing Officer must make a written decision based on the hearing within **45 calendar days**. If there are a lot of witnesses, it can sometimes take a couple of days to finish a hearing. The Hearing Officer can extend (or refuse to extend) the 45 day rule if you or the school ask him to.

Once the Hearing Officer makes his decision, the school must either appeal or follow the decision. If the school does not appeal and doesn't follow the decision, then you can enforce the decision by filing a complaint with the Bureau of Special Education or by going to court.

Copies of Hearing Officer's decisions can be found on ODR's website at: <http://odr.pattan.net/dueprocess/HearingOfficerDecisions1.aspx>.

TIP: If you settle the dispute with the school before the hearing, you can ask the Hearing Officer to put the settlement "on the record." But neither the Hearing Officer nor the Bureau of Special Education will enforce settlements. The only way to enforce a settlement is by going to court. You will also lose your chance to have the school pay for your lawyer's fees by settling unless the school agrees to pay the fees as part of the settlement.

Can the Hearing Officer's decision be appealed?

The Hearing Officer's decision can be appealed by the parents or the school (or both) in state or federal court within **90 calendar days** of receiving the decision. There is no longer an Appeals Panel to hear appeals of due process hearings in Pennsylvania, except for cases in which the due process hearing was requested before June 15, 2008.

Who pays for the family's attorney?

Remember, you do not have to hire an attorney; you can go to the hearing by yourself. While it may seem scary to go to a hearing without a lawyer, ask yourself what you have to lose. You might win some of what you want (or even all of what you want). Even if you lose, you will know that you've given it your best shot. Parents who go without a lawyer have a better chance of succeeding if they pick just one or two issues (like trying to get an extra session of Occupational Therapy or Physical Therapy) and make the hearing as uncomplicated as possible.

If you do hire an attorney and you win the case, the school may be forced to pay some or all of your attorney's fees. The payment of attorney's fees can be part of a settlement agreement with the school, or you can file a case in court to get the fees paid if a hearing officer has ruled in your favor. Schools do not have to pay for your lawyer to go to an IEP meeting unless the meeting has been ordered by a Hearing Officer. The school also doesn't have to pay for your attorney to attend a resolution session.

In very limited circumstances, a school can ask a court to order that a parent or parent's attorney pay the school's attorney fees. This would only happen if a parent asked for a hearing for an improper purpose, such as to harass the school.

A Hearing Officer or a court can no longer order a school to pay for the costs of any experts used by parents at the hearing.

CLAIMS OF DISCRIMINATION

If you believe that the school is discriminating against your child because of your child's disability (for example, not allowing the child to participate in field trips or the school marching band), you can also file a complaint with the Bureau of Special Education (the process for which is explained above), the U.S. Department of Education's Office for Civil Rights (OCR) or the Pennsylvania Human Relations Commission (PHRC). More information about such complaints may be found at:

- <http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>
- http://sites.state.pa.us/PA_Exec/PHRC/education/education_home.html.

You can also ask for a special education hearing to resolve an issue of disability-related discrimination. You can ask a Hearing Officer to order the district to provide your child with the necessary accommodations so she can participate in an activity or program. In some situations, you might also be able to go directly to court to ask a judge to order the school to stop its discriminatory practice(s).

Funding for this brochure was provided by:

Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

Pennsylvania Interest on Lawyers Trust Account Board (PA IOLTA)

*Prepared by: Education Law Center (Rev 4/09)
(215) 238-6970 (Philadelphia)
(412) 258-2120 (Pittsburgh)
www.elc-pa.org*